



Study of grandparents
in family court proceedings over
their grandchildren prior to the
2014 changes to the court

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Executive summary

This study reports the results of a quantitative and qualitative survey conducted with a group of grandparents raising their grandchildren who had been involved in custody and guardianship matters in the Family Court prior to the 2014 changes. The sample was derived from an earlier, larger study of grandparents raising grandchildren (Gordon, 2016).

In total 138 participants were interviewed via a CATI – computer assisted telephone interview. This was a response rate of 55% on the original sample of 248, and there were a variety of reasons why the rate was relatively low. There was little evidence that the sample was skewed by the lower than expected rate.

Most of the participants went to the Family Court to get custody and guardianship of one or more grandchildren. They did so under their own steam in order to add certainty to existing arrangements, or on the instructions of Child, Youth and Family (CYF). Many were concerned about the welfare of their grandchildren. Some needed to gain guardianship before they were able to access the Unsupported Child Benefit.

Most gained initial advice from a lawyer in private practice, and many thought they had received good advice, while others did not. Nearly 90% appointed a lawyer to represent them. A small number ended up representing themselves, because of cost factors. Participants found lawyers in the phone book, on the internet or by advertising. However, the main source of lawyers was a person they knew or that someone told them about.

Most participants rated their lawyer as good or great/wonderful, although 20% were neutral or thought their lawyer was not very good or terrible.

Less than 30% (40 participants) received financial support through legal aid for the Family Court process. Most of these used less than \$10,000 of legal aid. Seventeen reported they were having to repay their legal aid, through weekly payments and/or a charge against their property. Most were very happy to have had the support, but a number are struggling with the repayments. The addition of interest at 8% is of particular concern.

Participants in this study report paying from a few hundred dollars up to \$100,000 for their Family Court processes. Factors causing large bills include issues relating to the competency of the other party, high levels of contestation, and waiting for lawyers, the court, mediation and other agencies.

Most of the opposing parties in the Family Court were the children of participants in this study, or their partners. In some cases there were multiple parties. Some found the process easy and supportive, while other experienced high levels of contestation and costly, slow processes.

Over 40% had been through a mediation process and most were dissatisfied with that. Mediation “did not solve anything” and in particular commitments made there were often not achieved in practice. It was a forum run by the lawyers and was quite unfriendly.

In most cases children got a direct say and/or had a counsel for the child. Most participants were happy with the counsel. There were some scathing comments about the commitment and work of the counsel.

Most participants received the outcome that they sought. Most are happy with the outcome, although many note a wide range of stressors in bringing up the children. A few commented that it was a difficult process which has taken a physical, emotional and financial toll. For some, the contestation appears endless.

However, most report relative stability in current arrangements and some note that contestation is reducing over time. When asked to rate their whole Family Court experience from 1 to 10, the full range of ratings is used but most rate the experience in the range 7-10, positive to excellent.

The survey used for this study is appended.

About this study

In 2014, significant changes were made to the Family Court system in New Zealand. The aim was to move from a largely adversarial to a more mediated solution to Family Court disputes. In most circumstances, under the new regime, lawyers were not allowed to represent clients in the new system. In examining the changes, Atkin (2015) has suggested that they constitute a withdrawal of the state and a privatisation of family disputes, plus the removal of the right to litigate. The question of whether the new system has met its goals will be examined in a large Law Foundation funded study in 2017, by the University of Otago.

In order to gauge the effectiveness of changes, there needs to be an understanding of the prior system. In our recent study of grandparents raising their grandchildren (Gordon, 2016), participants noted that they had experienced the Family Court before, during and after the changes. Many of them indicated a desire to 'have their say' about their Family Court experiences, having found the system difficult to navigate. Earlier studies in New Zealand (Worrall 2005, 2009) indicated that Family Court proceedings were a source of particular stress for grandparent carers, for a number of reasons (see also Sands et al, 2000).

As the Family Court was explicitly ruled out as a research topic in our larger study (Gordon, 2016), we sought (and received) funding for a small follow-up study from the Law Foundation. Data about pre-2014 experiences of the Family Court would be collected by our team, while post-2014 data would be passed over to the University of Otago (with the consent of the participants), to be included as part of their study.

This report therefore outlines the findings of a follow-up survey to the earlier study, focussing only on pre-2014 Family Court experiences of grandparents raising their grandchildren.

How the study was carried out

Ethical permission had been provided by the University of Canterbury for the earlier study, and permission to participate in this study was provided through the earlier study. We therefore operated on the same ethical framework. All participants were reminded of the extended ethical terms and were asked to agree to these, and all did.

There were 248 participants in the larger study that noted they had experience in the Family Court prior to the 2014 changes and agreed to participate. These constituted the sample for this study. A further 159 names for peri- and post-change experiences were passed to the University of Otago team.

The Law School of the University of Canterbury allowed us to seek student volunteers to carry out many of the interviews. A group of six students was recruited and trained in interviewing the participants over the telephone, keeping records and maintaining confidentiality. Although volunteers, an ex gratia payment to cover their expenses was made to each student.

A survey was developed on the Qualtrics platform after consultation with the Otago team. This is attached as Appendix 1. The survey ran from August to the end of September 2016, and data was analysed and the report written in October/November.

The quantitative results were derived from the auto-report function of the Qualtrics software, and in this report are presented largely in tabular format. The qualitative data was analysed using NVivo, a research program that allows for the analysis and synthesis of data into multiple categories.

Responses

The response rate was lower than expected at around 55%. In principle, we had an expectation of 90% or more responses, as the participants had already consented to be contacted. There were four separate explanations for the low response rate:

-) Participants who had noted an incorrect phone number, or who never answered their phone (around 20);
-) Participants who, when contacted, decided that the earlier large survey was enough for them and who declined to participate (around 20);
-) Participants who indicated their interest in the survey but who missed telephone appointments or were unable to complete the survey at the time (around 20); and
-) Participants who were never contacted (around 40).

In studies of this kind, it is well acknowledged that stress factors act as a barrier to data-gathering, and the grandparents carer population is as stress-filled as any (Williams, 2011). There may have been the potential to increase the response rate by using trained telephone interviewers or some of the original interview team (the one member of that team who worked on this project achieved a response rate of over 90%). This is not to criticise the student volunteers, who did their best, but simply to note this kind of study benefits from having an experienced team.

The resulting sample was slightly skewed in terms of getting to the hard to reach participants. In this kind of survey, it is often Māori and Pasifika participants that require additional engagement, and the proportion of Māori in this sample declined from 36% in the prior survey to 20% here. There were only two Pasifika participants but 12% identified as other, including 'four' who identified as Māori/Pākeha, Australian, North American, South American, Chinese and a number who chose not to respond. The ethnic composition is outlined in Table 1 below.

| Ethnicity | % | Count |
|--|--------|-------|
| New Zealand European | 65.91% | 87 |
| Māori | 20.45% | 27 |
| Samoan | 0.76% | 1 |
| Cook Islands Māori | 0.00% | 0 |
| Tongan | 0.76% | 1 |
| Nuiean | 0.00% | 0 |
| Chinese | 0.00% | 0 |
| Indian | 0.00% | 0 |
| Other (such as Dutch, Japanese, Australian please state) | 12.12% | 16 |
| Total | 100% | 132 |

Table 1. Stated ethnicity of participants (six missing)

The age population of respondents largely reflects the distribution of the original survey, except for a notable skewing towards the older age group. There were zero grandparents under 40 years of age in this survey, compared with around 3% in the earlier study, and the modal age of this group is 60-64, compared with 55-59.

This slight skewing is understandable as all of these grandparents went through the Family Court system at least 2 years ago, and many much earlier. We would therefore expect to find that the post-2014 sample was slightly younger, overall.

Some kin carers are 70 years of age and older, possibly reflecting a great-grandparent relationship (there were 44 of these in the earlier study). The age distribution of participants is outlined in Table 2 below.

| Age | % | Count |
|------------|--------|-------|
| Under 35 | 0.00% | 0 |
| 35-39 | 0.00% | 0 |
| 40-44 | 3.82% | 5 |
| 45-49 | 8.40% | 11 |
| 50-54 | 16.03% | 21 |
| 55-59 | 19.85% | 26 |
| 60-64 | 23.66% | 31 |
| 65-69 | 15.27% | 20 |
| 70-74 | 9.92% | 13 |
| 75-79 | 1.53% | 2 |
| 80 or more | 1.53% | 2 |
| Total | 100% | 131 |

Table 2. Stated age of participants (7 missing)

While significantly smaller than expected, then, the responses indicate that a wide range of grandparent carers were canvassed. It remains possible that motivational factors have skewed the distribution slightly – that those with the worst experiences were more determined to have their say than others – but there is little evidence of such a skewing in the results. We therefore conclude that the sample is likely to provide reliable results on the Family Court experiences of grandparents raising grandchildren.

Reasons for going to Family Court

Participants were asked to select from a list the reasons that they went to the Family Court. Multiple responses were allowed for this question. By far the most common reason given was the need to get custody and/or guardianship of their grandchild/ren. The second most common reason (with significant overlap with the first) was that Child, Youth and Family told the grandparents to go for custody and guardianship. The third reason given was to get a ruling on access by parents to their children. The full results are outlined in Table 3 below.

| Reasons | % | Count |
|--|--------|-------|
| I went to court to get custody / guardianship of the child/children/moko | 80.74% | 109 |
| The parents of the child/ren/moko took me to court for custody /guardianship | 4.44% | 6 |
| I went to court over parental access to the child/children/moko | 7.41% | 10 |
| The parents of the child/ren/moko took me to court to get access | 3.70% | 5 |
| I went to court over payment of child support | 0.74% | 1 |
| Another agency (such as Child, Youth and Family) told me to go to court for custody/guardianship | 22.96% | 31 |
| Other | 3.70% | 5 |
| Total | 100% | 138 |

Table 3. Stated reasons for Family Court involvement.

A small number of participants noted that they had been taken to court by the parents of the children in relation to custody, guardianship and/or access issues.

Concern about the welfare of the child/ren

The main reason for seeking a legal ruling and guardianship was to secure the safety and security of the children. For some, the children had been living with the grandparents for some time and there was a drive to “make it legal”, to ensure that the children could not be taken from them. A variety of the reasons give are outlined below in participants’ own words.

Very concerned about the welfare of our grandchildren. Their mother was not feeding or caring for them properly and was also taking "P".

Child was abandoned and we needed to keep him safe

Parental drug abuse, domestic violence, police involvement, brief incarceration of parents

Children were in an unsafe environment and had been taken from the parents by another grandparent with a temporary court order.

The background was so horrendous, if I didn't apply for interim custody the boy's life was in danger. He was living with me, then she (my daughter) decided she would take him back to live with the father, who was dangerous, abusive, neglectful. Then, ended up at my place when social workers asked me to pick up Mum and baby from the refuge.

My daughter had been in jail. She turned up with a baby - meet your granddaughter - got pregnant in prison. Took someone with me. Went down in neutral place, met the baby, and the people who brought her to the meeting they loaded the baby's stuff in my car - you can have her for the weekend eh! Four weeks later... finally made contact. She turned up really on something, reeking of alcohol. I ended up at my sister's. I applied for temporary custody, which was granted. In the meantime I was still letting my daughter have access (was supposed to be supervised but not organised). It went against me that I allowed unsupervised access. Baby came back burns, bruises, very dirty. Every time I got her back there was something wrong. Evidence from Doctor. Supposed to have final hearing on unsupervised access they took her off me and gave back to mother. Mother hanging baby upside down on clothes line. I kept saying "something's wrong with this baby". Had her full time from when 8 months old. Three years for sole custody. Not guardianship. So I couldn't get medicines, schooling. I did feel that I was let down by the court, the baby was - they put her back into the care of a known violent person.

The children had been left in our care by their mother as she struggled with her addiction to meth.

We went to court to have security that [child] could not just be taken out of our care by his mum whom has mental health problems

The doctor from Starship rang CYFS and diagnosed Munchausen's by Proxy

Our initial action was to report through CYFS, but we found them impotent- they took no action whatsoever. As we were doing that, things got worse for the child more violence, more drug and alcohol abuse. By this stage we were asking CYFS to take the child out of the situation, that was clearly not going to happen and so we then went through the family court and engaged a lawyer

Our daughter was on drugs, we went through many group conferences to try to resolve the issue. The three children were not getting taken care of, the third child was born with withdrawal symptoms. She was a single mum with drug addictions and we tried to help her off the drugs but nothing worked.

The adverse situations from which the children were often removed were themselves a pressure point in attending the Family Court. Parents of the children with drug problems, mental health issues, prison backgrounds and often quite violent associates made for high levels of contestation in the Family Court system. In particular, it calls into question whether mediated settlements are possible with so many barriers within the families. This is discussed below.

Additional pressure again was applied in some cases by Child, Youth and Family, who often took quite a coercive stance with grandparents – take the child/ren and get guardianship or they will be put into foster care.

Child Youth and Family (CYF)

Child, Youth and Family played multiple roles in regard to these families. The agency accepted and investigated notification of abuse, uplifted children, provided foster care and sought medium and long term solutions.

From the point of view of the grandparents, CYF often played quite a demanding role in relation to the grandchildren. In particular, CYF often used the potential for the children to be placed in stranger care to push grandparents into taking on the children and gaining custody and guardianship. On the other hand, the agency also often paid for the Family Court process. The achievement of a custody settlement was often the trigger for the withdrawal of CYF and the closing of the case. In the process, however, CYF was not above using its powers to force a solution:

CYFs told us that we could not foster our grandson and that if we did not apply for custody then he would be removed from our care and placed into the state system which we understood to be foster care.

There were ongoing issues with the mother's health. She had tried to commit suicide, we then had to go through CYFs. We had to go to court to get guardianship.

Child Youth and Family told us to get custody as the child was in their care and he had an illness

My daughter, she didn't want her son. He was either going into CYFs care or I stepped in. There were mitigating circumstances. He had tried to jump through a window and was also on drugs and alcohol. He had been a naughty boy and got in with a wrong crowd. CYFS had intervened and put him in a boy's home. I wasn't happy with this so went to the family court.

CYFs - Insisted that we went to court to gain legal custody. They had a temporary custody order seeking for grandparents to take over.

CYFs was going to take the granddaughter into care, father murdered mother
I was the CYFs approved caregiver of my grandchildren. CYFs had approached me to go for a parenting order and guardianship in October 2013 but I declined because I didn't feel ready to take that step. After feeling empowered through my association with GRG and organising financial support from my ex husband and organising other support systems, I decided to go ahead with applying for a parenting order and shared guardianship. In the meantime CYFs seemed to have turned on and made unreasonable demands on me. I have since challenged and complained about their unreasonable demands and bullying tactics and received an official apology from senior CYFs staff and the Chief Executive of the Ministry of Social Development. I had also learnt through the GRG conference that the law was changing which would make it more difficult for people to apply for parenting orders. I saw my lawyer and she suggested we should be proactive and go ahead with my application for a parenting order and shared guardianship papers without CYFs support, which we did.

My granddaughter had been placed with me at birth by CYFS. It was planned from the beginning that this would probably be for her long term care, due to her mother's (my daughter) mental ill health. By the time my granddaughter was in her second year it had become clear that her mother's mental health issues were likely to persist long term. Therefore I was asked by CYFS to apply for guardianship and custody through the Family Court.

These extracts show a number of facets of the grandparents' relationship with CYF. Overall, there is the desire for the children's status within the grandparents family to be legalised. It is difficult for the families that the same agency that provides this advice often appears significantly coercive about the conditions under which the children can live with the grandparents. On the other hand, the offer by CYF in many instances to fund the Family Court legal process is of great assistance to the families.

Going to court to secure guardianship for financial or control purposes

The rules surrounding Unsupported Child Benefit paid by Work and Income requires proof of family breakdown and the intention of long-term care (over 12 months) of the child. The easiest way to get such proof is by holding a parenting order issued by the Family Court. Several of the participants in this study went to the Family Court primarily to get that order, so they could access financial assistance:

Children were given to great grandparents by parents willingly, went for custody in order to get WINZ assistance

As well, for a number of families the achievement of guardianship meant that the grandparents could 'have a say' in life decisions. Without guardianship, there is no legal mandate for carers to make decisions about the children in matters such as educational placement, health care and legal matters:

I wanted to have guardianship so I could authorise medical operations without CYFS and so I didn't have to deal with CYFS so often and have them controlling me, and so I had legal status in relation to the children.

In both these scenarios, the Family Court process is a means to an end.

Attempts to resolve the issues before the matter got to Family Court

Some grandparents tried to resolve the issues by agreement with the parents. The major route for such a process is the Family Group Conference, which in principle provides a forum for consensual decision-making and agreement among all parties. In reality, the FGC process was not effective for many grandparents.

Family Group conferences - they did not work anything out.

Yes, we went through group conferences and we got interim custody. We then had to go to court.

No the situation was too violent fuelled by drugs and alcohol and hate played a very big part in it.

Yes, tried everything, discussing with mother and father. Didn't work, had to go to court for custody

Yes, many group conferences. The children also went to live with their grandfather but he could not look after them. Our daughter wanted the children back so we bought her a house and set her and her family up for the children. She was on drugs again though.

Some noted that matters were resolved before court, but they wanted the 'rubber stamp' of official guardianship. CYF also pushed in many cases for a legal solution.

A number documented stories of family violence and concern for the safety of family members, which precluded the possibility of a mediated solution. One story (out of quite a few similar ones) is outlined below in the participant's own words:

Of course, we tried to support the family with counselling and recommendations to professionals to help deal with medical issues. We lent funds to help ease financial distress, and we frequently had our granddaughter to stay so as to provide space for her parents to work on their

problems. We called in the CAT team to help the father, and had to involve the police on several occasions when violence escalated. The family court was a last option when it became clear that the situation had become too toxic and our daughter had left the marriage. We believed our granddaughter was in desperate danger.

The numbers

Nearly two thirds of participants went to the Family Court over just one child. But a significant number sought orders on behalf of 2, 3, 4, 5 or more children. The number of children involved is outline in Table 4 below.

| No. children | % | Count |
|----------------|--------|-------|
| 1 | 58.82% | 80 |
| 2 | 23.53% | 32 |
| 3 | 11.76% | 16 |
| 4 | 4.41% | 6 |
| 5+ | 1.47% | 2 |
| Total children | | 222 |

Table 4. No. of children who were subjects of Family Court action

Participants were asked how many different ‘cases’ they were involved with, defined as separate actions. The response shows that three quarters were involved in only one case, which meant that a number involved multiple children. However, some were involved in two cases, and a small number in three or four, as Table 5 shows:

| No. cases | % | Count |
|-----------|--------|-------|
| 1 | 73.68% | 98 |
| 2 | 17.29% | 23 |
| 3 | 4.51% | 6 |
| 4+ | 4.51% | 6 |
| Total | | 133 |

Table 5. No. of cases taken to Family Court

In summary, due to the nature of the family circumstances, the desire of CYF for an enduring solution, the need to get certainty and financial support, seeking orders

through the Family Court was seen as the best option, or a necessary evil. There is little doubt it was a stressful option, made worse in some instances by multiple cases.

The overriding concern of many in the Family Court reforms (Atkin, 2015), raised by organisations such as Grandparents Raising Grandchildren, as well as many lawyers, was whether the new system, that largely bypassed legal representation and focussed on the private use of mediation, would be effective for groups such as this. The following sections consider the pre-2014 systems, its patterns of use and outcomes, to consider what changes are required.

Getting advice and representation

Participants were asked who they sought advice from about going to the Family Court, and the answers are summarised in Table 6 below.

| Sources of advice | % | Count |
|-------------------------------|--------|-------|
| Friends or family (non-legal) | 20.15% | 27 |
| A community law centre | 13.43% | 18 |
| A lawyer in private practice | 55.97% | 75 |
| Other, please specify | 24.63% | 33 |
| Total | 100% | 134 |

Table 6. Sources of advice about Family Court

More than half of all participants received their advice from a lawyer in private practice. A quarter were advised by CYF, and followed their advice. Others were advised by Community Law Centres or by friends or family.

Most noted they got good or excellent advice, but many also felt that they did not at first have adequate understanding of how the system worked.

We had no advice to speak of we just followed CYF's advice. Lawyer for child was very helpful from time to time but most of it has been difficult because we need what money we have to fund retirement and help family members. We did not qualify for legal aid.

Kind of. Thought you would get more clarity. Unfamiliar with court proceedings but expected more help from community law.

CYFs were his guardians. "You need to go to court, we'll help you". They also suggested a lawyer who did cases for CYFs

Some felt they did not get good advice, or good support. As well, some were very critical of aspects of the system. These views are represented in the following quotes:

Lawyer for child was hopeless. He was only there for the money. Never spoke up and only time he ever did was sticking up for the mother. Hadn't spent any time with grandson. Appointed same lawyer for the second round. Grandparents threatened to complain about him and he withdrew. The replacement lawyer for child was acceptable.

Our daughter sought legal advice from a lawyer via legal aid. I attended several sessions with her and was distressed at the consistently poor advice she was given and the disinterest of the lawyer working with her. We took the decision to pay for a private lawyer for our daughter so that she could have good quality advice, then sought a family law specialist to represent us when we applied for parenting order and eventually guardianship. We were shocked and distressed at the lack of professionalism and compassion shown by the legal aid lawyer.

No, CYFs told me which lawyer to go to initially for a parenting order and he did not explain options to me. When trying to get permission to go overseas, I used a private lawyer who cost \$14,000 and was useless. I had to do everything myself, and write him notes during court to prompt him.

Legal advice

Nearly 90% of participants appointed a lawyer, either by themselves or on the advice of CYF. See Table 7 below.

| Did you appoint a lawyer? | % | Count |
|---------------------------|--------|-------|
| Yes | 88.97% | 121 |
| No | 11.03% | 15 |
| Total | 100% | 136 |

Table 7. Numbers who did and did not appoint a lawyer

Some of those who did not appoint a lawyer noted that they already had a lawyer, or CYF organised a lawyer for them: “CYFS did all of that for me- they had legal aid. There was no way I could have afforded a lawyer and I wouldn't have been entitled to legal aid”. But most of those who did not appoint a lawyer ended up representing themselves, either because they wanted a different route or because they had no funding. Some experienced a process outside of the Family Court system that was difficult but eventually consensual:

It then eventually went to a Family Group Conference. Court gave child a lawyer who asked to see me. 27 people in that FGC, including the violent partner's family. Lawyer for child suggested that the child went back to the father. Said to me - if you don't agree, child will go back to foster care. We agreed to that. GRG supported me. Six months later, family review. At the

review, my daughter said she wanted the child to come to me. Two days later - father turned up and gave the child to me.

Eleven of these grandparent families ended up representing themselves or avoiding court action, while four eventually appointed a lawyer. See Table 8.

| Did you represent yourselves? | % | Count |
|---------------------------------|--------|-------|
| Yes | 73.33% | 11 |
| No, I eventually hired a lawyer | 26.67% | 4 |
| Total | 100% | 15 |

Table 8. Whether the families ended up representing themselves

Participants who used a lawyer were asked how they found the person. It is striking that over 70% of those who responded gained their legal advisor through personal networks – someone they knew, or someone who knew someone. This seems very high, although we were unable to find any New Zealand study on this question. See Table 9 below:

| | % | Count |
|-----------------------------------|--------|-------|
| Phone book | 16.80% | 21 |
| Internet listings | 4.80% | 6 |
| Advertising | 6.40% | 8 |
| Someone told me about this person | 47.20% | 59 |
| It was someone I knew | 24.80% | 31 |
| Total | 100% | 125 |

Table 9. How participants found their legal advisors

Of the other choices, the reliance on the telephone book may be a function of the time when they took legal action, rather than a failure to adopt new technology. It is somewhat surprising that internet listings were the least-used source of recruitment.

Quality of legal representation

The 2014 reforms were based on the notion that lawyers should have no place in the Family Court system. But nearly four out of five of those who had a lawyer thought she/he was 'great/wonderful' or 'good' in that system, as outlined in Table 10.

| Rating of lawyer by clients | % | Count |
|-----------------------------|--------|-------|
| Terrible | 5.65% | 7 |
| Not very good | 7.26% | 9 |
| Neutral | 9.68% | 12 |
| Good | 24.19% | 30 |
| Great/wonderful | 53.23% | 66 |
| Total | 100% | 124 |

Table 10. Rating of lawyer on five point scale.

We were also interested to find out whether participants changed their lawyers during the representation process. Over 81% did not do so. See Table 11.

| | % | Count |
|-------|--------|-------|
| Yes | 81.45% | 101 |
| No | 18.55% | 23 |
| Total | 100% | 124 |

Table 11. Whether participants stayed with their original lawyer through the Family Court process.

Of the 23 who did not stick with the same lawyer, seven did not appoint another lawyer, nine appointed one more, five two more and one each three and more than four more lawyers.

The study did not examine the relationship between the number of cases the grandparents were involved in and the number of lawyers appointed, although it would be expected that additional cases would provide opportunities or requirements to appoint new lawyers.

Those who did change their lawyers were asked to rate the final lawyer that they used, using the same rating scale as above. Nearly 80% thought that their final lawyer was 'good' or 'great/wonderful'. See Table 12. Only six participants were dissatisfied with their final lawyer.

| | % | Count |
|-----------------|--------|-------|
| Terrible | 4.35% | 1 |
| Not very good | 8.70% | 2 |
| Neutral | 13.04% | 3 |
| Good | 39.13% | 9 |
| Great/wonderful | 34.78% | 8 |
| Total | 100% | 23 |

Table 12. Level of satisfaction with final lawyer, among those who changed lawyers.

There was therefore a very strong opinion among the pre-2014 grandparents that lawyers did a good or great job for them, in what were often significantly contested family/whanau situations. This is important because, as Atkin (2015) notes, the new regime involved a significant withdrawal of professional legal advice and its replacement with a regime of compulsory mediation. The upcoming University of Otago study will examine satisfaction levels with the new regime, where lawyers are able to be used only under certain circumstances, and people are required to act on their own behalf in many instances.

Legal aid

The cost of Family Court processes under the 2014 regime was of concern to many participants. Under 30% of participants in this study received legal aid to take the court action (see Table 13), and some of this aid may, in fact, have been CYF support.

| | % | Count |
|-------|--------|-------|
| Yes | 29.63% | 40 |
| No | 70.37% | 95 |
| Total | 100% | 135 |

Table 13. Whether participants received legal aid.

For most of those with legal aid (59%), the total value of the support provided was less than \$10,000. However, for 16 participants, the value of the legal aid was over this amount, and up to \$50,000 (see Table 14).

| | % | Count |
|--------------------|--------|-------|
| Less than \$10,000 | 60.00% | 24 |
| 10,001 to 30,000 | 35.00% | 14 |
| 30,001 to 50,000 | 5.00% | 2 |
| 50,001 to 75,000 | 0.00% | 0 |
| 75,001 to 100,000 | 0.00% | 0 |
| More than 100,000 | 0.00% | 0 |
| Total | 100% | 40 |

Table 14. Value of legal aid provided to participants.

Legal aid is considered by the Ministry of Justice to be a loan, and may be subject to repayment. Interest of 8% is charged on the outstanding amount. Repayment may involve a regular amount and/ or a charge against a property. The Ministry of Justice website notes¹:

¹ <https://www.justice.govt.nz/courts/going-to-court/legal-aid/do-you-need-to-pay-back-your-legal-aid/>.

The charge means that if you sell the property, you must repay your debt out of the money you get from the sale.

You may still be required to make regular payments, even if your debt is secured.

As noted above, it is likely that some of the 'legal aid' provided was actually support from CYF, which is not subject to repayment. In effect, only 17 participants reported having to repay legal aid, as outlined in Table 15.

| | % | Count |
|-------|--------|-------|
| Yes | 42.50% | 17 |
| No | 57.50% | 23 |
| Total | 100% | 40 |

Table 15. Those required (or not) to repay legal aid.

Of the 17 who reported they were required to repay legal aid, only 6 were in fact doing so at the time of the survey. Repayments noted include \$5 or \$10 per week which, as one person noted "does not even cover the interest they are charging me". Another noted an interest rate of 8% was being charged on her legal aid debt. Three people noted that there was a charge on their home for the repayment of the legal aid debt.

In general those who received legal aid and, because of low income and lack of property ownership, did not have to repay it, were very happy with the system:

| |
|---|
| Helpful for those in need |
| It was brilliant, we didn't have to pay a cent. |
| As far as I was concerned it was wonderful for us. We had no problems |
| Without legal aid my grandson would be in an environment with alcohol, verbal abuse, physical, emotional and psychological abuse. And also not near his immediate family. |
| If it wasn't for them my case would have been impossible, very grateful for it |
| It was a godsend, especially as I didn't have to pay it back. I couldn't afford to hire a lawyer myself. CYFs helped me get legal aid but didn't put in any money |

I got legal aid and understand that only if I come into money do I have to pay it back

It helped me get custody of my grandchildren I am very grateful to them

When I applied for Legal Aid, I had no idea I would be asked to repay it. It should be paid for by CYFS, because without Guardianship and parenting order I have no say at all over the grandson whom I am looking after full time. They didn't demand payment for over 2 years, and I think it's disgusting that they now charge interest as well.

Very good for those like me a beneficiary at the time and currently still one.

Some had a much more rocky road, including having to change lawyers, early repayment through house sale, having to fight to get support and, in one case, pulling out of a custody battle because of the cost of repayment of legal aid:

We had to put a mortgage on the house for the legal aid.

I had to fight for this, legal aid was told by the court appointed lawyer for both my granddaughters that it was a dead case, I was not going to get custody, so legal aid refused any more payment to me, this I had to fight.

I think the rules have changed now, but I used it at end of [first child] then CYFs asked me to take on [second child] - \$50 deposit. Amount I would have to pay back is value of car - I thought, that's it, I actually pulled out. So couldn't afford to fight it and gave up, so [child] never came to me.

When we put our house into a family trust we had to repay the legal aid. As a consequence we took out a running mortgage with the bank.

My solicitor decided to stop doing legal aid and then I had to represent myself. I went to a lawyer I knew but Family Court wasn't his thing so I was passed on to someone else.

Finally, a small but irate group noted the inequitable situation where one party had non-repayable legal aid and the other faced repayment:

Hard to get

Appalling - the whole system surrounding it. Families where one parent is raising child they get legal aid but the other doesn't.

The Mother didn't have any property and she kept drawing out the process and this wasted a lot of time getting legal aid.

I own a home so I have to pay it back, neither parent owns anything so they don't. They took me through the court process TWICE for visitation that I said they could have, turned up both times for 8 weeks exactly then never saw them again. The courts gave me the baby, I didn't incur a debt from that only from having to go through the process of them getting legal visitation which, as I said, the door was open, they could have come any time but neither of them ever have in almost 8 years.

We could not understand how the mother could continue to push again over and over and legal aid did not say 'enough is enough' when she had been deemed unfit. but allowed her to try and get new lawyers to revisit her case.

The cost of legal action through the Family Court is a particular pressure point for grandparents raising their grandchildren. In the earlier study (Gordon 2016), it was reported that the majority of grandparents lost income as a result of taking on care of their grandchildren. The potential for a large legal bill, whether through legal aid or private payment, is therefore of particular concern.

Cost of legal action

Participants were asked to estimate the direct legal costs paid out for their Family Court case/s.

| Amount | % | Count |
|--------------------|--------|-------|
| Less than \$10,000 | 73.28% | 96 |
| 10,001 to 30,000 | 19.85% | 26 |
| 30,001 to 50,000 | 3.05% | 4 |
| 50,001 to 75,000 | 3.05% | 4 |
| 75,001 to 100,000 | 0.76% | 1 |
| More than 100,000 | 0.00% | 0 |
| Total | 100% | 131 |

Table 16. Estimated cost of Family Court processes.

Participants were also asked to outline which factors they thought contributed to the costs. The largest factor noted (except for 'other') was issues relating to the other party, followed by a high level of contestation. Waiting and delays by lawyers, the court, agencies and mediation all contributed to the cost. The factors are outlined in Table 17.

| Reasons for cost | % | Count |
|---|--------|-------|
| A high level of contestation | 27.78% | 35 |
| Legal delay | 15.08% | 19 |
| Court delay | 16.67% | 21 |
| Issues relating to the other party (e.g. family breakdown, drug/alcohol issues) | 33.33% | 42 |
| Waiting for mediation or other dispute resolution processes | 13.49% | 17 |
| Other agency delay (e.g. CYFs) | 14.29% | 18 |
| Other, please specify | 56.35% | 71 |
| Total | 100% | 126 |

Table 17. Reasons for costs of Family Court (multiple reasons allowed).

More than half of all participants noted there were other reasons. These included: the other party failed to appear; costs of travel and accommodation in attending Family Court in another city; CYF not having reports on time; loss of business; time taken (in one case, four years); and inefficient or expensive lawyers.

Legal costs included, in one case, \$100,000 for the lawyer, and in a number of cases the participants noted that errors by lawyers, or simply lawyers not keeping up with the workload, added to the costs. Two participants gave examples of how delay added extra stress (and costs) to their lives:

Parents applying for legal visitation set on a certain day a week when I said they could come stay at my home and or visit every day if they wished. Their lawyers had them drag me through this process when it was totally unnecessary. And I have a huge legal aid debt, a child with 5 diagnoses, he's on the autistic spectrum and has massive issues and is medicated for his extreme behaviour. I have no life outside this, I had to close my business to care for him 24/7 with no respite on a benefit and they have no debt and have their lives to themselves to do with as they please.

Was part of mother's illness that she was unable to let go. Constantly made it difficult. She had legal aid for years. So I would put in an application and she would at once counteract it. And that's her right. But there comes a time... if the system was not so slow, this would not be able to continue.

At the other end of the spectrum, a small number of participants noted that CYF paid all the costs. Some others noted that the costs were minimal as everyone was in agreement, that lawyers gave them free services, or that the only fee was lodgement as they represented themselves. One person noted that, despite the other party not appearing, things were efficient:

Actually it was pretty efficient. I had already written out the details - so I didn't have to dictate it to the lawyer. My daughter - still in a high state of arousal - was not able to instruct a lawyer well, and changed her lawyer, and did not make it to the hearing. CYFS got their paperwork in on the day of the hearing.

The Family Court

Participants were asked a number of questions about the Family Court process. The first question asked who the other party/ies were.

| | % | Count |
|--|--------|-------|
| My own child or grandchild | 69.63% | 94 |
| The partner of my own child or grandchild | 27.41% | 37 |
| My extended family/whanau | 4.44% | 6 |
| The other (i.e. partner's) grandparents or kin | 9.63% | 13 |
| Other, please specify | 22.96% | 31 |
| Total | 100% | 135 |

Table 18. Other parties in Family Court dispute.

Other included CYF, in several cases multiple parties and various unrelated persons. In some cases the number of parties was quite large:

The parties were myself, my daughter and the father of the two children, my daughter's ex-partner. Her current partner figured only as the target of the judge's opprobrium - one of the rules of seeing the children was that he was not to be present. My daughter's father, my ex-husband, despite a lot of talk, did not manage to get himself included as one of the parties.

There were 3 fathers, 3 grandparents and 1 mother all trying to go for custody of these children.

Mother, father, paternal grandparents. CYF and CYF lawyer, lawyer for child, lawyer for father, lawyer for mother, lawyer for paternal grandparents. This was for one case only. For the rest the paternal grandparents have had no legal support.

The Family Court experience

There was an extremely broad response to the qualitative question on the participants' Family Court experiences. Some found the experience "caring", "supportive", "easy", with good judges and other helpful people:

The judge was phenomenal- the most beautiful human I have ever met. He was sensitive, yet even cracked jokes. He made it clear he was a human. We felt supported

Others found it “adversarial”, “emotionally and physically draining”, with “high levels of contestation”, “costly” and “slow”.

Biggest thing that stuck in my mind was how nasty the other lawyer was. They were only concerned about wanting to win the case, didn't seem to care that there was a family involved.

The courts look through rose tinted glasses at the mother in this case as to her not good background. Vital information is not allowed when drugs, guns and alcohol are involved. Perjury and lies are accepted. Counsel for Child is also allowed to support the mother putting the children at risk. As the person fighting for the safety and wellbeing of the children I was bullied by lawyers and made to feel less than intelligent. I had to make numerous calls to the Commissioner for Children to find out information. I wasn't told of court hearings - bad communication. It took a number of lawyers to find the right person. It is all about money. I also felt that there was conflict of interest as our family court lawyer was also the father's lawyer while he was in Mental Health care. My court experience was not pleasant. I was also not believed when I had been threatened by the mother's brother. The children had orders for them not to be removed from our district when the parents visited only for them to be taken elsewhere so she could turn up at WINZ to get them back on her benefit. No one would action that. The Courts are a sad state of affairs too long and don't take the children's safety into account. The law that needs to be changed states that it's always best for the children to remain in the care of the mother. That law is very dangerous. It needs changing. I also believe that lawyers and judges must also be held accountable for the deaths of our children. Especially when they have ordered the child to remain with the parents. I hold very strong views on this.

Many of the responses made by participants to this question are extremely interesting, but are too numerous to include in this report. They may be the subject of further analysis at a later date.

Contestation

For grandparents, the process of going to Family Court for custody of grandchildren is often highly contested. As some participants point out, the grandparent is not the natural caregiver of the grandchild, the default being that the parents should look after their own children. Therefore the process requires an overturning of the

natural order, at least as it is perceived. The following extracts give a flavour of the nature and process of various aspects of contestation within the Family Court:

They contested everything, and they weren't paying anything as they had legal aid. They had the best of lawyers. We had one case manager through CYFS that stuck with us through the whole journey.

The matters are always contested. The major barrier is the hostility between my granddaughter's mother and myself. We are constantly facing untruths from the mother and memorandums that are very historical and hashed up to look recent. We will never find a resolution while the legal process is allowed to be manipulated in this way.

From 2008 when proceedings first began they were constantly contested by the mother. Mother eventually appealed the decision to the High Court - despite evidence, police etc (she was also facing criminal conviction). It was 18 months before we eventually reached the High Court.

She contested over and over again. It was a game for her- the judge would rule in her favour. I would never recommend anyone to go through the process.

Yes, everything I argued the mother contested to. There were a lot of lies in Court. This delayed all the process, had to go back to lawyers every time. in the end the child's lawyer had to decide.

Yes, the mother stated that there was a cultural difference and that we were racist so the child was not getting any education regarding his other culture. This was totally untrue and we were able to present an argument that satisfied the court. There were numerous affidavits from the mother which required a response, this causing the legal fees to escalate and delayed the court process

We have been in and out of court for the last 7 years with no resolution between the mother, child, father and grandparents.

Mediation

Just over 40% of participants were involved in formal mediation as part of their Family Court case, as noted in Table 19 below.

| | % | Count |
|-------|--------|-------|
| Yes | 41.79% | 56 |
| No | 58.21% | 78 |
| Total | 100% | 134 |

Table 19. Involvement in Family Court mediation.

Those who were involved in mediation were asked how satisfied they were with the mediation. Over 60% of these were not very satisfied or not satisfied at all. Less than 20% were satisfied or very satisfied, as shown in Table 20.

| Answer | % | Count |
|----------------------|--------|-------|
| Not satisfied at all | 28.57% | 16 |
| Not very satisfied | 33.93% | 19 |
| Neutral | 17.86% | 10 |
| Quite satisfied | 12.50% | 7 |
| Very satisfied | 7.14% | 4 |
| Total | 100% | 56 |

Table 20. Rating of satisfaction with Family Court mediation

Comments will be used to provide a representative illustration of each of the five categories of satisfaction.

Very satisfied (N=4)

Only four people found themselves *very satisfied* with the process. One noted that the Judge forced the other party to use one lawyer, which simplified the process. One found out that the other party was not being honest and was able to discuss this. One noted:

It is interesting as everyone gets to speak about the matter. The judge made it clear that it was a completely open forum where you can say anything and nothing will go out of the room. I didn't say anything, my husband spoke, he was amazing. He spoke with absolute honesty.

Quite satisfied (n=9)

The general tenor of those who were quite satisfied was that the mediation was not particularly helpful in itself but that things were in the grandparents' favour and so it worked out well.

Everything was great. My son showed his true colours which proved the child needed to be kept safe. Mother wasn't interested as he had special needs and knew he would be safe and well looked after with us.

No, was pretty fair. We had things in our favour.

One person noted that the mediation was successful because the lawyer for the child played a positive role.

Neutral (n=10)

The main concerns of those who were neutral about mediation were that it could be very costly with lawyer involvement and that it "didn't solve anything"

Not very helpful. Parties not allowed to talk, didn't feel like we had any chance to speak our thoughts

One more positive note was that:

It got us talking which was good.

Not very satisfied (n=19)

The main concern of this group was the ineffectiveness of the process for resolving issues. Several noted what they perceived as a lack of honesty in the process:

Wasn't very good, wasn't an honest thing, was obvious that what the mother said was only told to her from the lawyer. Seemed to be all about the Lawyers and not much about the child's rights - made it all about the mother.

It was the father saying things then doing the opposite. Not doing what was agreed in mediation

Doesn't work they say they are going to do things and never do them.

Other comments include: waste of time, window-dressing, "It was always on their terms at our cost".

Not satisfied at all (n=16)

A number of those who were "not satisfied at all" were keen to have their say around the issues they experienced. Four comments have been selected here to represent the range of concerns. Note that in some cases CYF mediation has been mixed up with Family Court mediation, which raises questions about the relative role of each method.

Think that it was very pressured. CYF were pressuring for decisions to be made far too quickly. The weight of the decision to take child from her mother permanently into grandparent's care was not a decision to be made lightly - but there was significant pressure to do so (at times we felt threatened). Felt as though there were no other options. Found out later we could have been offered a care plan as they already had children at home. Instead of offering this support to sustain being together as a family while our daughter got well again (mentally ill) they instead just took the child. In the grandparents eyes this was not the best decision.

We were not happy with CYF mediation at all. We were given the complete impression that CYFS supported the parents. When it came to mediation through the family court, that definitely was helpful and having a lawyer appointed for the child was pivotal in how everything went.

The father did not attend any mediation. CYFs took the side of the mother and allowed her and her support person to verbally berate us. No care/empathy was shown toward the child/ren.

Not happy at all about it, it was for the father who wanted more access and I had to pay for it. The meeting was in the city and we had to wait half an hour and then I left then was asked to come back. Very disorganised. Had to do it through the telephone. Outcome was what I had originally suggested, was a big waste of time and money.

In conclusion, there was only a small amount of support for mediated settlement processes among those who had experienced them, for a wide range of reasons.

Involvement of children

In over three quarters of the cases considered here, counsel for the child was appointed, as outlined in Table 21. It should also be noted that eight children were given a direct say in what they wanted.

| | % | Count |
|--------------------------------------|--------|-------|
| Yes, there was counsel for the child | 76.12% | 102 |
| Yes, the child had a direct say | 5.97% | 8 |
| No | 17.91% | 24 |
| Total | 100% | 134 |

Table 21. Involvement of counsel for the child.

Over two thirds of participants were happy with the work of the counsel for the child, with a small number unhappy, and a variety of others wanting to have their say on this role.

| | % | Count |
|-----------------------|--------|-------|
| Yes | 69.61% | 71 |
| No | 9.80% | 10 |
| Other, please explain | 20.59% | 21 |
| Total | 100% | 102 |

Table 22. Whether participants were happy with the counsel for the child

The comments made by participants were fairly evenly balanced between positive and negative, with some scathing negatives:

She was hopeless. Only came to see [child] once in the whole process (6 months). Only knew what was happening because I kept her updated. It is easy money for them - all they need is people on the books. That's what I think.

She sat there and put their hand out. I got fed up in the end.

But he didn't work well with me. Lack of communication and he was all for the children to be returned to the mother. Plus he lived in the property behind the mother.

She seemed very overworked and organised a couple of things in relation to access which were a complete waste of time and not in the best interests of our granddaughter.

Another counsel for the child was pro-active but not necessarily helpful:

Neutral. Lawyer for the child did not seem to add very much to the process other than commission psychological reports. Our granddaughter was only five so perhaps was a bit young to be too involved in the process, but she did not warm to counsel for the child and found the psychological testing that was ordered by the court to be deeply distressing and we had to arrange for her to have counselling to help her recover after that. Our impression was that the counsel for child was simply an administrative position.

And one more changed her position, causing distress and concern:

Sort of. The lawyer for the child did listen carefully to the children, and was not completely taken in by their mother. She did support that the children should come into my care, initially. I was not so happy with her in the next case, when she advised the court that the children go back to their mother - with recommendations but with no safeguards and no way of ensuring that the recommendations were complied with.

Some participants, in contrast, were complimentary about the counsel for the child, if cautious:

Any personal brief dealings I had with counsel for the children was always positive. But because I don't know what went on between her and CYF staff at various meetings where I must have been discussed, I cannot say that I am happy with her work. Her job was to protect the interests of the children, not my interests. And CYF staff did not treat me well. And I know they had biased opinions of me and had many incorrect notes about me. So no I cannot say that I am happy with the work of the counsel for the child, mainly because I don't know the full truth about what went on and what was said between the children's counsel and CYF staff. I don't blame her for anything because she had to listen to CYF. But I never got a chance to defend myself.

Very happy - was material in solving the matters.

He was amazing, absolutely fantastic.

Same Counsel for child for all three children, so she knew the history. She was great.

The counsel for the child in most cases facilitated the child's voice at the Family Court. Participants in this study were divided on whether this role was played effectively. Some had concerns about commitment and, potentially, the counsel making up his or her mind without having the full information. In a context of significant contestation, with often a background of drug abuse, violence and family breakdown, the role of counsel for the child is complex.

Outcomes

In most cases the participants in this study won the custody and guardianship applications that they sought, as shown in Table 23.

| | % | Count |
|--|--------|-------|
| We were awarded custody/guardianship | 88.06% | 118 |
| We were not awarded custody/guardianship | 3.73% | 5 |
| A temporary order was made | 3.73% | 5 |
| The other party was awarded custody/guardianship | 1.49% | 2 |
| The other party was awarded access | 14.93% | 20 |
| Other, please specify | 23.13% | 31 |
| Total | 100% | 134 |

Table 23. Outcomes of Family Court process.

However, many of the participants had concerns about the outcome of decisions made:

For first child we were awarded guardianship, for the second only custody. However, parents of child and other grandparent have no contact with children.

Due to the reason of so many hearings any resolution seems to last a short time and we then seem to be back at square one again.

The extremely immature, inadequate grandfather was awarded access, which he promptly misused, so back to court to get that revoked, all at great emotional and financial cost to myself and it further broke down family relationships.

The other party should have only been awarded supervised access from the facts of the case. Subsequently my Granddaughter was raped by the father during a visitation.

The children went into foster care.

Three of the grandparents appealed decisions of the Family Court, and the other part appealed in 15 cases.

Many of the participants state that the decision has worked well for them and for the children:

We are very happy as the child is settled and doing well. She understands the reason why she is in our care and we are open and honest with her around reasons why. She is also taught to respect her parents.

We had our granddaughter's best interests at heart, although we knew we would suffer financially; she is now a major part of our household - even though we still have the usual teenage 'stuff' we wouldn't change it for the world.

Very well, our granddaughter is now thirteen, she is achieving well at school and is plays representative hockey for the Under 15s. She has a wide circle of friends and is socially well adjusted. Best of all, she has developed a close and loving relationship with her mother, step father and young brother whom she sees on weekends and during the holidays (they live an hour or so away from us). Our granddaughter has a wide and supportive circle of adult friends that she can turn to, and has many positive role models in her life. She does not see her father who has moved to a different city and has a new partner and two young daughters. She exchanges cards and gifts at birthdays and Christmas and I regularly catch up with our son-in-law's sister so as to keep contact alive with his side of the family. Our granddaughter is clear that she does not want access to her father as his previous behaviour is still raw with her, but we have agreed to always leave the door open and she is welcome to change her mind and see him again at any time that she wants.

Financially not very well, but otherwise it is good. Parents don't really have anything to do with him. He had a brain injury and squeals a lot. It has worked OK as far as he is concerned. I had to give up my job and I lost a relationship. I am now in poverty a lot. I should have also had the little girl with me. Now looking after Janie through CYF - I am making them pay. Hell of a long road ahead. Judge saying don't rush.

For others there has been an ongoing struggle: personal, legal and in other ways:

The decision did not work for the children

In terms of continuing guardianship and custody it has worked fine. The issue that was always difficult was that my daughter's access was never defined. It was always my responsibility to decide how much access and when and how and where. For the first five years I had my daughter living with me and was also her primary caregiver. This was a great deal easier to manage when CYF

was involved as I could refer to the social worker for assistance and mediation if there was conflict. Once CYF was no longer involved managing conflict became much more difficult, especially when my daughter had repeated acute episodes. During those periods she became more aggressive and angry with me, especially over issues to do with her daughter's care. From the time my granddaughter was five I decided that I could no longer manage to have my daughter in the home. After that, most of the time I could manage access between her and my granddaughter, but again problems would arise, particularly during periods of unwellness. It meant that I had to be very vigilant in trying to assess my daughter's mental state as I would have to tighten up on what access I could allow if she was becoming unwell. Discussions with her mental health workers were not necessarily helpful, as they tended to overestimate how well she was. There were a few very difficult times when I had allowed unsupervised access and my granddaughter was subjected to some unsafe and distressing situations. At one point I contacted the counsel for the child to see if we could get guidelines for access legally established, but was advised by her that I was in charge of that and the only way the court would get involved was if my daughter took me to court over access. She has never done that.

Extremely stressful. I am on my own with her. My relationship has gone. No respite. ended up putting her in 28 day care. Has FAS, drug baby, autism, Praeder-Willie, behavioural, autism.

The decision stayed in place for about 18 months, and then my daughter brought another case for custody, at which custody was awarded to her. While the children were with me I was much happier that they were physically safe, fed, going to school, taking part in sports and so on. As their mother recovered the older child became increasingly anxious to get back to her. The provisions for access were hopeless. When the mother came to my house for them she physically assaulted me, so I tried to find a neutral way to set up access. The Salvation Army only offer one hour, and the judgement said minimum two hours per week. There seemed to be no way to achieve this, so I would take them to a park in West Auckland and pick them up later. as time went on and she seemed more competent I allowed them to go to her house. However I had problems with the grandfather (my ex) who would offer to take them for a week in the school holidays - and immediately turn them over to their mother. However, I was happier, over time, for them to spend longer periods with her. This is part of the reason she justified getting them back entirely. Probably this was the right thing to happen - certainly a lot easier for me - but I now have no way of knowing what condition they are in, or what is going on in their lives.

Finally, some of the participants wanted to give a message that the whole process was very difficult for them, even though they were happy with the outcome:

Yes, but I am angry that they made it so hard and it would not have been possible if I were uneducated.

At a huge financial and emotional and physical cost!!!!!!

I wouldn't change it for the world now, but if I had known what was in store I wouldn't have done it.

Yes but nearly every week one of the parents threatens us with Family Court again. It's very stressful - we do not have another \$28,000 to defend again.

It hasn't really worked for us ... we have had our moko for 8 years now ... the parents have got new lives and other children ... but if I had to do this again ... I would ... with a little more thought next time ...

The mother said she was happy right from the start that the child lived with me, that is in the best place. No one contested, but I get a huge legal aid bill for saving the child. So in that respect it hasn't worked for me, I cannot work to improve my standard of living I had JUST started my business and had it running for 2 months when I got the call so we are prisoners of the system stuck on a carer's payment, I get no respite at all, he is with me 24/7 365 days of every year BUT we love each other unconditionally and our lives are wonderful when the medication is working and outside that it's pure hell.

Aftermath

In most cases (over 80%), participants report that the parties have upheld the decisions of the court. Most of the concerns raised are about access, in terms of breaches of arrangements, and parents not seeing the children on a regular basis. Some parents are “nasty”, and others have tried to get court decisions overturned.

Mother is looking to appeal. Trouble keeping to informal rules they've agreed upon. Tries to manipulate the granddaughter and make her feel guilty when she talks to her.

Some access arrangements have failed to work properly and participants have had to go back to court:

The only part that did not work was the supervised access for our son-in-law. This was a very patchy experience as he would sometimes not turn up, sometimes be loving and bear gifts, other times he would be either drunk or under the influence of some substance that would cause the session to end early. The final visit was disastrous when he appeared dishevelled and had been in a fight, he was distressed and the supervisor felt that he was under the influence of some substance. He tried to abduct our granddaughter and caused a huge disturbance. After that our granddaughter (who was eight) refused to see her father again, and we went back to court at her request to ask for the supervised visits to be suspended until he could agree to undertake the necessary counselling.

85% of participants reported that the arrangements have been quite or very stable. Given the high level of contestation and difficulty many faced within their family/whanau, this can be seen as a reasonably good outcome.

| | % | Count |
|-------------------|--------|-------|
| Not at all stable | 14.29% | 19 |
| Quite stable | 34.59% | 46 |
| Very stable | 51.13% | 68 |
| Total | 100% | 133 |

Table 24. Perceived stability of Family Court settlements

Most participants report that there is now less family conflict over the custody and guardianship arrangements. Over time, it appears, the families settle into new arrangements. Also, as the children get older, there are fewer disputes. Issues such as drug use and mental illness continue to cause difficulties in some cases:

Yes- She went sober for a while, she was having unsupervised contact however re-contacted with old associates and is now back on methamphetamines. She has tried to make applications to see her daughter, it's an ongoing clash, compounded by her drug and alcohol use. In the mix of this she has had a number of boyfriends who have committed suicide.

Yes, minimal, daughter lives with us and not with her. She's still healing but because of this her recovery from mental illness is much harder as a result of it. As a family we've had a hard road to go through. Not offered family counselling or anything.

Absolutely - Daughter thinks has right to see children but goes through stages of being well/in prison or unwell. Fights with Grandparents sometimes over custody.

The final question asked participants to rate their Family Court experience on a scale of 1-10, "one being the worst thing that ever happened to you, and ten being the best thing that ever happened to you, what would your rating be?"

This question was very difficult for participants to answer, because it required a weighing up of the full range of factors covered in this report – service, cost, delays, effects on the family, personal burdens and so on.

The responses were very interesting and outlined in Table 25. The first thing to note is that there was a huge range of responses, and in general they were not clustered but covered the whole range of options.

The second thing to note is that there is a small cluster at the bottom end, of people who found the experience the worst of their lives.

Thirdly, more than half of participants rated the experience a 7, 8, 9 or 10. In such a contested context, this is a pretty good outcome for the court processes.

The table is on the next page.

| | % | Count |
|-------|--------|-------|
| 1 | 9.92% | 13 |
| 2 | 6.87% | 9 |
| 3 | 6.11% | 8 |
| 4 | 5.34% | 7 |
| 5 | 6.87% | 9 |
| 6 | 7.63% | 10 |
| 7 | 9.16% | 12 |
| 8 | 22.90% | 30 |
| 9 | 6.87% | 9 |
| 10 | 18.32% | 24 |
| Total | 100% | 131 |

Table 25 Rating of experience in Family Court, from 1 (worse) to 10 (best)

Appendix 1. Survey used in the study

Note: the survey's internal instructions have been removed from this version, thus the various 'skip logic' processes are hidden, but can largely be deduced from the context.

This survey is about your experiences in the Family Court. You consented to take part during the larger study of grandparents raising grandchildren and the ethical rules you agreed to still apply – your right to privacy and confidentiality, your right to decline to participate or pull out at any stage, and your right not to answer any question.

Do you agree to participate under that ethical agreement? (if no is selected, the survey will terminate).

- Yes
- No

Thanks. Now please explain first the reasons that you became involved in the Family Court around grandchildren/mokopuna living in your care.

- I went to court to get custody / guardianship of the child/children/moko
- The parents of the child/ren/moko took me to court for custody /guardianship
- I went to court over parental access to the child/children/moko
- The parents of the child/ren/moko took me to court to get access
- I went to court over payment of child support
- Another agency (such as Child, Youth and Family) told me to go to court for custody/guardianship
- Other

Please explain these reasons in your own words, and what triggered the decision

Did you try and resolve the issues before the matter got to Family Court? If so, what steps did you take, and what were the barriers to effective resolution?

How many children were involved in your Family Court cases?

- 1
- 2
- 3
- 4
- 5+

How many different cases? *A case is defined as a cause of action between specified parties. If, for example, two grandchildren each had different fathers, and each father was looking for*

custody or access, that would be two cases. But if there were two children and only one parent seeking custody, that would be one case.

- 1
- 2
- 3
- 4+

Who did you first seek advice from about going to the Family Court?

- Friends or family (non-legal)
- A community law centre
- A lawyer in private practice
- Other, please specify

Looking back, did you initially get good advice

Did you hire a lawyer to represent you?

- Yes
- No

Did you end up representing yourself at the Family Court?

- Yes
- No, I eventually hired a lawyer

How did you find the lawyer?

- Phone book
- Internet listings
- Advertising
- Someone told me about this person
- It was someone I knew

Please rate that lawyer on the quality of service to you and representation of you on the following scale:

- Terrible
- Not very good
- Neutral
- Good
- Great/wonderful

Did you stick with that lawyer right through the process?

- Yes
- No

How many further lawyers did you appoint?

- 0
- 1
- 2
- 3
- 4
- More than 4

Thinking about the final lawyer who worked for you, please rate that person on the following scale:

- Terrible
- Not very good
- Neutral
- Good
- Great/wonderful

Did you get legal aid?

- Yes
- No
-

What was the value of this legal aid?

- Less than \$10,000
- 10,001 to 30,000
- 30,001 to 50,000
- 50,001 to 75,000
- 75,001 to 100,000
- More than 100,000
-

Are you required to pay back some or all of the legal aid?

- Yes
- No

Are you currently repaying legal aid?

- Yes
- No

How much are you repaying?

Is there a lien on your property for legal aid repayment?

- Yes
- No

Please make any comments about legal aid.

Please estimate the direct legal costs

- Less than \$10,000
- 10,001 to 30,000
- 30,001 to 50,000
- 50,001 to 75,000
- 75,001 to 100,000
- More than 100,000

What factors contributed to that cost?

- A high level of contestation
- Legal delay
- Court delay
- Issues relating to the other party (e.g. family breakdown, drug/alcohol issues)
- Waiting for mediation or other dispute resolution processes
- Other agency delay (e.g. CYFs)
- Other, please specify _____

Who was/were the other party/ies?

- My own child or grandchild
- The partner of my own child or grandchild
- My extended family/whanau
- The other (i.e. partner's) grandparents or kin
- Other, please specify _____

In your own words, tell me about your Family Court experience (cover key issues – don't need day to day account)

Was the process contested? If so, in your own words, please explain the nature of that contestation and barriers to resolution.

Were you involved in formal mediation with the other parties?

- Yes
- No

How satisfied were you with the mediation?

- Not satisfied at all
- Not very satisfied
- Neutral
- Quite satisfied
- Very satisfied

Any comments about mediation?

Were the children involved in the Family Court process?

- Yes, there was counsel for the child
- Yes, the child had a direct say
- No, please explain

Were you happy with the work of the counsel for the child?

- Yes
- No
- Other, please explain _____

What was the decision?

- We were awarded custody/guardianship
- We were not awarded custody/guardianship
- A temporary order was made
- The other party was awarded custody/guardianship
- The other party was awarded access
- Other, please specify _____

Was there any appeal of the decision?

- Yes, by you
- Yes, by the other party
- No

How has the decision worked for you?

Have all parties upheld the decision of the court? If not, why not?

Would you say that the arrangements have been stable over time?

Not at all stable

Quite stable

Very stable

Is there ongoing family conflict over the custody/ guardianship arrangements?

If asked to rate your experience in the Family Court on a scale from 1 to 10, one being the worst thing that ever happened to you, and ten being the best thing that ever happened to you, what would your rating be?

1 2 3 4 5
6 7 8 9 10

Just a couple of questions to remind us of your demographic details (as this is an anonymous survey)....In which region do you live?

- Northland
- Auckland
- Waikato
- Bay of Plenty
- Gisborne
- Hawke's Bay
- Taranaki
- Manawatu-Wanganui
- Wellington
- Tasman
- Nelson
- Marlborough
- West Coast
- Canterbury
- Otago
- Southland
- Other, please specify _____

What is your ethnicity?

- New Zealand European
- Maori
- Samoan
- Cook Islands Maori
- Tongan
- Nuiean
- Chinese
- Indian
- Other (such as Dutch, Japanese, Australian please state _____)

How old were you on 1 January 2016??

- Under 35
- 35-39
- 40-44
- 45-49
- 50-54
- 55-59
- 60-64
- 65-69
- 70-74
- 75-79
- 80 or more

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