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To What Extent are Principles of Kaupapa Māori Reflected in the Current Practices of Māori Mediators in Aotearoa?

A thesis presented in partial fulfilment of the requirement for
the degree of

Master of Business Studies
In
Management

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Te Reo O Te Omeka Hau

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ATTESTATION OF AUTHORSHIP

I hereby declare that this submission is all my own work and that, to the very best of my knowledge and understanding, it contains no material previously published or written by another person, nor any material which has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

ABSTRACT

In the current practice of mediation as a form of Alternative Dispute Resolution (ADR) within Aotearoa there has been very little research conducted into principles of kaupapa Māori and how these concepts are reflected in the practice of mediation in Aotearoa. Indeed, almost all my studies completed through Massey University's Dispute Resolution Centre within the Massey Business School have been based on research from a Euro-Centric perspective.

This gap in current mediation research is the main motivator in designing the following as my research question:

“To what extent are Principles of Kaupapa Māori reflected in the current practices of Mediators in New Zealand?”

In addressing this question this paper intends to contribute to mediation literature by investigating principles of kaupapa Māori within the current mediation process practiced in New Zealand.

It will seek to address if kaupapa Māori principles of Whakapapa, Whanaungatanga, Mana, and Tapu are prevalent within a mediation process and to what extent.

Existing literature is scarce on this topic however some reliance will be placed on Tomas & Quinces' (2007) contribution to Spillers Dispute Resolution in New Zealand as well as comparisons with literature in the restorative justice field and mediation and indigenous dispute resolution writings

Semi-structured interviews of 10 currently practicing Māori mediators have been undertaken to assist in answering the research question. Results were presented as participant narratives where seven themes were analysed and presented to demonstrate how Māori principles and practices can enhance the mediation process.

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1. INTRODUCTION

Unuhia te rito o te harakeke

Kei hea te kōmako e ko?

Ki mai ki au

He aha te mea nui o tēnei ao

Maku e ki atu

He tangata, he tangata, he tangata

Pluck out the heart of the flax

Where will the bellbird sing?

Ask me,

What is the greatest thing of this world?

And I will reply

It is people, it is people, it is people

The above whakataukī or proverb speaks of the importance or sanctity of people in the world and is a reminder to us all not to forget especially in an ever more growing material world that it is people that matter the most. Of most importance here is the fact that people all share a whakapapa and whakapapa is what binds all people. Like the heart of the flax bush that binds the entire flax plant together. Whether that be the whakapapa of Adam and Eve in a biblical sense or that of Papatūanuku and Ranginui in a Te Ao Māori sense.

From the beginning, wherever two people have had a divergent way of seeing things the beginnings of a dispute have arisen. Differences can arise from many things including misunderstanding of an agreement or contract and even understanding someone's final will and testamentary promise.

This is exaggerated even more when two people lack understanding of each other's world views or where the other's perspective comes from and is none more evident than in the signing of this Aotearoa New Zealand's founding document Te Tiriti O Waitangi (note, Te Tiriti O Waitangi and The Treaty of Waitangi are one and the same document however for the purposes of this thesis the term Te Tiriti O Waitangi or Te Tiriti will be used).

Signed in 1840 and with the proclamation by Hobson "He Iwi Tahī Tātou" we are now one people; an understanding was thought to have been reached to enable both peoples to live together harmoniously and in peace.

However, by 1844 Hone Heke was cutting down the flagpole at Kororāreka to highlight his frustrations with the settler government over what he saw as breaches of Te Tiriti and thus the beginnings of many disputes under Te Tiriti O Waitangi.

Many of the misunderstandings of Te Tiriti in my view can be squarely placed at the feet of our different world views or epistemologies.

In understanding these different views and from whence they come is the key to unlocking the remedial pathway forward for Aotearoa as a society.

With that, an understanding of the process to move forward is also required. A process which is not based on the existing hegemony (dominant discourse) or dispute resolution pedagogy but is agreed on between the parties, that considers Te Tiriti O Waitangi, and which ensures power imbalances caused by the effects of colonization can be tempered to ensure an equitable partnership moving forward.

My interest in Alternative Dispute Resolution (ADR) and mediation really took flight when I began my initial studies at the Dispute Resolution Centre at Massey University in 2013 and, when I found how little was known about Dispute Resolution from a Māori perspective. Whilst studying ADR at Massey I asked myself, where is the acknowledgement of the principles of Te Tiriti in conflict resolution and how are they addressed in the practice of mediation? From this moment a seed was sown that required further investigation.

1.1 A BRIEF EXPLANATION OF TE TIRITI AND ITS IMPACT ON MĀORI

Aotearoa under Te Tiriti is a bicultural society first and foremost. This recognizes the agreement between two parties, Māori as the indigenous people of Aotearoa and the Crown as representative of not just Pākehā but all other people residing in Aotearoa since the signing of Te Tiriti.

It has been 178 years since the date commemorated as the signing of Te Tiriti. Many academics such as Maori Marsden, Sidney Mead and Moana Jackson, have written books on the disparity between Pākehā and Māori and the reality of how Māori have fared post Te Tiriti signing.

Prior to the signing of Te Tiriti in 1840, land in Aotearoa was predominantly owned by Māori in customary title. In 1840, Māori still held onto most of their land, except for a few areas, particularly Wellington, Wairarapa, Hawke's Bay and parts of Northland. After Te Tiriti O Waitangi was signed, the Crown obtained Māori land by acquisition and, after the 1863 New Zealand Settlements Act, by raupatu (confiscation). By 1862, the Crown had acquired roughly two thirds of New Zealand. The 1860s saw confiscations of huge areas by the government and large areas of land began to be lost through the effect of the Native Land Court. The period between 1890 and 1920 saw a boom in government land purchases, despite Māori protests. By 1937, very little land was left in Māori ownership. Māori freehold land constituted around 5–6 percent (approximately 1.5 million ha) of the total area of Aotearoa/ New Zealand in 2013 (Harmsworth & Awatere, 2013; Harmsworth & Mackay, 2010; Kingi, 2013). This land includes a relatively high proportion of indigenous forest and hill country areas.

In September 2017, Māori made up 50.7 per cent of New Zealand's prison population, despite accounting for just 14.9 per cent of the population at the last census published in 2013. To put those percentages into perspective, in September 2017 (the most recent figures available), there were 10,470 people in prison. That is 5308 of those prisoners identifying as Māori. Furthermore, in 2013, only 28.2 per cent of Māori and just 18.5 per cent of Pacific people owned a house. At the same time, 56.8 per cent of Pākehā owned

a house, followed by 34.8 per cent of the Asian population. A 2013 Statistics NZ study of Māori and Pacific home ownership in New Zealand pointed to a declining trend in land and home ownership for Māori people.

Māori are also over-represented under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Notably Māori are 3.6 times more likely than non-Māori to be subject to a community treatment order, and 3.3 times more likely to be subject to an inpatient treatment order. Māori life expectancy was also lower than that for non-Māori, according to 2013 Ministry of Health figures. Life expectancy at birth was 73.0 years for Māori males and 77.1 years for Māori females; it was 80.3 years for non-Māori males and 83.9 years for non-Māori females.

With statistics such as these, it is not hard to see that colonization has had a negative impact on Māori post signing of Te Tiriti.

Māori academics working in the Māori health field have seen first-hand the negative effects colonisation has had on Māori and have attempted to reverse these trends through the introduction of Māori frameworks and models for dealing with Māori health problems. Mason Durie (1994) and (2001) for instance, pioneered the Te Whare Tapa Wha model or the four cornerstones or pillars of Māori health based on the four realms being: taha tinana (physical); taha hinengaro (emotion); taha whanau (social); and taha wairua (spiritual) and I will attempt to elaborate on these later as one possible holistic approach to mediation with Māori.

Despite the many negative statistics regarding Māori wellbeing in a post-Tiriti New Zealand, there are also some current positives and encouraging trends in Te Kupenga, (Statistics New Zealand's first survey of Māori well-being completed in 2013).

According to Statistics New Zealand (2013 Census), the largest ethnic group (74%) identify as being of European descent. Approximately 15 percent of the total population of New Zealand acknowledge their Māori heritage, of which 13.4% self-identified as Māori and more than half of those who identify as Māori identified with two or more ethnic groups.

Seventy percent of Māori adults said it was at least somewhat important for them to be involved in things to do with Māori culture. Just 10 percent said it was not important, and 89 percent of Māori adults said they knew their iwi, which was also the most common aspect of Māori tribal identity or pepeha that Māori knew, while 62 percent of Māori adults had been to their ancestral marae (34 percent had done so in the last 12 months).

257,500 (55 percent) Māori adults had some ability to speak te reo Māori; that is, they were able to speak more than a few words or phrases in Māori. This compares with 153,500 (42 percent) in 2001. 50,000 (11 percent) Māori adults could speak te reo Māori very well or well; that is, they could speak about almost anything or many things in Māori. Between 2001 and 2013 there was a large increase in the proportion of younger Māori who reported some ability to speak te reo Māori.

Te Kupenga also found that 83 percent of Māori adults said their whānau were doing well or extremely well. 84 percent of Māori adults had face-to-face contact with whānau they didn't live with, at least once in the last four weeks. Half of all Māori adults said their whānau consisted of fewer than 11 people. Just 5 percent said their whānau consisted of 61 or more people. Most Māori defined their whānau by whakapapa. Almost all Māori (95 percent) stated their whānau included parents, partner, children, and brothers and sisters.

1.2 TE TIRITI PRINCIPLES

When attempting to envisage Te Tiriti in normal daily life in Aotearoa many authorities will refer to the principles as a way of reconciling the differences between the Te Reo Māori version and the English version.

Three principles of Te Tiriti commonly recognised and first outlined in the Royal Commission on Social Policy (1988) are:

1. Partnership: interactions between Te Tiriti partners must be based on mutual good faith, cooperation, tolerance, honesty and respect
2. Participation: this principle secures active and equitable participation by tangata whenua

3. Protection: government must protect whakapapa, cultural practices and taonga, including protocols, customs and language.

The Waitangi Tribunal (2017) have since included other principles such as autonomy, reciprocity, mutual benefit, redress, equity as well as others.

These values that originate from Te Ao Māori, are now commonly applied to kaupapa Māori perspectives and/or Te Tiriti principles in research, and thus will inform my research journey from inception to completion. As is tika in Te Ao Māori, I will now give my pepeha, while also providing some insight into how my identity was influenced by my whānau and New Zealand society.

1.3 THE RESEARCHER - KO WAI AHAU?

He mea hanga tōku whare

Ko Papatūanuku te paparahi, ko ngā maunga ngā poupou

Ko te rangi te titiro iho nei te tuanui

Puhanga tohorā titiro ki te ramaroa, Te ramaroa titiro ki whiria, ki te paiaka o te riri ki te kawa o rāhiri

Whiria titiro ki panguru ki papata ki te rakau tu papata ki te taihauāuru

Panguru Papata titiro ki Maunga taniwha, Maunga taniwha titiro ki Tokerau

Tokerau titiro ki Rakaumangamanga, Rakaumangamanga titiro ki Manaia

Manaia titiro ki Tutamoe, Tutamoe titiro ki Maunganui

Maunganui titiro ki Puhanga tohorā

Ko te Whare Tapu tēnei O Ngāpuhi

Tu mai Maungakohatu

E rere nga kohu taapere o te awa o Mangakahia

Tiheitia te Tarai O Rahiri kia tu tahi korua ko kohatu hei korowai ia Nukutawhiti raua ko

Te Aroha.....Ti Hei Mauri Ora!

I was born in Whangarei on the first day of May 1967 the first child of Haami Tokouru Ratana Hapeta Hone H Hau and Elizabeth June Stewart. My father was of Māori descent with seven siblings and my Pākehā mother an only child, raised solely by her mother and by all accounts a fourth-generation immigrant from Long Island New York.

I remember my father as a complex man always telling me quite proudly, “son...I maybe one of the last full-blooded Māori...” although at the time thinking what relevance did that have to me? But then at the same time discouraging any thought of my pursuing Te Reo

and taha Māori at school for fear that “You won’t get a job studying that Māori stuff...” The conundrum here was in his later years my father became a teacher of Te Reo Māori at a prominent Whangarei High school.

My father had taken up many occupations to support his wife and four children. Like so many Māori of the time he was a meat worker at Hellabys in Whangarei. He went on to become a bus driver, a taxi driver, a truck driver, a laundry worker at the hospital, a prison warden at Paremoremo and finally after some study at Waikato University in his early fifties, as I said a teacher of Te Reo Māori. But his most favoured pursuit, was that of a musician. He had travelled sometime before meeting my mother as a touring musician in a show band. He was, raised in the Ratana faith and learned his basic music theory through his father my grandfather, Hamuera Hau who was self-taught. My father had honed his musical craft to the point where he could have so easily made it his life pursuit however, it was as he explained to me....no life for a man with a family”.

He would often pick out the backing musicians on many of the television talent shows in the 70s and 80s and explain to me how he had met and played with them touring, but always with the end addendum.... but...it is not the life for a family man!

My mother, a strikingly beautiful woman with blonde hair and blue eyes was a former hair stylist from Auckland for the most part worked part time at night as a barmaid and during the day looked after us, her children.

Ours was upon reflection a different whanau set up from most of my friends and I can remember the first time I heard the word “half-caste” at school.

In Whangarei in the early 70s you were either European, Māori, or half-caste. This early classification as to my ethnicity did have some long-lasting effects on me especially in trying to identify who I was.

I remember these early days at school and the teacher, who herself was European, starring at her roll chart and calling each name out in turn espousing forth the names of

each class member for morning roll call and receiving the expected reply....David Smith (the teacher said)....Present (the student would reply).....Jane Brown....Present....and then getting to my name.....Tee Reeooooohhh How.....a sheepish “present” was my reply as I felt so embarrassed to be named such a name that the teacher could not properly pronounce it and thinking at the time this was all my parents fault! Aue.... It was here that I was given the name Rio by both my teachers and friends. Far easier to pronounce than Te Reo and upon reflection was the beginning of my cultural allegiance to the prominent European hegemony.

I attended mainstream schools in Whangārei, Palmerston North and Auckland. Kohanga Reo and Kura Kaupapa had not yet been established. It was only when I visited my haukāinga in Parakao, Mangakāhia that I would always hear my name pronounced the way it was intended. Te Reo, the old people would say.... Te Reo!!! Sometimes they had to say it twice because I was not aware they were talking to me!

I thank Ihoa and Te Taura Whiri for te wiki I te reo māori as the word Te Reo especially when referred in relation to Te Reo Māori has overtime been given more prominence in Aotearoa, so I am not having to correct people in saying my name as often as I once had to.

Overtime my identity as Māori and the need for this to be recognized began to grow. I started to correct people when they got my name wrong, I began to actually listen to what elders were talking about at hui and not simply “listening without ears” as alike to someone who is there in person but not really listening.

Through my years of growing up and gradual recognition of my identity I began to see things in a different light, a Māori light, and it caused me to start asking questions about how things came to be the way they were. The beginnings of my enculturation and identification as Māori were developing as I left school and started in the workforce.

I remember starting work in the Māori Land Court in 1989. Prior to this the Māori Land Court was a part of the Department of Māori Affairs however with implementation of the

government policy named devolution the Māori Affairs Department was carved up and services previously provided under one umbrella for Māori were effectively mainstreamed into existing government departments and a new Ministry for Māori Development was formed but became no more than a policy advisor to other Government Departments and Government officials. The Māori Land Court, at that time became part of the Ministry for Justice and I was now a Justice Ministry employee.

At the time a lot of the elder staff at the Māori Affairs would state that the idea behind devolution was the devolving of services from the Government to Tribal authorities and the Runanga Iwi Act 1990 was to begin this process. There was much talk at the time of Tino Rangatiratanga and Māori having the right to decide how services would be provided on a tribal basis. However, by the following election, the government had changed, the Runanga Act was repealed, and a new korowai named “Ka Awatea” was being promenaded by Winston Peters and described as the latest fashion on Lambton Quay. It appears that there is a rather large disconnect between the idea of Tino Rangatiratanga and the reality within Aotearoa politics.

In my research for this project I was surprised to find that through my years of growing up and trying to identify “who I was” seemed to align with the patterns of how the Government in Aotearoa were capturing information in the five-yearly census and classifying the New Zealand population change. As Addis (2016, p.185) describes:

In order to understand group outcomes, including population sizes, official measures for classifying populations are needed. Initially, reflecting western scientific thinking of the time, ‘racial’ groupings were adopted. However, overtime, these were replaced by ‘ethnic origin’ and later by measures of ethnic affiliation.

I found some solace in reflecting on this as I pursued this research project and in knowing that perhaps I was not alone in responding and identifying who I was and in wanting to take back my identity power and further still, that perhaps this was being reflected through the census and how and why other people of Aotearoa were wanting to be identified.

As Kukutai (cited in McIntosh & Mulholland, 2011) advise the reality of demography is not only that it is a study of statistics but it is also a study in politics and power.

Fast forward to 2016 and to my time at Massey University where I began my initial studies understanding Alternative Dispute Resolution processes. I soon found in almost all my studies most literature and teachings were based on a Eurocentric perspective and naturally I began to think about this and why this was.

In my initial welcome to the 2016 class of Alternative Dispute Resolution (ADR) taura or students of approximately 40 or so people I appeared to be the only Māori. I remember at the time the lecturer asked each of us to stand and give a brief on why we were there, why we wanted to study ADR. Each person in turn arose and gave their brief, some were lawyers wanting to act in the arbitration space, some were engineers and accountants, all were wanting to improve their knowledge in ADR to improve their work. My turn came and as the others before me had done I arose however the first words to espouse from my mouth were in Te Reo Māori. I could not help it, it was who I was and how I had to express myself. I proceeded to mihi to the tangata whenua, Rangitāne and deliver my tatau, my whakapapa, my essence of who I was, where I came from, my ancestral home, my whanau, hapū and Iwi.

At the end of my mihi I spoke in English and I remember at the time apologizing if I had made my lecturer feel awkward, however I explained that in my culture I must first acknowledge the first people of the area, the people who held mana whenua and were tangata whenua, this took priority over everything else as it was them that were the kaitiaki for the whenua upon which we were now standing. Once this was done I could then proceed to answer his question about why I came to enrol in the ADR programme at Massey. My lecturer was apparently quite taken aback by this and came to me late in the day and told me it was not I that should apologize but him for not knowing the correct protocol that relates to Māori.

This appeared to have a profound effect on my tutor and at the end of the year practicum, the tutor stood to speak, and his first words were "Tihei Mauri ora"he gave a brief tatau,

whakapapa of his German ancestry and welcomed everyone in Te Reo Māori. I remember at the time thinking how awesome that this lecturer, of German descent, whom I had only met through my studies had taken the time to learn and recite a brief mihi whakatau that he could say at the end of year practicum to all students and acknowledge the tangata whenua of Aotearoa. This event in many ways contributed to my further desire to pursue study around where I could find tikanga or principles of kaupapa Māori in the ADR process.

This same lecturer came to me near the end of the practicum and thanked me for the effect I had on him and he acknowledged that the programme they were teaching was lacking any acknowledgement of tangata whenua however the impact I had made on him on that first day was something he would keep with him forever. I found out later that the following year this lecturer had left Massey to take up a position at a University in Paris France.

I was now aware that I could change the way people think by explaining why as a Māori I did things the way I did. I was unaware however of how this one event had affected the delivery of the ADR programme however I was about to find out.

In May of this year I was surprised to be asked to be a guest speaker at the next ADR practicum at Massey University in July 2018. I was told to simply speak of my experiences from the practicum I attended the year before and what work I was currently doing regarding ADR.

At the induction evening there was a new lecturer about to speak to the programme inductees. I was surprised, when he stood, and he first spoke in Te Reo Māori and made an acknowledgement of the tangata whenua of Aotearoa and welcomed everyone to the induction evening for the ADR practicum. He further went on to advise how it was I, that had impacted on the programme so that now all inductions were first accorded the protocol of acknowledging tangata whenua first and foremost before any talk of the business programme. At this point I was both amazed and inspired. Amazed that I had

witnessed this change and inspired, by how an event such as specking Te Reo and keeping ones tikanga no matter what the setting can affect such a change.

In my own view the belief around the hegemony present in the existing curriculum needed balance to include or at least consider a Māori epistemology in the pedagogy. I am now proud to say I have had a small but, in my mind purposeful and positive impact on the delivery of the ADR programme at Massey University. I thought about this further and became determined to seek out dispute resolution processes from a Māori perspective, hence the beginnings of the idea for my research.

All these isims and skisms me piki me ngā heke that have become a part of my life have raised within my consciousness a curiosity of why things are the way things are. Overtime these have evolved to the point where I am now ready to put these thoughts into words on paper. This thesis project, although only a year in writing is more a culmination of my ideas, thoughts and observations from my fifty years of living as a Māori tane in Aotearoa, once ashamed of hearing his own name called in the English tongue to now be proud to stand on his turangawaewae and represent his uri of Ngāti Te Rino me Ngāti Pongia.

1.4 THE RESEARCH PROJECT

The purpose of my research project is to investigate to what extent are principles of kaupapa Māori reflected in the practices of current practicing Māori mediators in Aotearoa.

To understand and capture the praxis for the inclusion and use of Māori kaupapa principles in mediation a schedule of semi structured interviews has been arranged with current practicing Māori Mediators in Aotearoa. The mediators were asked a series of questions and their answers informed the data to be analysed by thematic analysis to address the stated research question. Thematic discourse analysis is the practice of identifying the ways of talking, thinking and practicing that people use to make sense of the world around them.

From the data collected and analysed I aim to:

- i. Identify if there are any common themes associated with their use,
- ii. Determine if kaupapa Māori principles are useful in mediation with Māori clients,
- iii. Understand how these principles are best applied to the mediation process, and;
- iv. Propose a model or framework for engagement with Māori in a mediation process.

From a kaupapa Māori perspective however, a research project such as this must be genuine in its attempt to assist Māori. It should not be seen as incrementalising the mediation process to, overtime, include aspects of kaupapa Māori into the mediation process. This type of variation will only enhance and strengthen the current hegemony. As Derby and Moon (2018) describe:

... the notion of incrementalism is, in fact, subversive, anti-cultural, and destructive, and it contributes to the consumption and repackaging of Māori culture by Pākehā to a form that is palatable and acceptable to the coloniser.

Māori culture is diluted and distorted in the process, while the Pākehā position of power becomes more concentrated.”¹

It is for this reason that Māori health models were considered in relation to mediation approaches as there are already Māori health models that have been investigated, applied and validated, that can be used as a preface or possible framework that can be transposed to a mediation context.

1.5 OUTLINE OF RESEARCH REPORT CHAPTERS

Firstly, I will need to inform what mediation is and where it has come from. It's origins, and why it has developed to the form it has taken on today. This will be completed as a part of my literature review.

From here, my literature review will also attempt to advise on the current mediation process and briefly explain four widely used models of mediation that are also taught within academia in Aotearoa. These or parts of these models may be referred to later in the final analysis to inform an appropriate model or framework for engagement with Māori in a mediation process.

Once the mediation process and current models have been explained an attempt will be made to describe the kaupapa māori principles of Whakapapa, Whanaungatanga, Mana and Tapu which are to be used in the interview process with practicing Māori mediators. These descriptions are drawn from my own experiences as well as those described in the writings of Māori academics such as Māori Marsden and Hone Sadler.

The scant literature about mediation in a Māori context will then be reviewed. This includes the work by Kylie Qunice and Nin Tomas in the Dispute Resolution in New Zealand text (Spiller, 2007).

¹ Derby, M., & Moon, P. (2018). Article - Playing Cultures. *Te Kaharoa*, 11(1)

Chapter 2 will end with a brief description of Māori health models which informs the analysis chapter later of a possible model for mediating within a Māori context.

In Chapter 3, the qualitative methodology used for this research process underpinned by kaupapa Māori theory and an understanding of the worldview of Māori will be outlined. I will also describe the selection process of the participants and the research method (semi structured interviews) used to gather and analyse the data (subjective knowledge and perspectives) from the Māori mediators interviewed.

Chapter 4 will outline how the data was analysed and present a summary of findings that incorporates the kupu or words by participants in their interviews and highlights the context of the use of these kupu when necessary. A thematic analysis will then reveal emerging themes to help address the research objectives.

Chapter 5 will discuss an article written by a colleague and good friend of mine Ngarongo Ormsby and provides an example of what mediating and facilitating in a Māori context looks like in practice. This is entitled Te Kai Tēpu and offers the reader an analysis of how a Māori world view can describe the initial engagement and meeting of parties engaged in a mediation process from the Māori perspective of Te Ao Māori and the powhiri process.

Chapter 6 will discuss, compare and contrast current mediation practices for Māori mediators and how these compare to those that are recommended from a theoretical perspective. The final analysis of the current position to answer the research question and propose a framework or model based on the existing practices of Māori mediators in Aotearoa as well as theories and models from academics.

Further where there are gaps or any disjunction between theoretical description and actual practice of mediation in a Māori context, these will be identified and commented on.

2. LITERATURE REVIEW

2.1 MEDIATION: AN ALTERNATIVE DISPUTE RESOLUTION PROCESS

According to Spiller (2007), the word dispute is derived from the Latin words *dis* to mean apart and *putare* meaning to think. Thus, the defining thought is one of “thinking apart.” One of the concepts underpinning mediation as one of the alternative dispute resolution processes is to identify common interests in the hope of aligning parties thinking. Alternative Dispute Resolution (ADR) has over the past 4 decades been a growth industry. Morris and Shaw (2018) advise the processes of Alternative Dispute Resolution have grown exponentially to the point where Alternative Dispute Resolution processes have now become a part of the mainstream.

This mainstreaming can be evidenced through the increasing role of the legal profession in the ADR process, the emergence of professional associations such as AMINZ (The Arbitrators and Mediators Institute of New Zealand) and Resolution Institute formerly LEADR (Leading Edge Alternative Dispute Resolvers), and the growth in the number of registered members within these associations. The establishment of these associations together with their standards of professional conduct and ethics has seen ADR processes become more attractive to those looking to resolve a dispute. Current standard texts for Dispute Resolution and mediation respectively are Dispute Resolution in New Zealand by Peter Spiller (2007) and Mediation Principles, Process, Practice by Boule, Goldblatt and Green (2008).

These texts reveal that Dispute Resolution processes can be categorised into two types (see Figure 1); those processes of a consensual nature and those of a non-consensual or adjudicative nature involving an adjudicator or decision maker who makes a final decision for the parties.

Table 1: Dispute Resolution Processes

Consensual		Non-Consensual/Adjudicative	
Negotiation	Mediation	Arbitration	Litigation
No Natural Justice principles		Natural Justice principles apply	
Interest Based		Rights Based	
Future Focussed		Fact/Past Focussed	
Problem Solving		Wrong/Right	

It is important at this point to also note that the consensual and non-consensual dispute resolution processes are underpinned by four main factors.

The factors underpinning the adjudicative or non-consensual process are:

- It is based on the rights of the parties
- Being rights based the principles of natural justice apply to the process
- It is focused on facts and the events of the past that lead to the dispute
- The focus will be on the wrongs perpetrated by one party against the rights of the other

The factors underpinning a consensual dispute resolution process are:

- It is based on the interests of the parties
- Principles of natural justice do not apply
- It is focused on the future relationship of the parties
- The focus will be on problem solving

According to Spiller (2007) the principles of natural justice refer to the rules of bias, that no one has the right to judge their own case, that everyone has the right to be heard (in Latin and legal terms referred to as *audi alterem partem*) and the right to a fair hearing. These principles of natural justice have also been described as “fair play in action...” (refer *Furnell v Whangarei High School Board* [1973] 2 NZLR 705,718) and are important to note in adjudicative or non-consensual ADR processes.

Mediation along with negotiation fall into the category of consensual dispute resolution processes. As some authors see mediation as a form of assisted negotiation, (i.e. Spiller, 2007; Wade, 2010) I am going to first review some negotiation literature and describe mediation processes in more detail later in this chapter.

2.2 NEGOTIATION

The importance of understanding negotiation and its relevance to mediation is required because during the mediation process parties are continually negotiating and to be effective as a mediator, negotiation skills and the knowledge of separating people from their problems and attempting to expose underlying interests, can assist in reaching agreement and breaking down antagonism between the parties. Mediating without an understanding of negotiating leaves a lacuna both in knowledge and approach to mediation.

Negotiation as a process is probably one of the most effective and least costly of all the Dispute resolution processes. There is no need for a referee, parties can decide amongst themselves how they want to resolve their differences and how to divide the pie so to speak. Negotiation and growing this ability and skill is seen as beneficial in any human engagement. Indeed, even in the corporate business world growing negotiation capability is seen as a must do for corporate executives. As Ertel (1999, p.55-60, 62-70) in the article "Turning negotiation into a corporate capability" writes:

As partnerships, alliances, and other agreements become more important in business, the pressure to treat negotiation as an institutional capability, rather than as a series of discrete events, grows stronger ...

Authors such as Fisher, Ury and Patton (2011), and Lewicki, Barry and Saunders (2015), consider the art of negotiation as a complex social process that involves some discussion and understanding of the process. As a result, models are often used to illustrate this

process. The two most widely used models of negotiation as described by Fisher et al. (2011) and Spiller (2007) are the distributive models, sometimes referred to as the positional bargaining or adversarial negotiation model and the principled or integrative model.

2.2.1 Distributed, Positional or Adversarial model of Negotiation

In the distributive model of negotiation, the focus is based on the fundamental driver that there is a fixed resource that requires distribution. This can lead to a competitive and adversarial approach to negotiations based on claiming value or who can get the biggest slice of the pie. In other words, there is to be a winner and a loser based on how much of the resource each of the parties receives following negotiations. This can obviously lead to a dominant and servient type relationship between parties as a dominant party with more perceived power and perhaps “legal rights” justification will seek to dominate the negotiations to ensure a better result for themselves. This would also tend to increase the damage to any future relationship and thus would be more beneficial where the importance of a long-term relationship is not a priority. As Fisher et al. (2011, p. 4) explain, this approach to negotiation can be more about ego than reconciliation:

The more you clarify your position and defend it against attack, the more committed you become to it. The more you try to convince the other side of the impossibility of changing your opening position, the more difficult it becomes to do so. Your ego becomes identified with your position. You now have a new interest in “saving face” – in reconciling future action with past positions – making it less and less likely that any agreement will wisely reconcile the parties’ original interests.

2.2.2 Principled or Integrative model of Negotiation

The process of principled or integrative negotiation is focused on the notion of separating the people from the problem and focuses on the party’s interests not the positions. It

seeks to invent options for mutual gain or creating value and the use of independent objective criteria to settle any differences where needs are not met. The process of understanding and attempting to satisfy a party's underlying needs is beneficial in creating an ongoing relationship with that party. Both parties will feel that they have been understood and had their concerns or interests in one way or another addressed or even simply acknowledged. There are elements of both interest based and distributed negotiation in Te Tiriti o Waitangi settlement processes and I will briefly describe these.

2.2.3 Negotiation and Te Tiriti

Morris (2014 - 4 VUWLRP 82/2014) advises - New Zealand's Treaty settlement process does include aspects of interest-based negotiation but to such a limited and selective extent that it cannot be defined as comprehensively interest based. There are clear underlying interests involved that provide the potential for comprehensive interest-based negotiation to occur, but this potential is not fully realised in the current process. There is a disconnect between these underlying interests and the actual process. Negotiations relating to cultural redress come closest to the interest-based model but even here the parties are restricted by Crown policy and past settlements as to what options can be considered.

The Treaty settlement process is a hybrid form of negotiation, combining positional bargaining between unequal parties with a rigid, largely pre-ordained, variation of interest-based negotiation. The attempt at interest-based negotiation found in cultural redress prevents the process from being overwhelmingly positional. Interest-based negotiation is effectively restricted to cultural redress and acknowledgements and even then it is presented in a "pre-packaged" form to claimants. This prevents the process from being truly interest based, despite claims to the contrary. This is of course based on an imbalance of power, where the crown negotiators have the dominance of power over hapū and iwi whom can only in effect take or leave what is offered especially in relation to commercial redress. There does appear to be more room however for negotiation as stated in the cultural redress arena.

2.2.4 Mediation and Cultural Values and Perspectives

Mediation according to Boule, et al. (2008 p. 6) can be defined “as a consensual process involving the assistance of a third party to enable the other parties to explore actual or perceived issues of difference in order to prevent or resolve those”. Roberts (2007, p. 70) however provides a broader explanation of the many purposes of mediation:

..there is a spectrum of possible purposes ranging from the most idealistic to the most pragmatic depending predominantly on the particular context of practice. Overall, what unites practitioners across fields is the common view that mediation provides an opportunity for the parties to achieve what they want to achieve.

Miranda (2014) also suggests that the origins of mediation are not culture-specific by explaining that in China, mediation can be dated back as far as 4000 years ago to the time of the Chinese ruler Shuen who ruled over the community of the Yellow River and would visit the people of his community, stay amongst them and instruct them at times when they were in dispute, especially over their borders. After Shuen’s mediation, mountain communities who once argued over borders, would freely offer their lands to each other, while people of the lakes community that previously argued over ownership of their houses would devise or give over their houses as required.

Miranda (2014) refers to the writings of a Chinese academic Cao Pei and his study which draws a line of connectivity between early Chinese mediation and the philosophy of Confucianism. Pei (1999) writes of an imperial official named Wu You, an official of the Han Dynasty (206 BC-24 AD) who although having the authority to decide on matters of conflict between people who were subject to him would retire in meditation to:

... reflect on his negligence and his responsibility, since he thought that if he had fully and properly taught the principle of ethics to his people, they could never have argued or competed one against another.” (Pei 1999; The

This reference to ethics of behaviour and the desire to resolve disputes in an amicable way reveals the thinking or ideology of the time in that if one behaves well and lives in harmony with those around them then no disputes will arise.

Miranda (2014) also refers to the Eastern tradition that in the end it is a duty to recognize the other's reasons (if correct), when in dispute. This recognition of the other party's difference of opinion, recognizes the beginnings of empathy, anchored in the history of the Chinese legal tradition and entwined in the writings of the famous Chinese philosopher Confucius where harmony represents the ideal social order. This highlights how 'alternative' philosophies to resolving disputes and its effect on their society can differ dramatically from the dominant Western perspectives which focus on individual rights based on civil law ideology.

Likewise disputes within Māori society historically were typically challenges to mana or someone's authority. For Māori, mana comes from ngā atua (the gods) and there is a Whakapapa or genealogical link from ngā atua to ngā tangata (the people). To challenge mana is to challenge the gods and this is not taken lightly. Challenges to mana could occur however when tapu, a state of immense power/energy, and noa, a state of normative well-being, are out of balance or not respected. Gathering food from a tapu place where a rāhui or restriction has been placed for instance, is a challenge to mana. Once a rāhui or restriction has been lifted over a place by the appropriate karakia the place once again is in a state of noa and thus food can again be gathered there. When noa is achieved all things are balanced and collectively, hapū are at peace.

The Western system of society has for millennia been inherently rights based and based on the common law and rights of the individual. The common law—so named because it was "common" to all the king's courts across England—originated in the practices of the courts of the English kings in the centuries following the Norman conquest in 1066. The

British Empire spread its legal system to its historical colonies (including New Zealand), many of which retain the common law system today (refer https://en.wikipedia.org/wiki/Common_law).

The signing of Te Tiriti can also be seen as an attempt by the Western system to align the western system of justice and individual rights with Māori views on justice and collective ownership. With the signing of Te Tiriti the colonialists were able to form government, pass legislation and implement the common law into Aotearoa. This led to the introduction of the Native Land Court and the subsequent establishment of title and individual ownership to land in order that such land could be alienated, in many cases to the crown government.

The problem however was that the understandings that were thought to be made under Te Tiriti were different for both the colonialists and for Māori. The different interpretations particularly around the understanding of the words *kāwanatanga* (government) and *rangatiratanga* (self-determination) lead to a number of grievances raised by Māori and the subsequent establishment of the Waitangi Tribunal. Further, the concept of individual ownership and title to land was a foreign one which many Māori did not understand. For Māori land could not be owned by a person individually but was rather held collectively by the *hapū*.

Western Society has also discovered however that there are benefits in not pursuing a legal or adversarial path all the time and sometimes a more collaborative and compromised approach such as mediation can bear better rewards. As Domenici and Littlejohn (2001) attest mediation has developed and become more popular in western society since the mid-1970s as disputants have seen the process to be more constructive, comfortable and cost-effective than more traditional adversarial methods such as litigation.

Unlike the Chinese roots for mediation which appear to have developed from an underlying philosophy based around Confucianism and the understanding that living in harmony is beneficial to all, the Western mediation model has had to adopt core values,

principles and sometimes described protocols that can assist parties moving from competitive to cooperative problem solving in order to produce opportunities for growth and change as opposed to the feeling of resentment that comes with the winner loser rationale that so often occurs with litigation and adversarial dispute resolution. That is not to say however that adversarial or position-based mediation does not have its uses, and this will depend on the type of approach and outcome the parties at dispute are seeking.

The core principles, values and protocols of mediation are outlined in Figure 2. These include the autonomy of the parties, the voluntary nature of the process, the confidentiality of the discussions, and the impartiality and neutrality of the mediator.

Figure 1: Core Principles of Mediation



Although these are the ideal principles of mediation, there are numerous cases where mediation is not seen as a voluntary process at all, some argue that mediation in its purist form should not be made mandatory as it takes away from the effectiveness of the process (Ingleby, 1992). In Aotearoa for instance, there are numerous situations where the mediation process is not entered in to voluntarily. For example, court ordered mediation, a requirement through an industry code or contractual undertaking such as an

employment agreement or as part of a legislative process as set out in the Resource Management Act 1991.

Although mediation is not always a voluntary process the outcomes will always be on a consensual basis between all parties. Another core value of mediation is the autonomy of the parties to decide on how the process will proceed and ultimately any outcome.

A further value or principle is that of confidentiality. The ability of parties to be absolutely honest assists the parties to discuss openly possible solutions without fear of repercussions. Spiller (2007) confirms that confidentiality is a distinguishing feature of the mediation process and is fundamental to the process because the ability to speak freely and honestly can assist in transforming party relationships by getting them to open up to each other. This ability to make offers, disclosures and even admissions without fear of acknowledging legal liability encourages parties to reach a satisfactory settlement of their dispute without expensive litigation.

An effective mediator can assist parties in this regard, however the neutrality of mediators is a necessity.

2.2.5 The Role of the Mediator – Neutral or Conductor?

The principle of neutrality or of using a third-party neutral is another value in the mediation spectrum. Neutrality however can be a complex dynamic in the mediation process.

Boulle et al. (2008, p. 24-25) contend that the neutrality of mediators is regarded as both an ethical requirement and a practical consequence of the mediation process. They go on to advise however that the word neutrality has “several shades of meaning”. The first is referred to as a sense of disinterestedness or when a mediator will have no interest in the outcome of a mediation. The second is referred to as a sense of independence and refers to the mediator having no previous relationship with any of the parties to the mediation. The third and final is referred to as the sense of impartiality and refers to the

mediator conducting the mediation process in a fair and even-handed way without bias to either party.

In regards to neutrality, Cloke (2001) suggests that as mediators we need to acknowledge our biases and emotions in order that we can assist parties in an objective way. Cloke (2001, p. 14) states:

Neutrality can paralyze emotional honesty, intimate communication, vulnerability, and self-criticism. It can undermine shared responsibility, prevention, creative problem- solving, and organizational learning. It can ignore the larger systems in which conflict occurs. It can fail to comprehend spirit, forgiveness and transformation, or healing, which are essential in mediation. As a result, it can become a straitjacket and a check on our ability to unravel the sources of conflict.

If mediation is a band of musicians then the mediator, as such may be referred to as the conductor and as one of the stand out features of a mediation process is its flexibility, in musical terms one commentator Bellman (2006, p. 325), referred to it as being “*similar to Jazz it requires improvisation and group effort and with so many varieties of practice, the boundaries of the form are hard to define*”

These core principles relate directly to my research and the question asked, “*to what extent are principles of kaupapa Māori reflected in the current practices of Māori mediators in Aotearoa?*” and need to be considered as to how they are impacted through the introduction of principles of kaupapa Māori, if at all and in the practices of Māori mediators.

I will now describe the mediation models currently in use in Aotearoa. It should be noted however, that these descriptions of models are not meant to provide a definitive description but rather are an attempt at categorizing the different approaches to mediation that are used. In many circumstances Mediators may use a variety of approaches and

hybrid models which all are intent on facilitating the necessary discussions between parties in conflict.

2.3 MODELS OF MEDIATION

Spiller (2007) refers to four specific mediation models generally prevalent in Aotearoa. He warns however that these models can have a wide range of approaches depending on what the parties involved desire as an outcome of the mediation or the factors surrounding the matter at dispute. The four models are described as the positional or settlement model, the evaluative model, the facilitative or interest-based model and the transformational model.

The different approaches or models used can reflect the desired outcomes for the parties. For example, where the relationship of the parties is important to maintain a more facilitative, interest based, or even transformational model would be recommended. Whereas if the relationship of the parties is not that important and this is a one-off deal that requires settlement a more evaluative approach may be required.

The settlement or positional model and the widely used facilitative or interest-based models, may be a continuance from the distributive and integrative negotiation models. The increasing endorsement of the transformative approach to mediation by mediation practitioner purists has seen a diminished interest in the evaluative approach outside of the protection of legislative frameworks. I suggest that this maybe occurring as parties seek to engage and reassess their ongoing relationships with other parties and how in future parties may want to engage in a mediation process.

I also find myself intrigued with the depth of understanding required in the transformational mediation space and how it may be used in a kaupapa Māori-Māori setting however first, a brief description of the mediation models is required.

2.3.1 Settlement or Positional Mediation Model

Goldblatt (2007) advises the settlement or positional mediation model begins at the separate positions of the parties that are in dispute and encourages movement through incremental bargaining until the parties are within what is described as the zone of agreement. The zone of agreement is the place where parties start to realise that they are in a position where a compromised solution can be accepted. The mediators' role is like that of an auctioneer trying to get the best price for the seller whilst alluding to the potential buyer that they are getting a great deal.

This model is perhaps best used where there is a one-off engagement between the parties or where there is an acknowledgement of liability and the only subject for discussion is compensation or some sort of commercial redress. This model has definite advantages where disputes are of a commercial or contractual nature however it is not a model that seeks to enhance relationships between parties.

2.3.2 Evaluative Mediation Model

The evaluative model of mediation provides for an expert in the field of the matter at dispute to give advisory guidance to the parties on their legal rights and duties during the mediation process.

This model can be used instead of going to Court and seeking formal legal redress. No doubt this would be the ground of lawyers and experts in the disputed field as it involves giving an assessment or evaluation of the matter at dispute and an expert opinion on the likelihood of success. Goldblatt (2007) describes this model as heavily weighted however towards legal rights, requires a high input of intervention from the mediator and is usually found more in the public sector where there is some form of mediation legislative requirement or statutory framework than the private sector because of the legal risk involved in the mediator forming an opinion and advising parties. This of course goes somewhat against the mediation protocols of the neutrality and independence of the mediator.

2.3.3 Facilitative or Interest Based Mediation Model

The facilitative or interest-based mediation model is a continuance of the integrative or principled negotiation model in that the parties are seeking to focus on their interests and not their positions. The model is based on the early work of Fisher et al. (2011) and is reliant on parties seeking to address their underlying interests and working collaboratively to problem solve in order to reach a resolution or agreement. This allows for the relationship between the parties to remain intact and can enhance further engagements if the process is dealt with effectively and the parties are able to engage, communicate and focus on the future for mutual gain as opposed to seeking justice and someone to blame. This model is also less reliant on legal rights and protocols and this can in turn allow for more creative options to be explored and made available to parties than those that keep within the confines of legal rights and principles of natural justice.

2.3.4 Transformative Mediation Model

The transformative mediation model seeks to change the relationship of the parties and in this way deal with the dispute which the transformative model sees as an opportunity for growth and understanding rather than a difference or problem. This model has a basis of seeking resolution rather than settlement and does this through a transformation of the relationship of the party's process rather than a problem-solving process. It requires both genuine honesty and empathy.

One of the foremost writers on and practitioners of transformative mediation Kenneth Cloke (2001, p. 25-26) advises:

Transformation and learning require awareness and listening, just as empathy and honesty require each other.....Honesty without empathy becomes brutal and judgemental, while empathy without honesty turns sentimental and ineffectual. To reach deeper levels of honesty, greater empathy is required to disarm defensiveness and judgement. To build great

empathy, deeper honesty is needed, to keep it from feeling false and make it practical.

Transformative mediation also introduces parties to the realm of the spirit of the parties. In his book *Mediating Dangerously* Cloke (2001) discusses the spiritual side of conflict and in particular how this applies to Native American mediation processes. Native American cultures will open and close mediations with an acknowledgement of the spiritual realm. In some ways this is not dissimilar to the opening and closing of Māori-hui through karakia or whakamoemiti and through acknowledgement of the ancestors who are no longer physically present. Cloke (2001) further advises:

Using spirit in mediation means discovering what the conflict means at a deeper level, exploring what lies beneath the surface. It means using dangerous forms of empathy and honesty, listening and acknowledgement, apology and ownership. It means turning inwards, letting go, and discovering what it feels like to be on the other side. It means acting on values and integrity, finding common ground, resolving the reasons that led to the dispute, and reaching forgiveness and reconciliation. It means authenticity and the possibility of transformation and transcendence.

From a kaupapa Māori view, the transformational mediation approach offers a much richer and deeper experience for parties who wish to remain engaged and further develop their relationship. For Māori, whānau and Whanaungatanga are integral parts in Te Ao Māori and as such the need to be able to relate and connect with each other mean that where possible, relationships need to be preserved. When initially engaging with each other or even when establishing a new relationship with someone who is not Māori, many Māori need to make a connection first before entering into any discussion, as this is how Māori identify their relationships and status and this is completed through whanaungatanga and whakapapa.

For this reason, it is important to discuss current literature on the mediation process with particular focus on the stages involved in engaging with persons involved in a mediation to gain insight into the academic rationale behind the process and how of if this aligns with Te Ao Māori.

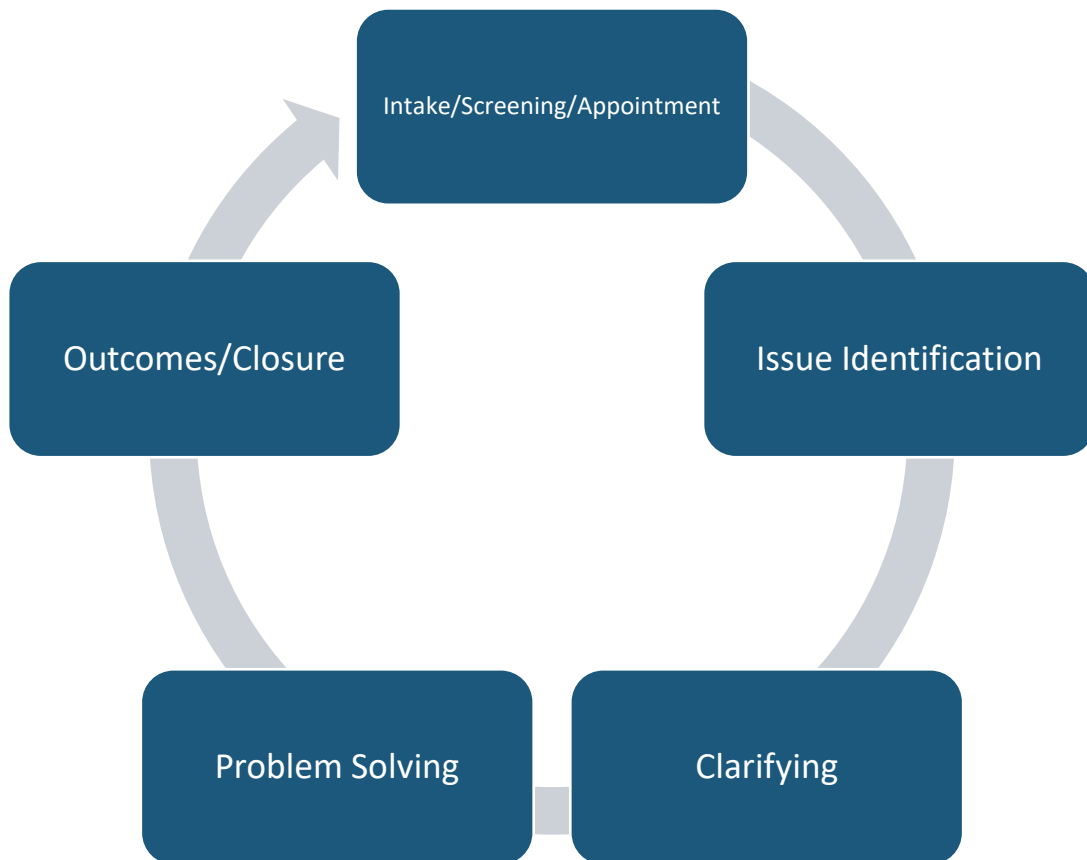
2.3.5 Mediation – The Process

One of the standout features of mediation is its flexibility, this can however allow for an enormous variation between different mediation cases. Although statute does prescribe in some cases the form of mediation for instance as described in Schedule 3C of the Telecommunications Act 2001, however for most cases it is left to the mediator and the parties to conduct the actual process in a way that promotes interest identification, problem solving and clear communication between the parties.

Never the less Boulle et al. (2008) identifies three distinct and sequential phases to a standard mediation process. These are described as the preparatory, meeting and post mediation activity phases. Although these phases have been highlighted as being for a “standard mediation process” Boulle et al. (2008) point out that for more complex mediation disputes such as those involving Waitangi tribunal claims and cross-claimant interests the process is not as linear and neat as set out but rather becomes “unpredictable and iterative.”

Alternatively, Spiller (2007) refers to five distinct “stages” to the mediation process. These are described as the intake and appointment stage, issue identification stage, clarifying stage, problem solving stage and the outcomes and closure stage. These are presented in Figure 3.

Figure 2. 5 Stages in a Mediation Process according to Spiller (2007)



Both Boule et al (2008) and Spiller's (2007) writings inform the mediation process herein described.

Intake/Initiating Mediation – Preparatory Stage

There is some commonality in both Boule et al (2008) and Spiller's (2007) description of the mediation process in that both describe the intake and appointment of a mediator, note Boule et al describe this as initiating mediation and the mediator's entry. However, Boule et al promote that at the beginning of the process known as "intake" there is a need to screen and assess the dispute and parties as to their suitability for mediation.

Indicators of non-suitability in the Boulle et al process to mediation include a history of domestic violence between the parties, cases of child abuse or matters where a party lacks the mental capacity to participate.

Further, there may be cases where a dispute is better served by a different process for example a dispute involving a sole trader who may need to assert legal obligations under a contract, these would be better heard before a tribunal or Court. There are also matters which may require a Court or Authority ruling such as matters involving societal norms or matters of significant public interest an example of such maybe where a bar or cafe owner enforces a strict dress attire for eating dinner or enforces a no tattoos policy. There may also be matters where the power imbalance between the parties is so great that one party can dictate the outcome or intimidate the other party into agreement thus ending that party's self-determination and autonomy, a core value of the mediation process. These issues to consider are not mentioned in Spiller's description. Spiller appears to be more concerned with who the parties are, what the problem is and who is going to pay.

Both Boulle et al (2008) and Spiller (2007) agree however that at the earliest stage parties should be informed and educated of the nature of the mediation process and signed agreements, known as an agreement to mediate, between the parties and the appointed or desired mediator need to be completed. These scholars further agree that parties may need to tell their stories in isolation from the other party at dispute and initial separate meetings can assist in this regard also allowing the mediator to prepare both parties, emotionally for meeting with each other, to ensure they have authority to settle the dispute and other parties are not required for the mediation to progress.

I note that neither Boulle et al. (2008) or Spiller (2007) have identified any sort of relationship building between the mediation participants and the mediator or intake agency. As identified earlier, many Māori need to make a connection first before entering into any discussion as this is how Māori identify their relationships and status. If this connection and relationship status is not established at the intake stage I suggest that Māori may not engage fully in the mediation process.

Again, Boulle et al (2008) and Spiller (2007) are consistent with the next stage or phase of the mediation process being a problem identification stage and this stage requiring both parties to be present and actively participating. Here is where the mediators' skills are put to the test with the mediators' role in assisting the parties to clarify the matter at dispute. This may involve reframing, defining, further questioning, detoxifying as required and transitioning parties to a place where their concerns are mutualized in order that common ground may be established and the problem solving, or resolution work can begin. Boulle and colleagues go to some length in describing this first joint meeting of the parties and describe the preliminaries of the meeting where the ice is broken to settle parties, reassure them and establish rapport. They then describe the mediators opening statement where the nature of mediation is again explained and the process of the particular mediation specifically and the party's contribution and telling of their stories this time to each other.

Once both parties have made their contributions a skilled mediator can then in consultation with the parties begin to define and order the issues at dispute. This is where Boulle et al join Spiller in getting to the clarifying stage. Once issues are clarified they can then be, according to Boulle et al, explored, negotiated and problem solved. It is also in this stage that Spiller (2007, p97) advises parties *"...can be encouraged as Cloke says, to act with honesty and empathy towards each other if one of the aims is to transform their relationship rather than just solve their problem."*

The clarifying issues stage is where a mediator will in consultation with the parties list the issues that have been raised that require a decision. The mediator may list them on a board and hold them up to make them more visible to the parties and to give the dispute some shape. This allows for the unpacking or breaking down of the dispute into discrete parts that may have been oblivious during the rise in tensions and emotions between the parties. Once issues are identified and prioritized, parties can then with guidance from the mediator move into the problem-solving stage of the mediation.

Boulle et al. (2008) describe the problem solving stage as the heart of the process and the stage that will normally occupy most of the time in a mediation. It is now that the parties must engage constructively. Good communication and negotiation skills are required to produce robust decision making. It is important at this point that all options are explored before any evaluation and decision making is done. Leaving any issues of any parties unidentified or worse still identified without any options generated to resolve will result in further problems for the parties in future like an undiagnosed illness these untreated underlying interests will remain to fester only to surface later.

From my own experience, moving from problem identification to problem solving too early without first ensuring that all underlying interests of the parties have been met is a recipe for further breakdown in the relationship between the parties and further mediation. Separate meetings during mediation may also occur at this stage these must however be balanced and timely both in content and duration. They are effective where discussions are breaking down to assist the parties to refocus on priorities and to allow the mediator to restore and reassert the purpose of the mediation. It can however also allow mediators to have some sway and power over the mediation especially when transmitting offers between parties as this allows the mediator to effectively package and present an offer strategically to pressure parties into settlement. This of course is contrary to the mediation principle of autonomy and self-determination of the parties.

When parties are brought together and or are ready for final decision making in respect of the options explored and available the decisions made are usually reality tested by the mediator. Reality testing is where the mediator will challenge the parties to ensure their expectations are not unrealistic or objectively unobtainable or even whether they are legally viable. For example, if a party were to attempt to force an issue by threatening a walk out or litigation, "I'll see you in court..." a mediator may call a separate meeting and reality test with the threatening party by asking the question "Are you sure you can afford the time and cost of pursuing a judicial decision in this matter?"

Once decisions are reality tested they can then be recorded in the mediated agreement. If there is no agreement, parties can take time to reflect and reconsider then return later to negotiate, or perhaps try other dispute resolution options such as arbitration or they

can simply walk away. If the mediation is terminated without agreement however it is important that the mediator remind parties of the confidentiality of the discussions to ensure there is no breach through disclosures or behaviour.

Outcomes – Post Mediation

Following the mediation meeting the final stage of the process includes the preparation and signing of the mediated agreement, ratification of the agreement through an external body as and if required (i.e. board of directors, trustees, lawyers etc..) by a negotiating party, and official sanction if required, by a Court or other such external body to validate the agreement. There are also non-binding agreements that can occur and may require follow up such as reporting or monitoring a timeline agreed to by the parties for things to occur. These can be dealt with through a referral agency, lawyers or by agreement an independent person.

There are many variations to a mediation process including the process of co-mediation where more than one mediator is appointed, and the interventions or functions are distributed, and the role shared. Like-wise there many other interventions that can be used by mediators. Along with caucusing separate meetings shuttle mediation and even advising referral to arbitration where agreement cannot be reached. The preceding description of the mediation process is described as a series of linear tasks or stages that follow a sequence however as mentioned at the start of this part of my review, the reality is the process can in fact be far more variable however the description does outline the main stages a basic mediation process will usually move through.

These series of stages and steps I learned as part of my training to become a practicing mediator. Interestingly however, I did note as I trained that there was no formal requirement for training to become a mediator in Aotearoa. There are of course skills and knowledge that one should possess and certain requirements a person must meet to practice in jurisdictional referred mediation such as Family Dispute Resolution (FDR) however in the broad spectrum that is mediation there is no legally enforced set standard for the practice of mediation.

Further, for Māori an understanding of their values and worldview is required in order that a mediator can fully understand Māori principles such as whanaungatanga and whakapapa. These should be considered and provided for in the mediation process Shah-Kazemi (2000 p321) supports such a consideration and advises that culture shapes the way disputants perceive the subject matter, process and options for resolution of a dispute. Further, she asserts that unless the culture of the parties informs the process of mediation, the benefits of the process (including the potential for parties' self-determination) will be lost. Understanding Māori principles is fundamental in effectively engaging with Māori and I will now describe some of these key Māori principles that need consideration in mediating with Māori.

2.4 KAUPAPA MĀORI PRINCIPLES

Tomas and Quince (2007) advise that in order to move towards a process of Māori dispute resolution fundamental aspects of tikanga must be taken into account. Tomas and Quince (2007) further, describe these fundamental aspects as Whakapapa, Mana, Tapu and Collectivity. In place of Collectivity I have used the term Whanaungatanga as it is Whanaungatanga that requires people to respect the relationships they have with each other and bonds people together on a common cause or through a process and in my opinion better reflects the ideal of Collectivity in Te Ao Māori. For the purposes of this research project, I have taken the principles of Whakapapa, Whanaungatanga, Mana and Tapu and used these core kaupapa Māori principles as a basis for determining how widely principles of kaupapa Māori are used and practiced in a mediation process by practicing mediators within Aotearoa.

Further, for each one there will undoubtedly be the presence of the other. This is the connection between ture tangata and ture wairua or those things of the spiritual realm and those things of the physical realm. This is how a balance is maintained and a state of harmony or noa can be found. For example, where there is Mana there will be Tapu and where there is Whakapapa there will undoubtedly be Whanaungatanga. In Te Ao Māori all these concepts are interconnected and interrelate with each other. These

aspects or principles must also however be balanced with a practical process that reflects the reality of how Māori live today.

It is important that a depth of understanding of these core principles is known before attempting any research into their use. I loathe having to define these concepts, as inevitably there are always dangers with trying to define something in a language foreign to the language from whence the concept originates. As Derby and Moon (2018, p. 1) describe:

... it is the consideration of what happens to those words from te reo when they are incorporated into English that has a bearing on the power relationship between the two cultures. Firstly, words appropriated from te reo are culturally and grammatically decontextualized, and their idiomatic force is drained from them.

Nevertheless, some description is required to ensure credibility of the research project and to define the parameters of the matters discussed. The endless debate over loss of substance and significance when attempting to interpret Te Reo Māori into English as evidenced in the interpretative problems with Te Tiriti (explained and written in te reo and another version in English) are an acknowledgement of this problem. The purpose however, of examining these concepts is to develop an understanding of them, and to show how they are values-based rather than rules-based although there are some rules that apply to their use and further still, that the values were flexible and dynamic enough, to take in to account and apply to different circumstances. It is for these reasons that the definitions now explained provide more of a general sense of reference and guidance in the approach to interpretation.

2.4.1 Whakapapa – The Genealogies of all things

'He kākano ahau i ruia mai i Rangiātea'

'I am a seed which was sewn in the heavens of Rangiātea'

Whakapapa provides an organizational principle within te Ao Māori. It emphasizes relationships between not only people but the environment and things within Te Ao Māori, it is how all things connect. People with places, nature and the world as a whole. In Te Ao Māori, everything has Whakapapa. It is our Whakapapa that gives us the intrinsic knowledge of knowing our environment and the world around us and it is through whakapapa that we are connected to all things. Sadler (2014, p. 149) states:

Ko tēnei mea ko te haka-papa ko koni atu te haka-papa o te tangata. Mehemea ka tirohia e koe ngā haka-papa nei, he haka-papa to te ao, he haka-papa to ngā atua, he haka-papa to te tangata. Ko te titiro o te ao Māori ki ona haka-papa he whanaunga ngā mea katoa o te rangi o te whenua ki a ia. Ko herea ra ki roto i tena āhuetanga.

Genealogy is more than the genealogy of man. If you analyse these genealogies you will realise that there is a cosmogenic genealogy, a theogenic genealogy and an anthropogenic genealogy. The worldview of Māori when it comes to genealogy is that everything within the heavens to the land is interrelated to him. They are joined within that notion.

If we take the beginning of Te Ao Māori as Te Kore. From Te Kore comes Te Po, and from Te Po comes Papatūānuku and Ranginui. From Papatūānuku and Ranginui comes Tane, who separated his parents and so began Te Ao Marama. But it also from Tane that the beginning of human kind through Tane breathing the breath of life into Hineahuone that Whakapapa interlinks mankind with ngā Atua.

For Māori, it is our Whakapapa links to ngā Atua that form our physical and spiritual being. Māori believe that Whakapapa relates to all things, both animate and inanimate, again, everything has a Whakapapa. Sadler (2014, p. 153) further describes how Whakapapa can be used as a tool of analysis to describe and analyse any phenomenon. Sadler refers to the tupuna Hone Mohi Tawhai and how he used Whakapapa to give his views and perspective on Te Tiriti o Waitangi:

Ko Aotearoa ka moe i te mana o Ingarangi, ka puta ki waho ko kawana Hopihana. Ka moe i ngā rangatira Māori o Aotearoa me te waipounamu kia puta ki waho te Tiriti o Waitangi, ka moe i te Paremata ka puta ki waho ko ngā Ture o Niu Tīreni.

Ka moe te Kaihakawā tumuaki i a kairuri, kia puta ki waho ko Karauna Karati. Ko ēnei āhuatanga I patu kino i a matou.

Ka moe te Kooti Whenua Māori ki a Roia, kia puta ki waho ko Rīhi to mua, ka rere ki muri ko Wira, ka rere ki muri ko Mōketi. Me ngā nama katoa.

Ka moe Te Tinihanga i a Te Waipiro, kia puta ki waho to mua ko te Haina, ka rere ki muri ko Te Hoko, ka rere ki muri ko te Haurangi.

Ka moe Te Whenua kore i a Te Ngākau Pouri, kia puta ki waho ko Mate Noa Iho.

Aotearoa cohabits with the mana of England and begat Governor Hobson, who cohabits with the chiefs of Aotearoa and Te Waipounamu and begat Te Tiriti o Waitangi and cohabits with Parliament and begat the Laws of New Zealand.

The Chief Judge cohabits with the Surveyor and begat Government Grants. All these things have been sent to suppress us.

The Māori Land Court cohabits with the Lawyers and begat Leases first, then Wills and Mortgages. And all the debts that go with it.

Deceit cohabits with Alcohol and begat first Let's Sign it Away, followed by Sell it and finally Drunkenness.

Landlessness cohabits with the Saddened Heart and begat Sudden Death.

Tomas and Quince (2007) further describe Whakapapa as providing the perpetual continuation of physical relationships between past, present and future generations of Māori.

Thus, it is that Whakapapa for Māori is the way in which all things are connected. It also explains why connection and identifying status and relationships are important when engaging with Māori and in particular in the mediation process.

2.4.2 Whanaungatanga – Kinship and Relatedness

‘Ehara taku toa I te toa takitahi - engari he toa takitini kē!’

‘My strength/being is not that of one person – but of thousands!’

The concept of Whanaungatanga is the support structure that assists and binds whanau, hapū and Iwi together. In Te Ao Māori one’s personality and ways of learning do not develop in isolation but are developed from the strength of the whanau and its collective support systems. Whanaungatanga defines the relationships, obligations and responsibilities of parties. It is Whanaungatanga that requires people to respect the relationships they have with each other and is a way of bonding on a common cause or through a process together. It is important that these kinship ties are maintained for Whanaungatanga both inter and intra whanau and for both in the present and into the future.

According to Pere (1994) Whanaungatanga involves practices between whanau that strengthen their ties to each other and the display or commitment of aroha is required and seen as vital to ensure the survival of the things that matter to the group. Values practiced between whanau groups such as loyalty obligation and commitment created the support system which made the whanau a strong stable unit both within the hapū and the iwi or tribe. Tomas and Quince (2007) advise that If Whakapapa is the organizing principle then Whanaungatanga is the moral and ethical framework within which Māori who relate to each other interact daily. Whanaungatanga was the overriding principle by which right and wrong actions toward relatives were determined.

Whanaungatanga is essential in the mediation process as for those practicing Whanaungatanga the ideal is to reach a unity of purpose, peace and harmony. Having respect for these relationships assists in any resolution where parties are in conflict to ensure each party retains mana and where damage has been done, can assist in moving

the parties back towards harmony and balance. For Māori, whanaungatanga is about the reweaving of the ties that bind us together as Māori, separate from anyone else. Again, not only through our blood ties but also in the spiritual realm and as Jackson (1988) advises strengthens the spirit.

2.4.3 Mana – Power and Prestige

‘Kaore te kumara e kōrero mō tona ake reka’

‘The sweet potato does not speak of its own sweetness’

Mana is rich in meaning and has been described in many different ways. Williams (1957) defined mana as having a multiplicity of meanings including authority, control, influence, prestige, power, and psychic force (cited in Mead, 2003, p. 29). Buck suggests, “The mana of a chief carries the meaning of power and prestige” (cited in Mahuika, 1992, p. 45). Mead (2003) suggests mana is held by each individual, with the level of mana held determined by the individual’s place in the group. Personal and group relationships are mediated and guided by mana’s varying levels. Individuals with high levels of mana tend to be leaders.

Mana is a fundamental concept for Māori leadership as it relates to political power (Williams, 1998, cited in Baragwanath et al., 2001, p. 33). In traditional society, Winiata suggests that the mana gave validity and power to all chiefly statements, contracts and tasks. It ensured strong chiefly authority and confidence, and follower loyalty (Winiata, 1967). In contemporary society, Mead (2003) suggests that people with mana tend to be in leadership roles. Mana is linked to the western concept of charisma (Mead, 1992; Winiata, 1967). Durie (1998) acknowledges that mana connotes both worldly and ethereal meanings. However, using the application of mana as used in the 1835 Declaration of Independence, Durie defines mana as authority and control or Māori sovereignty.

According to Barlow (1991) in modern times the term mana has taken on various meanings including the power of the gods, the power of the ancestors, the power of the land, and the power of the individual Māori see Mana as a status. It can be inherited as and through whakapapa, but it can also be acquired, increased or even lost through your

own actions. It is the way in which it is utilized in influencing the behaviour of others that Mana can either be enhanced or lost. Sadler (2014, p. 143) states:

Ko te mana o te tangata ehara nōna te mana, ehara ia i te matapuna o te mana, kīhai te mana i pūtake mai i te tangata, erangi ko tona mana he mea tuku iho mai i ngā atua ma roto i ngā haka-papa. Ka taea te mana te tītari mai i te mana atua, hei taonga tuku iho ma te mana whenua ki te mana tangata. Ko te pūtake o ēnei āhuetanga ko te ritenga o te tu o te tangata o te wahine raini ki roto i o rātou hapori.

The Mana of a person does not belong to him, he is not the source of Mana, Mana does not come from man, but his Mana is bequeathed from atua through his whakapapa. Mana is able to be dispersed from Mana atua to be inherited through Mana whenua and then to Mana tangata. These principles pertain to the roles of men and women and their standing within their communities.

In this explanation Sadler is advocating that the dispersal of Mana is again through Whakapapa or the gift from atua and in this way is inextricably tied to the land for it is through land (Papatūānuku) that a person can Whakapapa which allows them (Mana tangata) to exert authority over the land (Mana whenua).

The understanding of the concept that Mana does not come from the person as the source but rather is derived as Sadler describes above “*bequeathed from atua through his haka-papa*” is confirmed by other academics such as Marsden (2003) who describes Mana as being a spiritual gift from the gods and as such, goes on further to advise that, man is simply an agent or channel and never the source of Mana. With Mana comes not only an authority to act but also the power to act. Again, however man is not the source, it is ngā atua who give the power to man to exercise Mana.

Cody (2004) advises also that Mana atua is the Mana that comes from the spiritual world and is the authority given by the atua that control the different aspects of Te Ao Māori. The Mana is claimed in karakia from Tangaroa if someone is going fishing or from Tane if someone is going to cut wood or dealing with forests and from Tāwhirimātea if it is about

weather and so on. The issue of authority and power and how Mana is wielded is as previously described how one can enhance or reduce Mana. When trying to understand the difference between the authority to act and the power to act Marsden in King (1992, pp. 191-219) explains:

A person approaches a traffic crossing and the lights turn red. He has power to cross but no permission. The lights turn green but his car stalls at that moment. He has permission to cross, but no power. His car starts, and the lights remain green. He has both authority and power to proceed.

Thus, it is, that in wielding or exercising Mana all things should align in order that Mana is enhanced. As Tomas and Quince (2007) explain further it is Mana that allows both Māori as individuals and groups such as hapū to make decisions for themselves which aligns with the core mediation principle of party autonomy mentioned earlier.

2.4.4 Tapu - Sacredness

‘He kotuku rerenga tahi’

‘A White heron flies once’

The meaning of the word Tapu is to be sacred or the sacredness of something. Barlow (1991) advises Tapu is first and foremost, the power and influence of the gods. However as with most things in Te Ao Māori the depth of Tapu must be explained in order that the reader can fully or for the most part appreciate the concept.

To be Tapu is to have a place, person or even an object reserved and dedicated to an atua and is for their sole use. The person, place or thing is in effect removed from the realm of noa, or what is normal and is placed and reserved in the realm of sacred, it is untouchable and no longer available to be put to its common use. This process is completed through a type of spiritual contract between the individual or group and their atua. Marsden (2003) states that by applying physical laws (intellectual and emotional

consciousness) in a scientific manner, man can manipulate his environment to suit his own purposes. Further, that this concept is no less applicable in the spiritual realm and in the Māori view, the application of spiritual laws to this end is dependent upon man's cooperation with the gods. This is brought about by man entering into a type of contractual relationship with the gods. In another sense a Tapu object maybe classified as in the European concept "cursed" or unclean and if touched requires ritual cleansing before resuming a normal existence.

Tapu can belong to an individual or groups or it can be used by extension to natural resources and other things. An example of this type of extension is where a rahui or restriction, is placed over an area perhaps due to an unfortunate death or to allow an area time to replenish naturally. In this way the group, usually a hapū, use the institution of tapu to preserve or reserve the area for a suitable time. Tapu and Mana work together to regulate normality within Māori society. Tapu is the state of an object or person and this could be altered by using ones' authority or Mana. Some early misconceptions made were that Mana was the positive force in Māori spirituality and Tapu the negative force. This was incorrect. Marsden (2003) advises that Tapu can be defined as a sacred state or where a person's place or thing is set aside for the gods and removed from use. Further Marsden adds that Tapu can be secured by agreement of the gods and enforced by the endowment of Mana.

These core values or principles of Whakapapa, Whanaungatanga, Tapu and Mana all come together and establish tikanga. Tikanga is the way things should be done in Te Ao Māori and is derived from the word tika which means to be correct, true and right.

Notions of linear time do not matter in the establishment of tikanga. It has taken generations of the handing down of oral histories and traditions from the times of the ancestors to form tikanga and the true and right way of doing things in Te Ao Māori. Tomas and Quince (2007) advise that in order to move towards a process of Maori dispute resolution fundamental aspects of tikanga must be considered. Tomas and Quince further, describe these fundamental aspects as Whakapapa, Mana, Tapu and Collectivity. I will now discuss the theory of incorporating Māori values in the mediation process.

2.5 MEDIATION AND MĀORI

Myth and legend in the Māori cultural context are neither fables embodying primitive faith in the supernatural, nor marvellous fireside stories of ancient times. They were deliberate constructs employed by the ancient seers and sages to encapsulate and condense into easily assimilable forms their view of the world, of ultimate reality and the relationship between the Creator, the universe and men. – (Marsden and Henare (1992) as cited in Marsden (2003, p. 56)

From the time of creation of Te Ao Māori the history of conflict and disputes within Te Ao Māori began. It is through the children of Papatūānuku, the Earth mother and Ranginui the Sky father that one of the first disputes can be traced. The idea of the separation of their parents from each other did not meet with the agreement of all the children of Ranginui and Papatūānuku. Tomas and Quince (2007) remind us that Whiro disagreed with Tane in separating their parents.

Indeed, there were many disagreements between Tane and Whiro and it is referred to in Best (2005) that these disagreements were symbolic of the battle between the light and the darkness, between the embodiment of life and the embodiment of death, although Best stops short of describing them as the battle between good and evil he does however, refer to a number of inferences that can be made such as the dark and the light.

Tomas and Quince (2007) also assert that through a Māori epistemology and belief and values system the common thread and beginning point for Māori is in the creation story of Ranginui and Papa and that from the beginning the Atua Māori were in conflict at separating their parents Papa and Ranginui. The separation and the burden placed on those that caused it are reminders for reflection by us as human beings as to the way we act and behave towards each other.

Indeed, if it is through Whakapapa that we can align and link ourselves to nga atua and it follows that nga atua are held as exemplars for us as tangata and are the personification of heroes and villains then it may follow that the causes of dispute between us as Māori

can be inherent and descend from nga atua. Perhaps these stories were created to ensure mankind would reflect on purpose and reason for why an action is chosen to remedy a particular event or just to understand that being in conflict is a natural state of being.

Tomas and Quince (2007) also advise that through the process of colonization Māori over time gradually began to move away from matters of tikanga. They advise that this affected and diminished the role a rangatira in particular would play in whanau and hapū associations as Māori struggled to fit into a western Eurocentric way of life based around an individual ideology and the creation of material wealth. Where once a rangatira could exert Mana over whenua and whanau and assist to protect their people through actions such as exerting kaitiakitanga over resources or acting on behalf of whanau in public forums with other rangatira to reach agreements on conflict between whanau with the adoption of the western world view Māori began acting alone, thinking of oneself and moving away from an ideology of collective responsibility to one of individual entitlement.

Western laws and ways of doing things began to become the norm and with many Māori moving away from their tribal lands and into cities as part of the labelled rural to urban drift, the breakdown of the whanau support unit in favour of the nuclear family changed the dynamics within whanau and hapū. Hall (1998) supports this view and how the move away from the traditional whanau, hapū kinship model to a more individual one meant that the traditional ways of doing things within tikanga Māori no longer worked. Hall claims a lot of Māori today do not know the rules or share respect for communal values and standards. Although we have seen over time since the arrival of the European a loss of the use of many aspects of tikanga and knowledge of the same it has not been eroded to the point where it cannot be restored.

In 2004, I remember writing of events leading to the popularity of the Waiata Poi E performed by the Patea Māori Club. The waiata was a number one hit on the New Zealand popular music charts in 1984 in Aotearoa and I reflected on what was the social and political climate at the time that may have influenced how a Māori waiata could reach number one in the New Zealand popular music charts. I recall that at the time the waiata reached number 1, it was the final term of the Robert Muldoon lead National government

that had been in power since 1975. Wages had been frozen; many urban Māori had lost their Jobs at the freezing works and in February of 1984 voluntary unionism was introduced through legislation. It was also the time of the Muldoon and National government “Think Big” projects.

Deputy Leader Palmer of the opposition Labour Party released a statement to the press on 2 February 1984,(sourced from Northern Advocate 3/2/1984) conveniently one would think just before Waitangi Day of that year, that should the Labour party be elected to govern at the next general election to be held in November that amongst other things they would:

1. Enshrine the Treaty of Waitangi in legislation by incorporating it into the Bill of Rights.
2. The powers of the Waitangi Tribunal would be made retrospect in order that the tribunal could hear claims back as far as 1840. Prior to this the tribunal could only hear claims that came after the date of its inception in 1975.

On Waitangi Day 1984 (February 6) the protest movement Kotahitanga were for the first time in history invited to present submissions on Treaty grievances to the then Governor General David Beattie on the treaty grounds. Unfortunately, conditions were attached to the meeting the most prominent and reason for the meeting not taking place was that Beattie requested that only 100 members of the protest movement (note there were in excess of 2000 members in the roopu) would be allowed to be present at the presentations of the submissions. Upon hearing this Eva Rickard, the then organiser of the movement announced that either all the members of the group were to be present at the meeting or none of them would attend. A stalemate ensued and after waiting for the group for approximately two hours Beattie left the treaty grounds and the meeting was abandoned.

The 1980s were a decade where Māori started to negotiate greater institutional engagement. For instance, in March of 1984, an independent education review (financed by the then National government) called for the introduction of taha Māori in all schools (refer Northern Advocate 26/3/1984). In August of 1984 the new Labour government, led

by David Lange were sworn in to government. Fraser and McLauchlan (1986) notes that this was the first time that a Māori ceremony was held for the opening of parliament. In September of 1984 Te Māori, a Māori art exhibition, hit the world headlines for its opening at the New York metropolitan Museum in the United States. I reflected on all these happenings and came to a number of conclusions that included with the release of the single Poi E with its hip sound and video showing Māori breakdancing, it became cool to be Māori. Both non-Māori and Māori who could not speak Te Reo were now learning Te Reo through learning the words to Poi E.

The rural to urban drift of the 1960's lead to countless Māori moving to cities and as a result many urbanised Māori lost their tangible links with their heritage Māoritanga or ancestry because of the physical dislocation in the movement from country to city life. In 1984 however, a renaissance of sorts was already blooming and with Poi E reaching the No 1 spot on the New Zealand popular musical charts Te Reo Māori was now being played, via the airways and music media for all to hear. Māori were now encouraged to learn Te Reo Māori and with the language were seeking their tribal links, Whakapapa and heritage.

As identified in order to move towards a process of Māori dispute resolution fundamental aspects of tikanga must be taken into account however these aspects or principles must also be balanced with a practical process that reflects the reality of how Māori live today. It should not however be a process that incorporates aspects of tikanga and kaupapa Māori into an existing dominant western system as this would only prove to maintain the existing control by western thought and logic. As Derby and Moon (2018, p. 324) iterate:

... the notion of incrementalism is, in fact, subversive, anti-cultural, and destructive, and it contributes to the consumption and repackaging of Māori culture by Pākehā to a form that is palatable and acceptable to the coloniser. Māori culture is diluted and distorted in the process, while the Pākehā position of power becomes more concentrated.

Tomas and Quince (2007) further suggest, the system should be based on a framework that takes account of a balanced world and one that incorporates a “holistic” approach to

its development in other words one that recognizes the centrality of mankind and its' connectivity within the wider universe and obligations to all other things as kaitiaki.

Some comparisons can also be drawn between literature in the restorative justice and mediation spaces, for instance one of the common themes with both processes is they involve an independent either facilitator in the case of the restorative justice process or mediator, in the mediation process and they both have similar objectives to facilitate a discussion between parties either at dispute or affected by the actions of the other. I will now discuss these and mediation in other jurisdictions.

2.5.1 Restorative Justice - Mediation and Creating a Bicultural process

Goodyer (2003, pp. 179-199) conducted research into the current justice system and concluded that restorative justice has the potential to improve current justice services and in particular claims that:

Arguably, one reason why the traditional justice system is unable to deal with Māori needs is because of its Eurocentric development and focus. Māori have traditionally resolved conflict communally and consensually on the marae, through group accountability, rather than individual retribution

Further, Tomas and Quince (2007) advise the way forward for Māori conflict resolution and mediation is one that promotes the ideal of a system based on inherent cultural values. I reflected on this and asked the question if anyone had succeeded in creating a step by step Māori mediation process. I was referred to a paper by Blackford and Matunga (1991) requested by the Ministry for the Environment to research and develop a bicultural mediation process for resource management and environmental disputes in New Zealand.

Blackford and Matunga (1991) were investigating whether mediation could provide a model of partnership that might be more conducive to Māori interests and values than other dispute resolution processes. The Ministry for the Environment identified that resolving of cultural conflict by methods and techniques of the hegemony was not a way forward and work was required on how to best address this issue. Although the writers have written their research more from an Iwi Māori perspective as opposed to a hapū,

whanau or individual one many of the issues identified are common for all Māori. What the authors found was that in environmental mediation which was prescribed under the Resource Management Act 1991 the Crown through the New Zealand Government and its authorities (local and regional councils etc.) had the final say in any mediation process.

The authors found that in developing a bicultural process there was a presumption that all parties could participate on equal terms, however as only one party, namely the Crown, through government made the laws pertaining to the mediation process (p.vi) *“an ideal state of equity does not exist between Māori and non-Māori”*. In mediation terms this refers to an inadequate balance of power and without a balance of power the autonomy of parties to participate on an equal basis is severely affected. This in turn affects one of the core values of mediation, that of self-determination.

According to Boulle et al. (2008, p. 51) *“self-determination has the goal of allowing the parties to take responsibility for the outcome and to base this on their own norms as opposed to externally imposed standards.”* Further they go on to advise:

In all these areas the self-determination objective promotes party ownership of the dispute, it's management and its resolution. The objective will be realized where the parties assume the power to make decisions on their interests, priorities, and options, regardless of whether a settlement is reached. This objective is prominent in the transformative and facilitative models of mediation.

Blackford and Matunga (1991) also found that through the existing environmental mediation process traditional Māori knowledge of the environment was treated as inferior to western scientific knowledge and thus had little or no impact on outcomes from a Māori perspective. They advise *“Attitude and process applications imply that tribal definitions are inferior and of less significance than those of the colonial-based culture”* (p.vi). The writers continue to advise that these imbalances of power evident in the environmental mediation process can make the mediation process unattractive to less powerful parties and the writers thus decided on a course of researching an approach to improve Māori effectiveness in environmental mediation as opposed to designing a Māori mediation process.

Boulle et al. (2008) support Blackford and Matunga in this view and advise there are concerns that members of the dominant culture will prevail, particularly where mediation is mandatory and involves issues relating to the rights of minority groups. Blackford and Matunga (1991) decided the research project would examine the current environmental mediation process through a series of case studies, three in all, and identify what works well from a Māori perspective and look at ways to strengthen this and further identify the barriers and look at ways to eliminate these. The approach taken was to apply a North American indigenous model of mediation as a framework to identify issues for tangata whenua participation in the mediation process.

The research concluded that mediation as a process has some congruency with traditional Māori conflict decision making processes and is flexible enough to allow for multiple cultural norms to be expressed however there are a number of institutional causing imbalances that make it difficult for Māori to participate on a level playing field. The research further identified a number of evaluative criteria for a robust Māori mediation process. These were described as:

1. Tino rangatiratanga o te iwi Māori must be recognized
2. Appropriate pre-negotiation procedures and accountability processes must happen that will implement tikanga Māori into the process
3. The complexity and diversity of Māori society must be recognized
4. A fair process in which all affected groups should be able to participate
5. A process that ensures Māori maintain their mana, dignity and integrity of their culture must be practiced
6. Information is presented and exchanged with integrity
7. Parties have an input to the choice of mediator
8. The empowerment of Māori people in the process must be strived for
9. Tribal structures must be respected in any conflict resolution process. The identity of tribe is of prime importance, followed by hapū boundaries and whanau.

These evaluative criteria are a preliminary step to establishing a bicultural mediation process but as previously stated the current law/regulations and environmental attitudes require a major shift in the way scientific and traditional knowledge streams are assessed

and by whom. A major political movement is also required to ensure a proper bicultural balance of power within Aotearoa. Parallels on the introduction of values-based processes into mediation can also be drawn in the writings of other researchers in indigenous dispute resolution principles.

2.5.2 Indigenous Mediation – Some Comparisons

Incorporating indigenous values into a mediation process can provide minority indigenous groups with the opportunity for self-determination and is supported by a number of writers including Astor and Chinkin (2002); Behrendt and Kelly (2008), Tomas and Quince (2007) and Ken Cloke (2008), one of the foremost lecturers and practitioners in the process of transformative mediation based in California, USA.

Commenting on indigenous resolution in particular Cloke warns that where countries lack significant long term experience with social economic or political democracy, many indigenous tribal conflict resolution traditions that originally emphasized collaboration and interest based interactions were gradually supplanted by or subordinated to conforming with the dominant hegemony, in many cases the western or colonial view that relied on directives and hierarchical authority from above, rather than participation and insight from below.

Cloke (2008) advises self-determination can be a practical method for preventing, resolving, transforming and transcending discriminatory treatment and second class citizenship and goes further by describing that systemic discrimination sometimes referred to as institutionalised racism thrive where institutions subtly link the values of unity, conformity and sameness with domination and systems that are grounded in inequality, inequity and conflicts over minority rights, nationalism and self-determination.

Cloke (2008) offers an example of the panchayat system in India and Pakistan as an example of where prevention, resolution, transformation and transcendence have occurred when ancient interest-based resolution processes are revived and reintegrated into current resolution practice using elicitive techniques. A further example Cloke

describes is the palaver process which consists of continuous community dialogue which is still practiced in parts of Angola, Mozambique, and other countries in Southern Africa. Cloke summarises that as large urban centres have overtime been established, the old ways and techniques of indigenous people for resolution have been bypassed or become institutionalised and less effective in recent times. However, Cloke adds that when these are revived and combined with modern methodologies, these ancient practices can invigorate the process of dispute resolution and help us all to learn from each other.

Cloke (2008) has taken this ideology a step further and been a part of the creation of the organization the Mediators Beyond Borders: Pathways to Peace and Reconciliation (MBB). This organization has the goal of recruiting volunteers within the dispute resolution community to support projects and programs that build conflict resolution capability. The MBB has committed to a holistic approach to conflict resolution on a global level that seeks to integrate innovative conflict resolution methods with traditional techniques and develop strategies for addressing the sources of conflicts within communities.

Other writers that also support the ideology of the introduction of values-based processes into mediation can be located across the Tasman sea in Australia. Astor and Chinkin (2002) for example have written of the ways that aspects of identity intersect and impact on Mediation. They advise that in mediating in a dispute between Aboriginal people where resources are provided to introduce mediation to these communities based on their own terms, those communities can adapt mediation to their needs, mediation can support self-determination by providing a mechanism for Aboriginals to resolve their own disputes without recourse to the formal justice system.

Further, Behrendt and Kelly (2008) advise alternative methods of dispute resolution can and should be developed that embody the cultural values of Indigenous people as these can be more empowering for the participants. They describe:

One of the advantages of employing dispute resolution processes that are built upon Aboriginal cultural values is that they reinforce those values and reassert Aboriginal authority. In this way dispute resolution processes that actually empower Aboriginal people can be seen as nurturing Aboriginal self-determination and sovereignty.

They go further and acknowledge, as Tomas and Quince (2007) do earlier, that from a dominant cultural viewpoint the idea of taking aspects of a culture, including them in a dominant system and then imposing them on the culture develops a lot of interest, however less understood and perhaps neglected because of this is the notion that there are mechanisms within indigenous cultural values that can be built upon to provide alternative and better processes.

In their article entitled *The Wisdom of Native Americans*, (refer <https://www.mediate.com/articles/epsteinj7.cfm>) Joe Epstein, an experienced practicing mediator and lawyer in the USA and Darby Sais a recent law graduate and intern at Conflict Resolution Services Inc (CRS) advise that ancient Native American traditions and values provide a portal for modern mediators to satisfy today's demand for a more meaningful, transformative, complete and satisfying mediation process. According to their article Native American wisdom focuses on healing wounds, and bringing peace through good feelings, not fear. While mediations are focused principally on legal issues, Native American wisdom provides that one should be mindful of a person's emotional damage as well.

Epstein and Sais (2003) found that intertwining Native American values with basic practice and principals of mediation aids in facilitating effective transformative and spiritual dispute resolution. They advise 12 Native American values based on Native American wisdom that when integrated into a mediator's practice can earn the mediator the accolade of a gifted one or a peacemaker. They describe that gifted mediators listen patiently for the deepest meanings of what is said verbally and communicated non-verbally. The mediator is listening for both overt and covert messages. They listen with respect and compassion. They risk self-revelation just as they ask it of the parties. It is not only a mediator's generosity, humour, and silence, but also their style and empathetic connection with the parties which allow the mediator to gain the necessary trust. As they ask for trust, they must earn it. Then having earned it, they may assist the parties with atonement, with respect, compassion, empathy, sympathy and forgiveness. A risk-taking mediator may even attempt to assist the parties with transformation, and they afford opportunities for healing. A mediator with true wisdom knows how to set a foundation

during a mediation, which allows participants to heal their wounds. Mediators who fail to address underlying issues and needs sell their clients short, according to Epstein and Sais (2003) cannot earn the title of the "Peacemaker" or the accolade of being considered a "Gifted One."

They summarize that modern mediators must be prepared to take risks to help the parties come to a complete closure and they must recognize that in some instances at least, this may require "risking" heartfelt and spiritual connection. By using the 12 core values inspired by Native American wisdom in their practice, mediators may become "Peacemakers" and may be honoured as a "Gifted One." Using values in practice is something that Māori health academics have adopted to create Māori health models which respond to Māori health problems. These will now be discussed.

2.6 MĀORI HEALTH – A COMPARATIVE JOURNEY

As noted in my introduction to this thesis Māori academics working in the Māori health field have seen first-hand the negative effects colonisation has had on Māori and have attempted to reverse these trends through the introduction of Māori frameworks and models for dealing with Māori health problems. I have included this part on Māori health frameworks in my literature review as it aids in investigating and revealing if there are comparisons that can be made with conflict resolution practices for Māori in Aotearoa or if there are learnings from the Māori health development journey of the last thirty or so years that can be transposed and used in the Māori conflict resolution and mediation space.

If there is anything to be learned from Māori health, according to Durie (1994) then it is that Māori health cannot be separated from the historical and contemporary experiences of Māori in Aotearoa.

Durie, (1994, 2001) further developed this ideology through his writings and adoption of his Māori health development models for instance, he pioneered the Te Whare Tapa Wha

model or the four cornerstones or pillars of Māori health based on the four realms of the human being: taha tinana (physical); taha hinengaro (emotion); taha whānau (social); and taha wairua (spiritual). Durie looked from within Te Ao Māori for an answer to the problems in Māori health. Where others were looking at genetic proneness to problems such as gout or rheumatic fever Durie was looking holistically and including culture as a variable. There was a rejection of the assimilate notion that Māori would sooner or later become a part of the urban collective whose lifestyles would not be significantly different from other residents within that landscape. From here in the early 1980's the work really began as Māori health workers started restating their own perspectives on Māori health according to their own philosophies their understandings of Te Ao Māori and their own positive understandings of Māori health development.

For Durie, advances in health were more about reliable pure water sources, efficient waste disposal, safe and comfortable living conditions, access to good food, environmental protection and attitudes that favour the survival of future generations rather than advances and innovation in medical technology. He quotes the tikanga of Tapu and Noa and how these were used to regulate Māori society. They allowed for replenishment of a resource through rahui and quarantine through tapu when required to isolate those affected by an unknown force. Indeed, Durie takes us back to learning about ourselves and how these traditional values and concepts are still as relevant today as they were pre-colonisation and perhaps even more so.

Along with incorporating the values of taha wairua, taha hinengaro, taha tinana and taha whānau as the preferred definition of Māori health came the emergence of Māori health initiatives such as the Māori woman's welfare league report Rapuora, a health survey among Māori woman using Māori frameworks and perspectives and which promoted further the ideal of Māori solutions to Māori problems with the recommended establishment of marae health centres or whare rapuora for health promotion, primary health care and herbal treatment.

From these initiatives came the Māori community health workers who appeared as a new category of health kaimahi or worker within health services around 1992. Five years later they had become an accepted part of the community health team and were keen to

establish their own training and accreditation programmes to ensure a consistent, relevant and fit for purpose service. Within health there was now a new movement which was based on Te Tiriti and the affirmation of Tino Rangatiratanga or self-determination.

Durie does warn however that the appropriation of tikanga and cultural practices in to mainstream organizations can lead to institutionalised modifications to tikanga and Māori intellectual and cultural property being claimed by the State. Further, he warns of bi-cultural policies that are mainly used to create an impression of responsiveness to Māori issues but without any demonstrable evidence of understanding of the Māori position or how to address the same. In order to address these issues Durie suggests that policies and processes need to be more direct and go beyond cultural sensitivity and protocol to ensure Māori are able to benefit from the core business of a particular programme or service. Further, any service provision must be able to interact with Māori communities on Māori terms according to broadly defined goals which allow for autonomy.

For this to occur, the capacity of professionals must move beyond narrow frameworks and demands a professional orientation which values effective partnership. This in my opinion may involve having both Māori and non-Māori accredited and trained according to not only professional skill matrices, but also cultural ones devised by Māori. There is also a need to ensure that boundaries are respected, and that appropriation of Māori knowledge and skills is not institutionalized and finally, that there is Māori participation across all levels of a system.

Durie (1994) summarises by describing that even though urbanization has caused further disparities in health for Māori communities nonetheless Māori today are in a better position than they were 100 years ago. He refers to higher standards of health and also to the active involvement of Māori providers of health care and in policy development as making positive contributions to the overall health of Māori. Durie acknowledges that Māori health improvement can be linked to increasing Māori participation in this field on Māori terms with recognition of tikanga Māori and Māori health perspectives and in the future Māori will opt for those health delivery systems in which Māori are active as directors and providers.

Another focus of the literature analysed for this review was the exploration of the reasons as to why Māori health is so poor. Ihimaera (2004) suggests two possible reasons: one being that there is an insufficient quantity of culturally appropriate services and the other being the incapacity of mainstream services to provide adequate care for Māori. Ryan (1998) concurs, noting that a lack of recognition of *mate Māori* (cultural illness) may be a barrier to earlier intervention and cure. Thus, adopting a more culturally competent method of care is seen to be central to improving health outcomes. In order to improve cultural competence, some reconfiguration of services may be necessary. Ihimaera (2004) describes four characteristics that may be of interest to Māori mental health services: a cultural context that fits with service users (*tangata whaiora*) and their *whānau*, optimal clinical care, outcome measures that are patient-focused and are understood easily by *tangata whaiora* and the intertwining of good mental health practice with other areas of Māori cultural development. Ihimaera also emphasises the importance of using *tikanga* models of clinical practice to develop *kaupapa* Māori mental health services.

In all, my excursion into the health field to search for comparisons that can be applied in a Māori mediation context has not so much as revealed new material but rather confirmed for me that the right for Māori to develop solutions to our own problems is inherent in *Te Ao Māori* and *Te Tiriti* and Māori are able if sufficiently resourced to create their own pathways to development and improvement which can be based on our own values. In fact, it may be in our values that the answer to many of our problems lie. *Te Tiriti* principles of partnership, participation and protection all have a relevance to Māori health and the Crown through local government and District Health Boards need to appropriately invest in Māori health initiatives.

The addition and inclusion of a cultural variable to the health clinicians' array of health indicators has seen an improvement in Māori health and has given Māori the confidence to challenge the health system and reclaim a more participatory role within the health sector.

A framework offered by Durie and that is similar to that offered by Ihimaera (2004) that may be useful in a mediation context and that characterises in his opinion a Māori health

service within which effectiveness can be measured would have four key characteristics. These are described as:

- clinical inputs that are consistent with the best possible outcomes,
- a cultural context which makes sense to clients and their whānau,
- outcome measures which are similarly client-focused, and;
- the integration of health services with other aspects of positive Māori development.

It has taken Māori health development the last thirty or so years to get to where it is now and there is certainly no slowing down. There are numerous written books and journal articles on the subject of Māori health and it is certainly one of the statistics that government look at when assessing their performance.

Along this journey of the last thirty years Māori health development has acquired the necessary frameworks to ensure it remains purposeful and client focussed. If Māori in the mediation process would like to see similar success achieved the answer may be to transpose these key learnings into a mediation context. The challenge will be in how this can be done.

2.7 OBSERVATIONS FROM LITERATURE REVIEW

Near the beginning of this thesis I discussed the early origins of mediation in China and in particular refer to Mirandas' citing of the writings of Cao Pei who referred to the philosophy of Confucianism and the part it played in early Chinese conflict dispute resolution. According to Fingarette (1972) Confucianism transcends the dichotomy between religion and humanism, considering the ordinary activities of human life—and especially human relationships—as a manifestation of the sacred, because they are the expression of humanity's moral nature, which has a transcendent anchorage in heaven and unfolds through an appropriate respect for the spirits or gods of the world.

In considering Fingarettes' explanation I cannot help but draw the comparison between this explanation and the Māori values of Whakapapa Mana and Tapu. In particular regard to the understanding of how these sets of values influence and to some degree control

the behaviour of the human mind. They draw from the divine or are in a sense based on ones' respect for the higher power and our relationship with that source.

For instance, Whakapapa for Māori can be linked through Hineahuone to Tane and thence to Ngā Atua. It is through this divine connection that all human life is connected. Thus, there is mana and tapu that adhere to our relationships with each other and the way we behave towards each other. This is the essence of Whakapapa and to some degree, Confucianism. There is also an acknowledgement of the disparity in the balance of power and thus the loss of autonomy and rangatiratanga where the mediation process is one that is prescribed through law or regulation.

This would suggest that there may not be an option for the implementation of a proper "tikanga" based process where the process is already constrained by the requirements of law or regulation. If this is confirmed, what are the options then available to a Māori mediator and Māori parties to ensure that their obligations and responsibilities as Māori are covered? Are the kaupapa Māori principles of Whakapapa. Whanaungatanga Tapu and Mana able to be adapted to the mediation process or is a watered-down version of tikanga prescribed where only "elements" of tikanga are used or are they even used at all?

Interesting that some of the core values for mediation in particular, self-determination or autonomy and voluntariness align with the tikanga based processes as suggested by Tomas and Quince (2007). It will be interesting to see how the other values in mediation such as confidentiality and neutrality fare when a final analysis is completed inclusive of the findings from the participant interviews. Further, along with the issue of balance of power, there also appears to be no acknowledgement or due consideration given to traditional Māori knowledge as opposed to the weight and consideration given to western scientific knowledge, especially in the environmental space.

These are points of interest that require consideration with other literature reviewed from a Māori context of mediation especially in relation to the writings of Tomas and Quince which contend that a Māori mediation process must be based on a foundation of tikanga and along with other indigenous academics such as Behrendt and Kelly, Astor and Chinkin, Joe Epstein and Darby Sais, etc. that conclude that a framework based on

indigenous values can empower indigenous people as opposed to negating indigenous values and thereby disempowering and disenfranchising them.

Further, there is acknowledgement that there should also be an allowance for the current reality of the participants as to their strengths and weaknesses within Te Ao Māori including Te Reo me ona Tikanga. The strengths of participants in mediation in Te Ao Māori and using Māori values, such as Whakapapa, Tapu, Mana and Whanaungatanga to shape the mediation process and ensuring Māori mediators recognize the current reality of the participants when creating a mediation process to move forward.

There would appear to be some disjunction between what a values-based process requires and should look like from an academic writers' perspective, and what the regulatory or statute driven mediation process actually looks like. However, we can take some lead from the Blackford and Matunga (1991) research that a robust Maori mediation process should have:

1. Tino rangatiratanga o te iwi Māori recognized
2. Appropriate pre-negotiation procedures and accountability processes that implement tikanga Māori into the process
3. Reflect the complexity and diversity of Māori society
4. A fair process in which all affected groups should be able to participate
5. A process that ensures Māori cultural practices maintain their mana, dignity and integrity
6. Information exchanged with integrity
7. Party input to the choice of mediator
8. The empowerment of Māori
9. Tribal structures respected in any conflict resolution process. The identity of tribe is of prime importance, followed by hapū boundaries and whanau.

I further note that there appears to be a need to educate organisations that work with Māori in Te Ao Māori and eliminate the distance between Māori and non-Māori

Leaders in these organizations could create culturally appropriate and responsive contexts for learning through supporting the implementation of a culturally responsive pedagogy of relations. These relations however need to be appropriate and purposeful and as Durie (1994) mentions in relation to health professionals the need to build capacity within practicing professionals must move beyond narrow frameworks and demands a professional orientation which values effective partnership and the training of both Māori and non-Māori accredited and trained according to not only professional skill matrices, but also cultural ones devised by Māori.

Embedding the cultural component into the training of Mediators maybe one way of ensuring that where a values or tikanga based process is requested by Māori at the very least, the accredited mediator may be aware of and can make provision for this in the mediation process. As Durie also warns earlier however, care needs to be taken to ensure the process does not dictate the cultural component or is in anyway assimilated into a western construct but remains able to stand alone and is tuturu Māori.

The Māori health comparison raised five key points or learnings from the health sector that can be applied in the mediation space. In summary, these are:

1. Mediation requires a holistic approach that must take into account the culture of the party's
2. One must be self-aware and aware of ones' own culture and how this can affect other party's in the mediation process
3. Mediation must be able to allow for and provide Māori solutions to Māori problems
4. Organizations working in the mediation space require a Te Tiriti based strategy that allows for Māori to work with and within these organizations on a basis of the principles of partnership, participation and protection.
5. Training and the capability of people working as mediators and within the mediation space requires a cultural framework component as well as a skills based one.

It will be interesting to investigate and analyse what happens in reality from the data collected with the participant interviews.

I have referred to the importance of tikanga Māori being incorporated into any mediation process involving Māori and must reiterate that this is not only important to the process of mediation in Aotearoa, but also to the way that research is conducted. I will now discuss the methodology used in this research project.

3. METHODOLOGY

This chapter will outline the methodology used in this research study and the method, approach and tools used to gather and analyse the results. The approach to this research project is an amalgam of kaupapa Māori theory and qualitative research methodology. A major motivator for this research project has been to seek out and understand the current reality of the extent of use of kaupapa Māori principles in mediation from a Māori mediator perspective and because of this, a kaupapa Māori research methodology was employed to inform the qualitative research strategy, and the inductive/grounded theory method.

The adoption of a kaupapa Māori approach to this project was also required to ensure that the values of the research participants were to be a priority in this project and the research would be conducted for and with them as opposed to research on and or about them. An amalgamation of the kaupapa Māori and qualitative research discourses was also chosen by the researcher for this research project as they were identified by the writer as providing the most appropriate methodology to ensure both a fit for purpose strategy and the credibility of the research project remained intact.

Kaupapa Māori theory was chosen as a methodological framework because the researcher is Māori, is seeking information for and with Māori and the research has the potential to be of benefit to Māori. A qualitative research strategy was selected because the most appropriate process to accumulate the data required for analysis was through interviewing in some depth those persons whom currently perform and facilitate the mediation process for, with and by Māori.

A qualitative approach allows for the participants to tell their story through their eyes. Qualitative Research being primarily subjective in approach seeks to understand human behaviour and reasons that govern such behaviour. Rather than measurement it seeks explanation. There is also the involvement of meeting and speaking to participants face to face or in Te Ao Māori “kanohi ki te kanohi.” Bryman and Bell (2015, p. 405) describe:

The epistemology underlying qualitative research has been expressed by the authors of one widely read text as involving two tenets: (1) ...face to face interaction is the fullest condition of participating in the mind of another human being, and (2)...you must participate in the mind of another human being (in sociological terms, “take the role of the other”) to acquire social knowledge.

Greenhalgh (2010) further advises that in qualitative research, however, we are not interested in an on average view of a patient population instead, the purpose is to gain an in depth understanding of the experience of particular individuals or groups.

L. Pere and Barnes (2009) in their paper *New Learnings from Old Understandings*, conducting qualitative research with Māori, advise that being a qualitative researcher requires an open mind; one willing to explore new paradigms, methods and approaches to research. Being involved in Indigenous qualitative research requires an even more open mind; one willing to consider how cultural frameworks influence research and how engagement and connection with the research population alter the experience. At all times during the interview process, the health and safety of participants was paramount, and the writer ensured participants were comfortable with the setting and surrounding environment before beginning interviews and a brief conversation at the end to ensure participants were not concerned with any part of the interview.

A number of further ethical considerations are explored in this chapter and due consideration is given to these as part of the gathering of information from participants.

3.1 - KAUPAPA MĀORI THEORY & RESEARCH

He riri he riri he toa he toa

Papatu ai i raru ai te kakau o te hoe. Pa toa kia koe, Māhuhukiterangi

E rere ki tua o Hawaiki he moana, he moana, he mānutanga waka.

Ka makawea ra te ngakinga o te patunga o Tūhakaroro. Nau mai, e Waha, taua ki taku,

E hara i ahau ngā whakawhara mau o Rongokea, e hora ra ake.

Aue te riri, aue te nguha,

Whiri te tuatini he piki kotuku whenua

e hakatau ana ki te toa, e tā mauae, whiti rawa, haumi e, hui e, taiki e!

From battle a brave comes forth.

Through dissension the unison of the paddle is troubled. You are the brave, o Māhuhukiterangi

You have travelled from beyond Hawaiki, over the ocean from the launching place of waka

The killing of Tūhakaroro has been avenged. Come with me, dear Waha, I do not possess the dangers wrought by Rongokea spread out yonder.

How terrible the battle and the dissent,

Weave together your diverse talents for your treasured lands. O my lands,

Welcoming the brave according to Mauae. Proceed, proceed, we are all united in one accord!

The research design and approach undertaken are underpinned by kaupapa Māori theory and research methodology and it is in knowing these values, beliefs and practices of te Ao Māori (a Māori world, a Māori worldview) are valid and legitimate, that they guide the inquiry methods and approach. As Durie (1997) succinctly espouses, Māori knowledge has integrity and quality. Smith (1999, p137-140) advises the key principles for kaupapa Māori research are that it is dependent on the researcher being Māori; it is underpinned by Māori philosophy and principles; it recognizes the validity and legitimacy of a Māori world-view and is concerned with Māori autonomy over Māori well-being.

Māori philosophy and principles although recorded in many books and commented on by many Māori academics can be easily absorbed through reading and retaining such information, however especially for myself, they are better represented when they are felt and heard. These give the intention of spirit of form and a depth of feeling that you cannot receive by reading about them in the pages of a book. How is it that these values and principles can be heard and felt? What makes them tangible and gives them such substance?

They are tangible in that they can be felt in the whakairo, carvings that adorn many marae and are present on waka and ceremonial weapons such as the taiaha. They can also be felt in the ihi me te wehi, the feeling you get when the hairs stand up on the back of your neck as a warrior begins the introductory incantations of haka. They can be heard in the

many waiata by kuia and the karakia recited and performed by kaumātua. This for me is the essence of “Māori”.

The Māori worldview is also the reason that the participants selected for the project are all Māori. They all have a depth of experience in Te Ao Māori from some that are completely comfortable in Te Reo and tikanga to others that have little knowledge but identify as Māori and have an awareness of what that means for them. This reflects how they practice mediation and their use of kaupapa Māori principles in the mediation process. In a Māori worldview Māori conceptualise how they see the world they live in. The spiritual (taha wairua) and physical (taha tinana) realms intertwine and connect with each other. Our emotions, thoughts and the way we communicate think and feel (taha hinengaro) are all shaped and surrounded by our whanau and whakapapa which provide the interconnectedness to all other things.

In chapter 5 entitled “Te Kai Tēpu” – a Māori mediation context in practice, a colleague describes his engagement with a couple in conflict. His writings, in my opinion, reveal a true reflection of how Māori with a knowledge of Te Reo me nga tikanga, see the world they live in every day. Connections are made between what they see and what they can’t see but they base their perspective on their Māori world view to enable them to make sense of what is truly going on around them, in front of them and behind them. It is from this view or perspective, that an identifying process of underlying matters that require attention are revealed and provide the answers to remedy or understand holistically what is actually happening.

Māori academics have previously advised that for Māori the world is not as plain as what you see before your eyes and is not the only one that needs to be addressed. For instance, as described in chapter 2.6 on Māori health, Durie (1994) refers to the elements of taha tinana, taha wairua, taha hinengaro and whanau, in his health model named Te Whare Tapa Whā and likens these elements (Tinana, Wairua, Hinengaro, Whanau) to the pou of a whare. This is an attempt at providing an understanding of how the Māori mind works in balance with the other characteristics of a holistic being or persona to provide a construct for a Māori health model. Although this is not a traditional model or

description of health for Māori it does provide a vehicle through which these elements can be articulated in relation to Māori health and well-being.

Like-wise, in Te Wheke, Rose Pere (1988) uses the octopus as a metaphor for her health model, where each tentacle represents a different aspect that contributes to the wellbeing of the person or whānau unit, represented by the head of the octopus. The aspects of wellbeing represented by the tentacles are: wairuatanga (the spiritual aspect); mana ake (uniqueness); mauri (life principle); ha a kore ma a kui ma (the breath of life from forebears); taha tinana (the physical aspect); whanaungatanga (the relational aspect); whatumanawa (the emotional aspect); and hinengaro (the psychological aspect)

What these writers have described is what Māori already knew that in Te Ao Māori, spiritual and physical realities cannot be considered as separate entities. The way in which the spiritual and physical co-exist as two parts of the whole, if one part is affected, the whole is affected, whether it is in the spiritual or the physical realm. Again, these concepts display the depth of the Māori way of thinking and demonstrates why the interview participants for this project needed to be Māori mediators. This mixture of physical and spiritual realities intertwining can be seen almost every day in Te Ao Māori if you are aware and know what you are looking for. These are the realities of interacting in the Māori world.

For Māori, everything will have a state of noa or normality once the areas of tapu have been addressed. It is around these concepts that the Māori worldview takes shape. The Whakamoemiti or karakia at the beginning of a meeting or hui, the sharing of food before the meeting begins, the kōrero before the introduction of the purpose of a meeting. All are signs of the spiritual realm intertwining with the physical realm. Even the ones that have departed this earth have a part to play and are acknowledged. Such is the depth of Te Ao Māori.

Gibbs (2005) advises that kaupapa Māori research developed from experiences of exploitation and a desire to have self-determination. In this respect, as a research movement, it has similarities with service-user led research and other international developments from groups wishing to reclaim control over their research experiences. This research is for Māori, it is conducted by Māori, the participants interviewed all identify

as Māori and understand the kaupapa Māori principles described as Whakapapa, Whanaungatanga, Mana and Tapu.

The narratives and associated concepts that were being articulated by the participants to support and exemplify their thoughts I found quite moving and rich with knowledge and experiences both in Te Ao Māori and the process of mediation and its practice. It was however in the Te Ao Māori space that I found the most benefit and it reminded me of how powerful the human story can be, and how storytelling is fundamental to mātauranga Māori, and the knowledge base of Māori. Robinson and Ginter (1999) describe that if we are open to the richness and potential of human stories, then they can serve as gifts for the present, and for the future. The art of storytelling for Māori is shared within whānau, hapū and iwi. These stories collectivise and remind us of our past in order to guide our future. They can define who we are, where we have come from and the things we need to take note of in navigating our future paths.

3.2 - QUALITATIVE RESEARCH

A qualitative research strategy has been engaged in the writing of this thesis. According to Bryman and Bell (2015) one of the main preoccupations of qualitative researchers is to see through the eyes of the people being studied. Further, they explain that qualitative researchers base their epistemological position on that of an interpretivist, being one that stresses an understanding of the social world through an examination of the interpretation of that world by its participants.

An inductive/grounded theory approach generates theory out of the research accumulated through observations and findings and these will be based as described from a Māori worldview perspective. (note inductive theory – tends to be a qualitative approach to research where the theory evolves out of the researched observations and findings and as such no hypothesis is made).

Bryman and Bell (2015) further advise that one of the more common criticisms of qualitative research is that it is too impressionistic and subjective. By these criticisms they usually mean that qualitative findings rely too much on the researcher's often unsystematic views about what is significant and important, and also upon the close personal relationships that the researcher frequently strikes up with the people studied. This may of course lead to an unintended subjective bias in research.

This is even more problematic where Māori are concerned because of the need to connect through Whakapapa and Whanaungatanga to other Māori and determine status, relevance, responsibilities and obligations. It can be inferred that by virtue of this need to connect a close association can develop between participants and researcher thus leading to an unintended subjective bias. Cram (2001) however, advises that it is crucial for Māori researchers to ensure they are not writing about their communities from an outsider perspective, viewing the participants as other or somewhat distal. Being proximal however and writing from the perspective of the insider allows for authentic interpretations of the Māori world to be made.

Further, Marsden (2003) describes that only an approach which sets out to explore and describe the main features of the consciousness in the experience of Māori offers any hope of adequate coverage. For the reality we experience subjectively is incapable of rational synthesis. This is why so many Māori react against the seemingly facile approach of foreign anthropologists to their attitudes, morals and values, and the affective states of mind which produce them. I believe only a Māori from within the culture can do this adequately. Abstract rational thought and empirical methods cannot grasp the concrete act of existing which is fragmentary, paradoxical and incomplete. The only way lies through a passionate, inward subjective approach.

A number of observations have been noted from the literature review, these provide a theoretical picture of what a Māori mediation process could look like and comments are also made around a disjunction between theory and regulatory or statutory driven mediation processes and these will all be considered as part of the analysis of the information acquired from the interview participants.

3.3 - RESEARCH ETHICS

A number of ethical considerations were required in the completion of this research project. Bryman and Bell (2015) convey that ethical issues can arise at a variety of stages in the course of conducting research. Ethical issues cannot be ignored as they can relate directly to the integrity of the research and to the disciplines that are involved.

Ethics bring into focus the role of values in the research process and in particular how we treat people on whom we conduct research and further the way we treat the information they impart to us. Bryman and Bell (2015, pp. 134-144) advise the following ethical considerations should be considered as part of any research project:

- Whether there will be *harm to the participants* (i.e. issues of confidentiality)
- Whether there is a *lack of informed consent* (i.e. prospective research participants should be given as much information – i.e. the process, what and why how the data will be used and to whom it will be reported - as might be needed to make an informed decision on whether to participate.
- Whether there is an *invasion of privacy* – the participants are given the opportunity to withdraw at any time?
- Whether *deception* is involved – representing research as something other than what it is, usually to gain favour or professional self-interest.

Other considerations include the ownership of data, copyright, role of reciprocity and the responsibility of the researcher to overcome any power inequalities so that there were benefits for both in determining the relationship between researcher and participant and the need to declare funding and support affiliations which can influence research findings and perceptions of bias. These considerations were primarily accounted for in preliminary korero, the distribution and acknowledgement by participants of understanding the research project and in the signing of the participant consent form.

Cram (2009) considers that the following values should also guide a kaupapa Māori research project

- Aroha ki te tangata - a respect for people that within research is about allowing people to define the research context. It is also about maintaining this respect when dealing with research data.
- He kanoahi kitea - being a face that is seen and known to those who are participating in research. For example, researchers should be engaged with and familiar to communities so that trust and communication is developed.
- Titiro, whakarongo...kōrero - Look, listen and then, later, speak. Researchers need to take time to understand people's day-to-day realities, priorities and aspirations. In this way the questions asked by a researcher will be relevant.
- Manaaki ki te tangata - looking after people. This is about sharing, hosting and being generous with time, expertise, relationships, etc.
- Kia tūpato - be cautious. Researchers need to be politically astute, culturally safe, and reflexive practitioners. Staying safe may mean collaborating with elders and others who can guide research processes, as well as the researchers themselves within communities.
- Kaua e takahia te mana o te tangata - do not trample on the mana (dignity) of people. People are often the experts on their own lives, including their challenges, needs and aspirations. Look for ways to collaborate on research reports, as well as research agendas.
- Kia mahaki - be humble. Researchers should find ways of sharing their knowledge while remaining humble. The sharing of expertise between researchers and participants leads to shared understanding that will make research more trustworthy.

The principle of Mana was employed as the key ethical consideration in this research and underpinned the interview process. The interviewees who participated in the research understood that they alone held Mana over the information that was shared as part of the

research process and the power or right to withdraw at any time from the Project prior to any of the information being released.

Protecting the anonymity of participants is assumed to be an integral feature of ethical research. However, in considering this ethic and the status of Mana over the information provided I concluded that some participants may wish to retain ownership of their stories and thus want to be identified. Where participants have been identified they have consented to being named in this research project in order to rightfully retain ownership and Mana for their stories.

Before undertaking each interview, a brief whakatau or kōrero and sometimes both, where it was the first meeting between the interviewer and the participant, were recited to encourage Whakawhanaungatanga and to make the required connection in Te Ao Māori.

Where possible participants were interviewed kanohi ki te kanohi or face to face. This concept involves dealing with the issue of trust and ensuring that those receiving and those giving the information fully trust those who are ultimately responsible for analysing and interpreting the information. When interviewing the participants, I fully disclosed the reasons for the research as outlined in the participants information sheet and gave an oral brief of the research project. This was instrumental along with the other aspects of tikanga, to establishing a grounding or foundation of trust and assisted in the kōrero that was to follow.

Out of trust comes manaakitanga, and in particular the sharing of information and experiences that seek not to uplift ones' own profile but to add some value to the collective through the sharing of knowledge. The following whakataukī relays this concept:

Nau te rourou, naku te rourou, ka ora ai te iwi

Your contribution and my contribution will provide sufficient for all

The contribution of the participants was acknowledged, and it was reiterated that their contribution may assist in providing a practical model for future mediations with Māori or at least, identify matters for consideration when mediating with Māori and will also add to

the knowledge base especially from a practical perspective on the subject of mediating with Māori.

Concepts of Koha and Aroha ki te Tangata were also appropriately accounted for in the performance of whakamoemiti/karakia, mihi whakatau, and in the Mana of the process of the interview remaining with the participant. According to Mead (2016) these concepts reflect the belief in reciprocity of gift and love for other people or to act in the best interests of others. Further, Barlow (1991) describes the concept of aroha as a person who expresses genuine concern towards another and acts with their welfare in mind, no matter what their state of health or wealth.

3.4 SEMI-STRUCTURED INTERVIEWS

Semi structured interviews were held face to face or through video linked meetings with participants. The interviews had a structured component in that the same questions were asked of the participants to ensure a similar context of questioning was maintained and in order that responses maybe compared. The use of this type of interview method requires at times that the interviewer relinquish control of the interview to enable non-directive and informal kōrero and conversations to flow, at a pace determined by the research participants.

Prompts, as opposed to closed questions, were initiated to focus, manage, and lead significant themes as they emerged. Humour was also used to not only lighten conversations but to also strengthen connections. What was also clear, as Whanaungatanga was being enacted, was the relaxed, open and genuine space that was being created; a space where it was safe to think, feel and relate as Māori.

3.4.1 Interview Schedule

The approach to each interview was heavily focused on power-sharing relationships, where Te Tiriti principles of partnership, protection and participation were three of the

guiding principles. The opportunity therefore to capture the richness and vibrancy of the participants thoughts and narratives was something that proved to be an enriching feature in this research.

Semi-structured interviews were all arranged to suit the availability of the participants and all participants identified they were currently practicing mediators. Please refer to Appendix B for the interview schedule.

A series of structured questions were asked of all participants, but the researcher quickly realized that information came from the participants more freely and continuously where the participants provided or cited cases where they had used principles of kaupapa Māori in the mediation process and the context surrounding their use. The questions in the schedule were returned to when there was a need to bring participants back on track particularly where the stories began to digress on another tangent. These tangents however were rich in other information regarding the mediation process that were not however the subject of this research project.

A series of initial demographic questions were asked to place the participant in the frame of mind to recall their experiences in mediating and to gauge their skills and experience. These initial questions asked

- How many years have you practiced as a mediator?
- Do you have accreditation with a professional body?
- What are the key areas in which you mediate? (e.g. workplace, family, ACC etc)
- Approximately how many cases have you mediated in the last year?
- Approximately how many of these cases involved a party who is Māori?

The next set of questions asked about the participant's experiences with and understandings of particular kaupapa Māori principles. Participants were advised first however that for the purposes of this research was specifically referring to kaupapa Māori principles of Whakapapa, Whanaungatanga, Mana and Tapu. Participants were advised that there were of course other principles of kaupapa Māori that may have been used in

the mediation process such as Waiata, Whakamoemiti or Karakia etcetera and these could be described in detail later however initial questions were based on these principles and asked the question;

- Considering these principles (i.e. Whakapapa, Whanaungatanga, Mana and Tapu) what is your understanding of them?

A note to the interview schedule advised - if there is no understanding of these principles of kaupapa Māori an explanation will be given based on the researcher's own knowledge and experience.

The next schedule of questions that were asked of the practicing mediators, concentrated on the experiences of the participants when mediating with a party or parties whom identified as being Māori. The questions asked were:

- In your experience where the principles of [Whakapapa/Whanaungatanga/Mana/Tapu] was adopted in a mediation process how effective was this principle in the mediation process?
- Can you advise or describe why you think that is?

Note - The above question was to be asked for each principle, however all participants chose to deal with all the named principles at once as they preferred to cite a case they recalled and advise the process they went through with the parties involved.

Participants described where principles of kaupapa Māori were used in a part of the process and this was recorded by the researcher. Note, this enabled participants to recount their stories in a continuous manner without interruption. This also assisted with the next questions which talked of the principles of kaupapa Māori collectively. The questions asked were:

- Thinking about the mediated cases where principles of kaupapa Māori principles in general were adopted compared with other cases that haven't involved kaupapa māori principles, do you think these cases have any characteristics/features that influenced the way you conducted the mediation? Please explain these features

and how they influenced the way you conducted the mediation (for instance were parties Māori and how did this influence the way you mediated and why?)

- In your experience, was mediation more successful where kaupapa Māori principles were introduced or not? Why do you think that is?
- Can you describe other aspects of kaupapa or tikanga Māori that you believe contributed to final outcomes positively or negatively for those mediation cases where principles of kaupapa Māori were used. Is there a reason for that? Can you talk a bit more about why?

The final series of questions asked participants about their opinion or perspective on particular issues to do with mediation. In the first question participants were given a quote from a Māori academic on dispute resolution and were asked to give their thoughts. The quote cited was from Kylie Quince and comes from Tomas and Quince (2007), The quote cited read “that any process of dispute resolution (involving Maori) must allow for all aspects of the human being and their relationships to each other to be addressed.”

The next question asked:

- What do you personally think would be the critical factors that should be used to judge the success of a mediation process?

The final question asked participants to look forward and give an opinion on what a future mediation process inclusive of principles of kaupapa Māori principles might look like. The question asked:

- Thinking about the cases you have mediated, and potential future mediation cases involving kaupapa Māori principles, can you talk me through your views on the use of mediation in cases involving kaupapa Māori principles?

The following prompts were available for use with this question:

- How to maintain a balance of power between parties in the mediation involving kaupapa Māori principles (kaumatua/kuia as opposed rangatahi, tuakana teina relationship etc.;

- The setting for the mediation (i.e. Marae as opposed to office environs);
- mediator impartiality/neutrality in cases involving kaupapa Māori principles, and;
- the range of outcomes that can be reached through mediation involving principles of kaupapa Māori.

3.5 PARTICIPANTS

Because of the research question and its relevance to Māori, a purposive sampling method was applied using Māori mediators as opposed to using mediators in general. I acknowledge that there may be current practicing mediators using principles of kaupapa Māori in their practice that are not Māori however as this research question for the project is specific to Māori and generalizability is not for the purposes of this research important, a decision to base the sample research participants on current practicing Māori mediators was made. Potential participants for this research project were initially identified through a Hui of practicing Māori mediators held at Mātaatua Marae, Māngere, Auckland on Friday 22 June 2018. I was invited to this hui as a Māori contractor of mediation services to the host organization, a professional dispute resolution organization made up of Dispute resolution practitioners from across Aotearoa. A wide section of Māori mediators were present including those in the family dispute resolution field, Accident Compensation Corporation review teams, employment disputes, local government including resource consent, building consents and others. This roopu reflected a good cross section of Māori mediators and the specific areas in which mediation is practiced.

From this group of around 12 attendees, 6 were currently practicing Māori mediators. Others were Māori staff from the organization involved in pre-mediation and administrative tasks. Of the 6 practicing Māori mediators, 5 agreed to be participants in this research project. I found this initial identifying process linked with the Māori mediators' hui held in Auckland to be beneficial in that it enabled me to firstly Whakawhanaungatanga with the participants prior to beginning the research interviews with them.

This also assisted in creating trust and developing the required relationship between myself as researcher and the other mediators as participants to enable the said participants to have an in-depth understanding of the purpose of the research together with its' relevance and the cultural benefits to māori. The status of the relevance of the relationship between myself as researcher and the other Māori mediators as participants did not in any way reflect a positional power relationship and in fact in the context of tikanga, which is how we engaged, the relationships were developed in the limited time available with mutual respect and honesty which established our boundaries and ensured our cultural safety during this process.

I had initially wanted to target 15 participants as a credible sample size for the purposes of interviewing and collecting data. However, in the time allocated for identification and gaining informed consent, this was not possible and a sample size of 10 currently practicing Māori mediators was used. Five of the participants were tane (male) and 5 were wahine (female).

I was able at different times during the months of June through August to interview participants from the hui. Further, I was also able to contact 5 other Māori mediators through these participants and through the Māori Land Court who periodically employ Māori mediators to facilitate meetings between Māori land owners.

In the process of identifying and obtaining consent from these further 5 participants tikanga again was the context and approach used to ensure cultural safety, honesty and a mutual respect for each other was maintained. Each of these further participants were initially engaged through the phone and on social media. After greetings were exchanged, a short Whakawhanaungatanga was held to identify and connect where possible with the participants and the purpose and structure of the research project explained.

I felt further compelled to remind participants that the practicing mediators' community in Aotearoa New Zealand is relatively small – indeed, it is even smaller for those who reside in Aotearoa and identify as Māori mediators.

After exploring some of the potential risks that this might pose should reference to a context or a client result in people being identified, it was ultimately agreed that

participants real names would not be used to protect their (and others") anonymity. This decision was congruent with the overarching ethical consideration of reducing potential harm to participants. Note however that as previously described in the ethics chapter to this thesis, where the participants wished to retain Mana and ownership of their stories they have been identified and where participants have been identified they have consented to being so named in this research project.

3.6 THEMATIC ANALYSIS

A thematic analysis has been engaged as part of the analysis of the data acquired from participants through the interview process. Thematic analysis is a widely-used qualitative data analysis method that focuses on identifying patterned meaning across data. These patterned meanings are developed in to themes that are used to answer the research question being addressed. Thematic analysis was chosen, and an inductive theory employed to provide the writer with the necessary information to build a bridge between information analysis-interpretation and concept development.

Thematic analysis suits questions related to people's experiences, or people's views and perceptions, it also suits questions related to understanding and representation. Altheide (1996) advises on qualitative analysis that the aim is to be systematic and analytic but not rigid. Categories and variables initially guide the study, but others are allowed and expected to emerge during the study, including an orientation to constant discovery and constant comparison of relevant situations, settings, styles, images, meanings and nuances. For thematic analysis we will as Altheide informs identify the "other" (themes) to emerge through the analysis of the transcribed participant interviews. This will be completed by identifying first order concepts, these are concepts first identified through the participants own words, then a second theoretical layer drawing on connections between the first order concepts and grouped into higher order conceptual categories and finally the themes that emerge and are derived from these higher order conceptual categories.

4. FINDINGS

4.1 THE PARTICIPANT NARRATIVES

In the interests of creating for the reader a background of the experience involved and to make a genuine attempt at alluding to the richness of experience behind the participants and contributors to the interview process I will initially give a brief account of each participant interviewed and their background and experience in mediation and Te Ao Māori. For myself as the interviewer, researcher and report writer, the true value in the data provided through the interview process is in the acknowledgement of the voices of experience that are reflected through the words of the interview participants and the uniqueness with which each applies their experience and knowledge in discussing their experiences through the interview process with me.

The participants have seen these accounts and consent to their use to describe their experience in mediation and Te Ao Māori.

Participant 1 is of Ngati Ranginui and Ngati Maniapoto ancestry and brings the skills and competencies to walk two sides of the cultural divide simultaneously which is a unique value and strength. This ability to walk two sides of the cultural divide is brought to their practice in family mediation and believes in a holistic Māori framework rather than a clinical westernised one to assist Māori clients improve their relationships. They have been working in this field for over 8 years and according to participant 1 an understanding of Law as well as Lore and the ability to adapt this to any given environment to conduct family and relationship conversations with outcomes of improved parent/child arrangements is a necessity. They have thrived in hostile environments, alluding to the heat of the day 40+ degrees in Alice Springs and Kalgoorlie as an Indigenous Family Dispute Resolution Practitioner. Having returned from their Australian experiences, Participant 1 brings a wealth of Trans-Tasman expertise portfolios with a background in mental health, law/lore, educator/facilitator, counselling/psychotherapy, governance/consultancy. Today, this participant advises that 80% of the clients they deal with are Māori, and they continue as an accredited professional member of the Arbitrators

and Mediators Institute of New Zealand (AMINZ). When mediation begins Participant 1 comments:

“For me, there’s a conscious shift...from the ahua Pākehā whakaaro to ahua Māori....that puts me in the framework because that’s a framework I know well and that we (together with the parties) know well.”

Participant 2 is of Te Waipounamu and has for 30 years worked in employment relating to couple separation and the care of children following separation and the passion for the work is what keeps them interested. When changes occurred within the Family Law System in 2014, participant 2 sought to train and work as a Family Disputes Mediator, so they could continue practicing in this field and assist couples to work out suitable arrangements for their children following separation. This participant has been accredited with the Resolution Institute (formerly LEADR) for three years. Participant 2 believes every child deserves a good healthy relationship with both parents. They are also a registered social worker and have a master’s degree in social welfare (MSW) specialising in counselling and family practice. Other qualifications and experience include an understanding of various forms of domestic violence, addictions and tikanga Māori. Participant 2 chose, as part of the MSW qualification, to research about shared parenting and focussed on what makes parenting arrangements following separation work best for children.

Participant 3 acknowledges they are a beginner in speaking te reo but have been involved in and can identify tikanga Māori when it is being practiced and understands the key concepts involved. They have a background in criminal prosecution and were a practicing lawyer for 8 years in a variety of different legal jurisdictions including criminal and family and has worked in the Waitangi tribunal. They are now employed as a mediator involved in ACC reviews and speak from their experiences in the family Court where the majority of cases dealt with were Court directed mediations. Participant 3 advises their opinion of successful mediation:

“Healing for me or the ability to heal would be really important to be successful. What i often saw, particularly in family disputes, was really horrible and destructive

anger and resentment, and if that anger and resentment remains then that mediation hasn't been successful.....it has to be a process by Māori for Māori.”

Participant 4 is of Te Atiawa, Ngati Mutunga and Ngati Tama descent and has been a practicing lawyer since 1988. They are a specialist family mediator and a Family Disputes Resolution provider. Participant 4 practices in the areas of Family, Criminal and Property Law and is a Senior Lawyer and advocate for Child and Youth. They are an accredited mediator and panel member for the NZ Law Society's panel of Mediators as a family specialist and they are a passionate solution focused advocate who strives to obtain excellent outcomes. Participant 4 describes the current use of principles of kaupapa Māori in mediation:

“I don't think they've ever been integral to any mediations.....i think they're brought in as a sort of side issue because the model that's used is very Eurocentric and doesn't encourage people.... to engage and bring kaupapa Māori principles into play...”

Participant 5 graduated with a Master of Law in 1999 and a Diploma of Business Studies (Dispute Resolution) in 2008. They then practiced as a solicitor for a number of years before becoming an adjudicator for Dispute Resolution Services Ltd which deals with telecommunication and ACC review disputes until 2012 when they then returned to private practice as a solicitor specialising in employment law, relationship property and various commercial matters. Participant 5 has a passion for justice and does voluntary work within their community. They currently work in the areas of Accident Compensation, employment advocacy, and Family Dispute Resolution (FDR) mediation. On mediation where kaupapa Māori principles are integrated as a part of the mediation process Participant 5 says:

“Generally, I think people are more respectful of each other and more willing to bend with the wind, if you like and show more ability to concede and work together...”

Participant 6 has whakapapa linking to Ngai Tahu however has spent the majority of their years in Te Tai Tokerau with whanau ties to Ngati Wai. They bring to the family mediation arena a lifetime of experience of whānau, with 27 years mediation practise and accreditation through LEADR (Leading Edge Alternative Dispute Resolution) now known as the Resolution Institute. Participant 6 also has experience in tenancy related mediation, Māori Land disputes and facilitation and mediation with minority ethnic groups. Participant 6 is a former award-winning journalist and writer with a particular interest in Māori issues who also believes in ensuring the mana of the parties in mediation remains intact during the mediation process and says:

“As mediators we have a responsibility to manage the Mana of the situation, the Mana of the process the Mana of the parties and your own Mana all at the same time.”

Participant 7 is a practicing lawyer with experience in advising clients in alternative dispute resolution processes is a member of the Resolution Institute and was accredited as a Mediator through LEADR (Leading Edge Alternative Dispute Resolution). This participant has a passion for mediation and believes there is great value in communities being better informed about this confidential and voluntary process. Participant 7 has experience working in the areas of environmental law, employment law, Māori land law, Waitangi Tribunal matters and has been involved in mediating between Māori land owners, trustees and beneficiaries. On the mediation process participant 7 says:

“Whanaungatanga is vital...you are looking for these parties to connect to each other not just necessarily dealing with the issues before them but back to actually reach that wider empathy for each other and Whanaungatanga principles, kaupapa Māori they all contribute to that.”

Participant 8 is of Ngati Porou, Te Aitanga-a-Mahaki, Rakaipaaka and Ngati Maniapoto ancestry and graduated from the University of Waikato with an LLB/BA. They have a background in Māori Land and Treaty of Waitangi Law and has contributed as an author to the Māori Law Review. They currently sit as a legal advisor to a number of Māori and non-Māori organisations and serve on a number of governance bodies including Ngā Kaiāwhina Hapori Māori o Te Ture and the Māori Justice Network.. Participant 8 has experience working in Community Law and mainly practices in Family, Employment, Civil and Criminal Law. Participant 8 is an accredited Mediator through the Resolution Institute, has been mediating for 8 years and is fluent in Te Reo Māori. On mediation and the use of kaupapa Māori principles they describe their experience with their clients:

“They are Māori firstly, they feel that a process that they are safe with, and they understand, and they are familiar with would be helpful to the resolution of their dispute...”

Participant 9 is of Maniapoto, Tuwharetoa, Raukawa, Te Ati Haunui a Paparangi, Te Ati Awa and Kahungunu ancestry and was mentored by elders in tribal protocol, histories and te reo from an early age. Since 2011 they have been self-employed offering land research and administration services as well as facilitation and mediation services and although holding no formal mediation accreditation has a wealth of experience through their mentoring by their tribal elders. Participant 9 describes the purpose of engaging is to empower and bring out the best in others, and they have worked in both public and private sectors providing guidance in leadership skills at both the coal face and management levels. They are also an experienced facilitator and Chair, this skill base has been acquired through many professional associations which cover Whānau, Marae, Hapū and Iwi to Land, Property Administration and Governance. Participant 9 is also a Justice of the Peace for New Zealand. On engaging with Māori and preparing for mediation they say:

“It’s really important to me but first and foremost it’s totally about building that rapport, that manaakitanga and respect and then you have the respect that is going to be

reciprocal they are going to respect you and you will respect them in establishing the firm foundations for a hopefully good process.”

Participant 10 is of Ngāti Kahungunu, Rangitāne and Ngāi Tahu ancestry and has been in private practice since 2000. They graduated from Waikato University with an LLM and is one of the managing directors at a major law firm in Kirikiriroa (Hamilton). They act for a number of Māori groups across the country on a wide range of legal issues affecting whānau, hapū and iwi. They have provided legal and strategic advice to a number of iwi groups on Treaty settlement matters, including throughout negotiations and beyond. They are an accredited mediator and a member of AMINZ (Arbitrators & Mediators Institute of NZ) and The Resolution Institute (formerly LEADR), with a particular focus on alternative dispute resolution with respect to Māori and Pacific Island work. They are also a long-standing member of Te Hunga Rōia Māori o Aotearoa (The Māori Law Society). Participant 10 is dedicated to Māori success and is a strong believer in building long term relationships with people and ensuring that advice is culturally appropriate. On prescribing rules of engagement at the beginning of mediation Participant 10 comments:

“How we behave in these sorts of mediations is based on those sorts of Principles (kaupapa Māori) ...so for example ensuring we leave each mediation hui with the other party’s’ mana intact is of utmost importance.”

4.2 - SUMMARY FINDINGS

The summary findings from the interviews have been set out in Table 2. They have purposefully been included in the findings chapter (rather than as an appendix item) to demonstrate transparency in the qualitative and inductive process used to identify themes. The columns identify which participant the words or ideas are attributed to that were highlighted from the transcribed interviews, the context or sentence used when the word or idea occurred (verbatim account), and the concept or overall theme derived from

the use of the sentence, idea and words (related theme used for analysis). The schedule (Table 2) makes for interesting reading and is a brief but meaningful collective of the narratives transcribed from the participants.

I have chosen this method of citing the summary findings from the interviews as I believe it not only provides the data necessary to state the findings but is also shown in its raw form as the participants themselves expressed to me in interviews. This raw form of data production reveals the order in which the data has unravelled and gives an indication as to how the themes or concepts arose from the data and the frequency with which they arose.

Table 2: Qualitative and Thematic Analysis of Interview Data

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 1	Māori framework	That's why I jump on the bandwagon and beat my chest in terms of protecting our whanau to make sure that they've got competent mediators that can work competently in the Māori framework....they are not applying a Māori framework...they are applying a clinical westernised framework I'm the only one that, in terms of them saying competent I'd certainly put my hand up to say I'm competent, because there are others that do it but I don't know how competent they are in applying tikanga and kawa.	Capability
	ahua Pākehā whakaaro	There's two things that happen for me. There's a conscious ahua Māori shift from the ahua Pākehā whakaaro to ahua Māori .	Positioning
	Pōwhiri	Engage as if powhiri conditions apply for safety of all ...I think powhiri is a safe place in terms of positioning. So, in terms of process or in terms of tikanga, I refer to the powhiri process, I like to think that's a point of reference. Where would I be positioned as the mediator in that kind of Whakaaro? I would not position myself as a haukāinga... So, the aspects of Whanaungatanga,Because I don't take it for granted just because I'm a brown face and I say Tena koutou I want the whanau to be confident in the ka nui ki te korero, that they are confident in terms of me and the reciprocity of full i koe nohi au.	

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 2	Tawhirimatea Tapu Noa	I think if we get that right from the start tu utu or the exchange across Tawhirimatea and Tumatauenga across the Marae atea in that space of introduction I think if we do that right and do the tapu noa process then I think we can be confident in moving and shifting forward from that point. You become the Kai Tiaki of that whanau from that point	Kaitiaki
	Waewaetapu Whakaaro	I am waewaetapu till handed the rakau When I look at what we're faced with the one-hour Pākehā timing aspect and the one hour invoiceable hour, you know my whakaaro isi know that's in the background and I know there are limitations, but it will take as long as it takes	Statutory limits
	K/M principles	All Māori principles work simultaneously we're a cyclonic ` people, nothing is in isolation. Allowance for party to determine path/process & intro of K/M Principle Where Maori and Pākehā – describe the dance apply clinical or Tikanga Approach” – Need skills to be able to do both. Observations required, customise process to suit, Māori do it naturally.	Rangatiratanga Do the dance
	Success	Getting to agreement is the main kaupapa The holistic theory is nice, but reality is the agreement Testing reality with them, what they can live with. Acknowledgement of work each other has put in – Hongi or maybe a handshake. – An affirmation Power in relationships – talk through and balance – mix n match doing a dance – good mediation requires it but not many practicing mediators can do it.	Rangatiratanga

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 2	Karakia	Ask Parties how they would like to proceed – i.e. if Karakia It's who I am, I like to start with karakia it puts everything in the right realm	Rangatiratanga
	Whanaungatanga	I like to make connections." All this is done more with Māori I'm not a stranger anymore – building trust, more successful when dealing with Māori but difficult when one Māori other Pākehā or other ethnicity. You need to be able to walk in two worlds as well as gender bias – deal with male and female equally. Māori males more inclined to recognise the role of Māori mothers.	Engagement Positioning Do the dance
	Kanohi ki te Kanohi	Important – testing if genuine, parties can read each other – no hiding. "Children have rights Parents responsibilities – children the right to have good relationships with both parents – parents the responsibility to make it happen."	
	Success in mediation	Success is the agreement.	
	Marae	In future take children more into account for setting venues a marae would be awesome!	
	Mediation Organizations	Some organizations not known to be Kaupapa Māori friendly – some Lawyers Still practice positional mediation – "Lawyers don't feel" Depth of Māori values quite different to non-Māori – would like to see more Māori values reflected in mediation organizations.	Capability

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 3	Whanaungatanga	Court directed mediation more adversarial – Government	
	Manaakitanga	Intervention, there to win not to talk - going against whanaungatanga & manaakitanga	Stat/limitations
	Whanau	The process started out wrong, everything after that was going to go wrong – Maori whanau cast aside from society out on their own, not able to engage so process didn't work	
	Kaumatua Mana	Case did work where Kaumatua led the way, explained a process People bought in there was a connection to it. You could see In that one that that man had a lot of Mana Just a good korero without all this stuff that's involved.	Rangatiratanga
	Success in mediation	What I think success might mean in a broader sense is healing. Healing for me or the ability to heal...I realise it's not like that but there's got to be something where you come out of that and you think "oh, I feel a bit better..."	
	Future mediation for Māori	A broad outline is that it's not that Pākehā can't do it...I think that's narrow minded but it's got to be a process by Māori for Māori and it's got to be a process that the people involved buy into. So, If it's going to be (a process) on a Marae, is that where people want it to be? It has to be a process by Māori for Māori brought into by Māori. ...what we're calling dispute resolution, if we have disputes in the family environment in particular, if they're not fixed and if we don't get a proper resolution I see what happens to the kids involved and it's not pretty.	Rangatiratanga

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 4	K/M Principles	Problem with engagement through contact organization	Engagement
		<p>I think there needs to be more consideration of how people are engaged in this process and what messages they are given about the value that is to be given and the ability of these practices (K/M) to be incorporated. That we need to make sure that it is handled well, that these principles (K/M) are discussed, explained and people feel comfortable moving forward.</p> <p>Lack of understanding what a K/M process looks like engagement at beginning is so important</p> <p>I think if people are offered Māori protocol (mediation with K/M principles) what that means. We have to think about access to people who can perform appropriate whaikorero if we can't do it ourselves, open and close the hui appropriately</p>	Capability
	Tikanga	Current model Eurocentric, so does not encourage parties to bring tikanga into play. I don't think they're integral, I think they're bought in as a side issue because I think that's the model used by (the mediation organization) it is very Eurocentric and doesn't encourage people to engage.	Rangatiratanga
	Success	<p>Agreement not as important as restoring relationships – KM Principles enhance this and transform for more enduring outcomes Important to have appropriate screening at start that incorporates protocol and can explain what's possible</p> <p>More flexibility required in process – allow for Marae</p>	Capability Do the dance

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 5	KM Principles	Adopting K/M Principles make our people feel more comfortable I think it makes our people feel more comfortable if you acknowledge and allow them to almost set the tikanga for the day	
	Manuhiri	Sometimes they may want karakia or a small powhiri and for that purpose I'm the manuhiri and afterwards we can move into the mediation	Positioning
	Tikanga	Allow parties to set tikanga, not all Māori want it so I always ask how they want to open up the hui Adopting tikanga allows parties more respect for each other and more at ease with process & more able to work together I match the process to suit the parties as long as it is within my ability	Rangatiratanga Do the dance Capability
		At times tension between tikanga and Ture Pākehā in process this is where a mediator needs to be able to adapt to both worlds and give weight to tikanga when required	Capability
	Kuare	Then there are some Māori who don't want to know – bought up kuare or might be because they don't want to own it (the process) without outside help. People disconnected	Do the dance
	Success	empowering parties & giving them freedom to air raruraru in a safe environment.	
	Pōwhiri	Ideal process one that begins with Powhiri protocols. You can turn any space into a Marae – it's more about aroha understanding and respect	

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 6	Whakapapa	is used as a warm up to mediation	Rangatiratanga
	Whanaungatanga	To ensure no conflict or bias	
	Mana	Mediator must manage the Mana of all parties – Let parties express mana through the process. When Mana returns it is a sign of resolution.	Do the dance
	Mamae	Teasing out the hurt, getting parties to open up. A full cup needs to be emptied so it can be refilled with positives.	
	Whakaiti	Communicating equally not down to people. Let parties dictate the process where to start sometimes venue will dictate (i.e. small room). Sometimes people just want to get on with it but need to feel “culturally safe.”	Rangatiratanga Do the dance
	Rongo	Under the umbrella of Rongo – creates spiritual connection & atmosphere, creates frankness, honesty & respect.	Rangatiratanga
	K/M Principles	Can be the icing on the cake when appropriate but if misused can cause distrust – if this happens need to separate parties and put the flame out – balancing power	Positioning
Success	Restoration or retention of Mana – there is no book as it would be too prescriptive. In take process needs work – older people not online friendly would prefer to meet in office setting	Engagement Capability	

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 7	KM Principles	Let parties decide if KM principles to be included – the more understanding and practice of KM in the room the more it helps conversely if you have kaumatua who take advantage of their position it will work against the people	Rangatiratanga Kaitiaki
		I believe it's a fantastic process for them to feel the power of resolving their own issues but it's just at what level you can come in in terms of kaupapa Māori.	Capability
	Whanaungatanga	That whanaungatanga and that aspect is so vital because it's the same thing in any mediation you are looking for these parties to connect with each other	Kaitiaki
	Mihi Karakia	Part dependent Many parties not happy Court or outsiders involved- participant deals with mostly Court directed mediations	Stat/limits
	Wananga/Tikanga	Some people ask for some particular issues to be dealt with because they are not appropriate in the forum and I will say if that's how people feel I'm happy to park those issues I agree there's maybe a wānanga to be had or some kind of process for resolving particular tikanga issues	Do the dance Kaitiaki
		Te Reo Māori	Invariably somebody else will say can they please repeat that in English because I don't understand Māori. I also accept that over time I will be obsolete because there will be people who can conduct the mediation in Te Reo Māori. Let's face it the majority of our people don't have Te Reo, are disconnected from their Marae aren't comfortable I that forum for whatever reason and yet within themselves as they are Māori the idea of sitting down and talking and reaching agreement with each other is familiar in their bones if you like it's in their DNA

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 7	Marae	the perfect pinnacle as it's dealt with at the Marae under all auspices of Te Ao Māori but reality for some of our people they are not going to get there right now...	Kaitiaki
	Success	Where greater understanding of issues reached or parties feel they have moved forward – foundation laid for agreement later	
	Ideal future	On Marae, people awhi, Taumata, understanding connections whakapapa loss of knowledge however can cause problems	Rangatiratanga
Participant 8	KM Principles	Effective in every case. Parties will request them. Culturally safe for Māori participants.	Rangatiratanga
		Incorp at beginning of process with Karakia and Mihi – rest of process mainstream with addition of Te Reo	Do the dance
		If a Māori mediation process is requested it has some Māori ethics to it...so there's an element of Reo, tikanga, Mana, tapu all of those principles you have mentioned...generally it is why a Māori process is requested	Capability
		I would leave that for the parties to decide whether they want to incorporate those (KM principles) in to the process because they're Māori I don't want to automatically think they want a Māori mediation process.	Rangatiratanga
		Sometimes matter at dispute has an element of KM. (i.e. translation or defining cultural protocol) Parties to dictate process sometimes they just want to get through it (i.e. the process)	Rangatiratanga

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 8		I think some may not want (a Māori mediation process) particularly for those living in Auckland they're disconnected from that world (Te Ao Māori)	Do the dance
		So, for a Māori person who is connected to Te Ao Maori and understands the principles and believes the outcome was a result of a Māori process and there's tikanga and kaupapa Māori principles...I think the outcome would be respected more by the participants because of the process that had been used	Rangatiratanga
		The outcome of the process was nothing to do with the translations and the outcome that was decided was that parties would have a karakia whakawatea to cleanse the workplace and that for an independent person to complete the translations of these publications...it was less about the physical and more about the spiritual and wairua of the workplace...In any other place it probably wouldn't have been understood...but for us Māori it makes complete sense.....Those remedies we wouldn't find in the Employment Relations Act...	Do the dance
		So those types of processes need to recognize that parties would respect the outcome more if the outcomes weren't tick boxes from legislation or caselaw...	Stat/Limits
		The use of Te Reo. The whole mediation doesn't need to be conducted in Te Reo but the incorporation of Te Reo into the mediation process is important and parties should feel at liberty to speak Te Reo if they want to.	Capability
		My concern is that mediators don't know that those principles (KM) could be incorporated or how to incorporate them or that an alternative Māori process can exist. They're not taught... I don't think there is a place that offers adequate training for that.	Capability

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 9	K/M principles	<p>Most definitely, they are engrained in everything I do with my work it's about fostering a rapport...that manaakitanga and respect and then you have the respect that is going to be reciprocal....In establishing the firm foundations for a hopefully good process</p> <p>Very effective (K/M principles) ...I connect and pick out names they are used too....the barriers start to break down...</p> <p>It's about working with them ...not about putting yourself up on a pedestal.</p> <p>I'm always mindful when I go especially with Māori I will always appeal to the nannies and koros even if they say you open up I say no, I'm on your turf now, I hand it to you and then you can hand it back to me....that's where the respect and values are so important in how you work with our people....making them comfortable....that is the neat thing about Māori, we actually dumb ourselves down because we can actually move in both worlds quite comfortably.</p> <p>I say, I will take the lead from you...so I think it's about reading the landscape....no disrespect to our ways, but sometimes I'm mindful that it can actually make people feel uncomfortable. It's like managing a stage show....</p> <p>...and likewise if it's on a Marae you cannot divorce yourself from the proper tikanga in terms of going on to a Marae</p>	<p>Capability</p> <p>Rangatiratanga</p> <p>Do the Dance</p> <p>Positioning</p>
	Whakawhanaungatanga	<p>My view is sometimes if you go too deep in to those things it can backfire...depending on parties you could have a take over land ownership or dispute over shares and you may throw fuel on the</p>	<p>Kaitiaki</p>

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 9		fire by bringing up too much background...someone might say my tupuna was a tuakana to yours and he had a right to get that... for me it goes back to prep and doing background research.	
	Success	We can all sit down at the table, share kai and enjoy each other's company....Manaakitanga.	
	Ideal	It's down to adaptabilityNot one take is going to fit in to a box we all know when people get shoved in to a box and people say it's either this way or no way at all you end up getting people who are non-responsive	Positioning
Participant 10	Mana	On rules for engagement - for example clauses around ensuring that we leave each of the mediation hui with the other party's mana intact.	Engagement
	Whanaungatanga	And whilst you know you can be hating on your relations across the table it is a pretty powerful tool in a principle....we're all related here, to each other, to the land, so we've got to keep that in mind in terms of our solutions	
	K/M principles	...where there is someone in the room that has experience and expertise in those principles. As a mediator you can use their wisdom & knowledge to help the parties come to a consensus.	Kaitiaki
	Māori concept Tikanga	In that instance it came from the parties...what are the key principles that will dictate how we behave in this process... this is in Pākehā terms, no surprises...but how do we articulate that in a Māori concept...Okay we've got some hard stuff that we'll need to deal with but we've got a strong platform based on agreed tikanga...	Do the dance
	Oral Viz Documentation	there's a balance between the use of documentation versus the oral traditions....it can go downhill like the Paul Majurey	Do the dance

Participant No.	Interview Idea/Words	Context in Sentence	Concept
Participant 10		thing in terms of Hauraki/Tauranga where he went on TV with all of his documents vs someone who was talking in a tikanga context .you've got to be able to read the play on that and be careful.	
	Whakamana Whaikorero	You try to whakamana the parties in terms of their approaches... we've got the flexibility...we need to respect both sides and again that is consistent with whaikorero on the marae in the sense that I might not agree with that korero but will get my opportunity	Rangatiratanga
	Mana motuhake	It might come across as individualistic but it's part of the mana motuhake of the individual to run a process or be a part of the process that they feel comfortable with	Rangatiratanga
	Success	the matter resolved is one measure...but the process must be mana enhancing....that I have understood and respected their concerns without necessarily being an advocate for them...if there's a power imbalance then they've been given a forum to be heard.... I think in reality that the principles and values that underpin what we might call western mediation are not too far different from what we might call a tikanga based process. I think it's about consensual outcomes...everyone has a chance to korero there is an intermediary which is not foreign if you have a kaumatua or a tohunga involved...so I think the principles are the same just some differences around rituals around the different values at play, how everyone might have a say and how our decision might roll out.	Kaitiaki
		So, you wouldn't have a one size fits all for a tikanga process... You would use all the tools we've got sit it alongside some of our processes in tikanga and develop a suite of options.. ..some ethical considerations for mediators that are tailored to the Māori way of thinking and the Māori world view.	Do the dance

4.3- EMERGING THEMES

From the summary findings of the participant interviews I identified seven key emerging themes which related and had an impact on the use of kaupapa Māori principles in mediation. These key themes were repeatedly articulated, some in different variations or degree of description, throughout the analysing of the participants transcribed interviews.

I identified these key themes or concepts as:

1. Capability
2. Rangatiratanga
3. Do the Dance
4. Statutory Limitations
5. Positioning
6. Kaitiaki
7. Engagement

Note the names I have given to each of these key themes or concepts is simply the name I felt would best encapsulate the meaning intended by participants. I will now translate fully what each of these key themes or concepts that have emerged from the participant interviews means.

1. **Capability** refers to the mediators/organisations/engagers own ability, skills and experience that are available to assist in in the mediation process. It also refers to the competency required to adequately practice a tikanga based Māori mediation. Many participants felt that pre-requisite skills and ongoing professional development in the area of cultural competency needed to be accorded as much importance as clinical expertise. It requires acknowledging and embedding Māori knowledge and participation across all levels of an organisation; from research and policy through to practice. As one participant states:

“That’s why I jump on the bandwagon and beat my chest in terms of protecting our whanau to make sure that they’ve got competent mediators that can work competently in the Māori framework.”

- 2. Rangatiratanga** refers to autonomy and to the parties at mediation being able to have full control over the mediation process to the point where outcomes are self-determining. As one participant describes:

“A broad outline is that it’s not that Pākehā can’t do it...I think that’s narrow minded but it’s got to be a process by Māori for Māori and it’s got to be a process that the people involved buy into.”

It is clear from the research data that the notion of rangatiratanga was something that the participants valued highly as a key component of culturally responsive service delivery. Their perspectives in this regard are supported by the similarly recurring messages that permeate through the literature that was reviewed in particular chapters 2.4 and 2.5 as relates to mediation and Māori and indigenous contexts and of special note is that autonomy or self-determination is one of the core values of the generic mediation process and in my view provides the strongest alignment with a kaupapa Māori tikanga based process

- 3. Do the Dance** was a colloquialism used by one of the interview participants that referred to the ability to match party autonomy with the mediators’ capability and referred to the “dance” between a western clinical approach and a traditional tikanga Māori based approach. The dance in this instance can also be described as one’s ability to walk in two worlds, that of the western reality and dominant hegemony and that of Te Ao Māori. A participant appropriately described this as:

“So, you wouldn’t have a one size fits all for a tikanga process. You would use all the tools we’ve got sit it alongside some of our processes in tikanga and develop a suite

of options...some ethical considerations for mediators that are tailored to the Māori way of thinking and the Māori world view.”

4. **Statutory Limitations** (Stat/limit) refers to where the mediation process and the ability to use kaupapa Māori principles is severely limited or restrained because of the statutory obligations, rules, regulations and institutionalised practices that dictate and govern control over the dispute resolution process from beginning to end. These can include timeliness and financial constraints as well as those legislatively governed through acts of Parliament. An interview participant advises:

“The outcome of the process was nothing to do with the translations and the outcome that was decided was that parties would have a karakia whakawatea to cleanse the workplace and that for an independent person to complete the translations of these publications....it was less about the physical and more about the spiritual and wairua of the workplace...In any other place it probably wouldn't have been understood...but for us Māori it makes complete sense.....Those remedies we wouldn't find in the Employment Relations Act...So those types of processes need to recognize that parties would respect the outcome more if the outcomes weren't tick boxes from legislation or caselaw....”

5. **Positioning** refers to knowing oneself and in relation to the process where one should be situated. It can also however refer to self-awareness and in terms of the mediator practicing in a Māori context it is essential for practicing professionals to have a realistic understanding of their own worldview perspectives, and of their own social and personal identity. For example, is the mediator familiar in Te Ao Māori and understands where to position in terms of pōwhiri and how this context applies in a mediation process. As one participant stated:

“There's two things that happen for me. There's a conscious ahua Māori shift from the ahua Pākehā whakaaro to ahua Māori...”

Some participants believed also that this required those practicing professionals to reflect on any cultural biases, stereotypes or beliefs that they may hold about Māori so as to recognise the potential impact of their own culture on their interactions with Māori. They also reiterated the damage that can be done to Māori (as clients) where strongly-held negative assumptions about Māori by those practicing in dispute resolution may effectively minimise the realities that Māori are dealing with on a daily basis as a result of those normalised influences associated with the process of colonisation.

6. **Kaitiaki** refers to the concept of a guide able to navigate an appropriate mediation process for the parties involved in mediation. It also means that the mediator becomes the conduit between the parties to both ensure their cultural and physical safety and to also ensure that parties interests are protected to the degree that parties want them protected in and as a part of the mediation process. As an interview participant explains:

“I think if we get that right from the start tu utu or the exchange Tapu Noa across tawhirimatea and tumatauenga across the Marae atea in that space of introduction I think if we do that right and do the tapu noa process then I think we can be confident in moving and shifting forward from that point. You become the Kai Tiaki of that whanau from that point...”

7. **Engagement** refers to ensuring that parties are given the right information at the right time to ensure they can make an appropriate decision that will assist in empowering the parties. Many participants refer to the front end of the process and the importance of engaging appropriately with parties at this crucial stage. Appropriate engagement means parties can be participants in their own dispute resolution design process that can be based on their own inherent cultural values as opposed to ticking boxes and following a prescribed one size fits all approach. As an interview participant describes:

“I think there needs to be more consideration of how people are engaged in this process and what messages they are given about the value that is to be given and the ability of these practices (K/M) to be incorporated..”

So far, the narratives of Māori mediators have been presented as vignettes (participant-centred), as a process of identifying themes (to provide transparency of the inductive process), and as emerging themes (theme-focused). An issue with presenting data this way is that the narrative as a whole is lost, and the voice of the Māori mediator is dissected and removed from the context and practice that is at the very essence of this research objective. As a Māori mediator myself, I wanted to find an example of Māori mediation in practice. To demonstrate how the theories and themes thus far presented in this report can be put into practice. To do this the next chapter refers to an article by Ngarongo Ormsby, which in my opinion is one of the most absorbing accounts I have read of how a Māori worldview, principles and practices can come together well when engaging with parties at dispute. Explained in mostly the English language, the title of the article is Te Kai Tēpu (The Food Table), and this provides a holistic narrative that aims to demonstrate how the themes identified in this chapter can be put into practice.

5. TE KAI TĒPU – MĀORI

MEDIATION IN PRACTICE

I met with a practicing colleague and now good friend of mine, Ngarongo who had over the time of writing this research project shared with me some of his own experiences in mediating in a Māori context. My friend is a practicing self-employed Family Dispute Resolution (FDR) provider who has worked in conflict resolution with indigenous communities in the Australian outback and returned to Aotearoa to work in the family dispute and resolution field. He is Māori and been working in the disputes and conflict resolution field for a number of years. He explained to me that in his opinion, from his own experiences a Eurocentric mindset is unable to grasp the full scope and entirety of mediating in a Māori context.

It is not that the European mindset lacks the intelligence to understand far from it, he acknowledges the intricacies and abilities of the Eurocentric mindset within the disciplines of mathematics, spatial awareness, logic and other key abilities that make up and measure ones intelligence quotient (IQ) however, he refers to the ability to apply tikanga together with the collective and holistic approach of consensus and mana, tapu and noa and what they mean and even with an understanding of these concepts the Eurocentric mindset lacks the depth of spirituality and wairua and how to apply these in a mediation process in particular to Māori. To emphasize his point, he referred to an article he wrote for an organization of mediators he belonged too that stressed the depth of an engagement with Māori for a family dispute resolution case he was dealing with from a Māori perspective.

This article was based on his first meeting with clients that had invited him to a Family Dispute Resolution mediation and detailed the engagement process from his perspective as a Māori dispute resolution practitioner leading up to beginning the formal mediation process. The article begins with observations and experiences of the writer when invited by ringawera to partake in kai or food and asks the question:

“Are you aware of the Uara (the principles of Tikanga and Kawa) that underpins the custom of seeing to the needs of your visitors on the marae and what the protocols might be about?”

He further points out that:

“I ask these questions to stimulate the curiosity and inquisitiveness of observing the protocols, rituals, symbolisms, meanings, and making sense of it.”

The writer then goes on to explain his experience around being invited by parties to perform a family dispute resolution mediation around their kitchen table. He advises that when applying a Māori context to the meeting as he points out:

“...from a Ringawera tikanga as part of the holistic framework of Pōwhiri on the marae.”

One needs to understand what are the underlying protocols, beliefs habits values and customs and how do you begin? The writer refers to his first engagement upon the parties answering the door:

“Immediately engage in conversation with a warm handshake and smile. On entry take note of key features around you, they might be, the children and family photos, trophies and awards on display, interesting ornaments. What you are actually doing is engaging in bridging the gap (stranger danger - Marae Atea). Like the exchange of the protocol of whaikōrero (Tumai Tu utu) between tangata whenua, manuhiri and hongī process. You are engaging by building a very brief relationship, demonstrating interest by asking questions and affirming, reassuring, exchanging pleasantries, getting comfortable with the environment, loosening up, relaxing and calming in preparation for mediation. Not only for yourself, but also for the parties (assume they are naturally nervous with expectations). Always the protocol of the Rākau belongs to the Mana Whenua (the parties in their home environment).

Our writer is then invited in to sit at the kitchen table and here the writer then refers to the kitchen table and compares this to the whare kai of a Marae:

“For a start, the kitchen table does not exist in isolation from the entirety of the sum-total of its environment, it is one component of, with its own set of protocols and customs that intertwine in a cohesive and seamless manner. Think of the Whare Kai and the Ringawera whose roles are to support the Paepae tapu. (The protocols of welcome and exchanges of speeches). They do not exist in isolation, they are part

of the sum-total of the Marae experience, rituals, customs, protocols of tikanga and kawa.

Once the writer is seated with the parties around the kitchen table our writer now describes his thoughts:

“What is the protocol now? Who makes the adjustments and adapts to the environment? Does the Mediator assume leadership? Take control and exercise their role? What we do know is this, both parties have made the invitation to meet in their home instead of the office. So, now we make professional assumptions, we have approval at the invitation by both, a shared decision. Like on the Marae, protocols dictate tikanga and kawa (ways of doing). Always, this environment is at the invitation and good-will of the Mana Whenua (local owners of the land, house and resources). Even though the Rakau (rod, assumed authority) has been handed to me (the parties have given approval and handed authority over to me for the time-being to conduct mediation). I am in their environment at their invitation, never losing sight of this.

When the invitation and Rākau is handed over, I assume the Leadership position (Mediator role) and initiate the protocols and customs you would expect with visitor and owners, manuhiri and mana whenua engagement process. That is to say, formalise the commencement by acknowledging Mana Whenua (the parties) and their roles (Parents of the children - Matua ō ngā tamariki) the environment we are in (their house, the marae) their courage (Marae Atea - Tūmatauenga) to meet around their kitchen table, and the homely environment of their sacred space. All the preliminary welcome protocols (Whaikōrero - engagement exchange) said and done..... Formal mediation commences.”

The application of tikanga Māori in this sense is drawn from the writers' own observations, experiences and knowledge of both tikanga Māori practice and the mediation/family dispute resolution process. The writer in particular acknowledges the different realms of protocol and Marae tikanga present in a pōwhiri and assesses how these intertwine with the mediation process and this particular engagement. Through his observations our

writer has acknowledged the movement from karanga and invitation to the Marae atea to the taumata or paepae and from thence to the status of noa.

The acknowledgement is also not only of moving from the Marae atea to the Marae Taumata or paepae but of also moving from and through the realm of Tūmatauenga. If you understand the formal pōwhiri process you can identify and appreciate the depth of engagement the writer is referring too. To assist in this understanding and the depth to which the writer dwells I will outline a usual pōwhiri process from my own area or rohe and hapū of Ngāti Te Rino as this is a process I am familiar with. The pōwhiri process on our marae will usually begin with the karanga. On our marae the karanga is not just a call from one person to another but a spiritual call, carrying the mana of the marae and area of Ngāti Te Rino. It creates a safe pathway through which manuhiri or visitors should pass without fear and sets the purpose of the kaupapa of the hui. The karanga serves to ward off any evil spirits that may be present, ensuring a safe passage for the visitors across the marae atea (the sacred area in front of the meeting house). The Marae atea is used to hurl challenges across this space before entering the Wharenui or ancestral house; this battle of words is just as important as words of peace. It is also across this same space that words of prayer are shared. The space is tapu (sacred) and is the realm of Tumatauenga (God of war). The writer refers to the area in his article as the initial discussions upon entering the whare and describes:

“What you are actually doing is engaging in bridging the gap (stranger danger - Marae Atea).”

Insults are a fair exchange across this piece of land but are not acceptable inside the wharenuui where Rongonui (God of peace) resides. Shoes are removed before coming inside the wharenuui to leave the dust of Tumatauenga behind. What the writer is conscience of at this time is that the general “feel” of the engagement can be felt here, that is, whether parties are irritated and to what extent. The writer then refers to the talks held in getting to the kitchen table and likens these to the exchanges in whaikōrero and in particular the whaikōrero structure of tu mai tu utu.

On all marae, tangata whenua will speak first and generally last, however there are variations. These are known as whaikōrero structures and two such examples of these

are tu mai tu utu and paeke. The whaikōrero structure known as tu mai tu utu, is one in which the speakers alternate between tangata whenua and manuhiri. In the other whaikōrero structure known as paeke, the manuhiri will start and when their speakers are finished, will usually acknowledge they have finished and “hand the rakau” or pass the time and space over to the manuhiri to deliver their speakers salutations and korero. In Ngāti Te Rino, my own hapū boundaries, the whaikōrero structure is that of paeke. Some marae insist that Te Reo Māori only is spoken on the marae and in the case where English is allowed it is preferable that the speaker begin in Māori to acknowledge the custom of the people. Part of the spiritual depth of Māoritanga is expressed through whaikōrero and Te Reo Māori because ideas, emotions and expressions can be conveyed more easily in the native language.

Invariably each speech is followed by a waiata (song), usually led by women who will decide which waiata complements their speaker`s words. Mana (esteem) will be increased in this way and even more so if the people can sing their traditional waiata. Whilst the quality of the singing might enrich the event, it is the act of supportive singing which has the most significance. On rare occasions a woman may begin the waiata before the man has finished speaking to show that she thinks he has spoken for long enough or is not adding to the mana of the iwi, in which case the speaker will finish and join in the waiata. Woman, in Ngāti Te Rino, have the authority to end whaikōrero in this way and do so on occasion.

In the process of some pōwhiri once all speakers have finished a spokesperson from the tangata whenua will then invite the manuhiri up to their taumata (front row of seats) to harirū (shake hands) and hongī (pressing of noses). In some areas though, it is usual to harirū first prior to the exchange of whaikōrero. This is especially done in the North at hui mate or funerals. The hongī can vary from iwi to iwi, but each iwi will indicate their particular slant on it. Some may press noses once others twice, some on the side of the nose rather than directly on it, others will say tena koe or kia ora as they touch noses and the kaumatua (elders) will often touch foreheads too. The hongī is a gesture of sharing one breath and one`s feelings, the touching of foreheads as a sharing of knowledge. There is no room for tentativeness or doubt in this gesture for it is designed to express

caring and sharing and indeed the lifting of tapu. Now all people are one under this roof. As is custom, kai (food) will now be served to make that which is tapu, noa (normal). A karakia (prayer) to bless the food will be recited, usually by the tangata whenua, before the food is eaten, at a time that allows manuhiri to arrive and be seated but not so long that the food grows cold. If a karakia is not forthcoming, manuhiri could stand and ask if tangata whenua would like them to say a karakia, in which case it will be recited with the same reverence, a blessing on behalf of all people present. Because food is seen as something that can break tapu there are protocols around the handling of it.

A final analysis of the way in which the writer has shown the impacts and effects of being Māori and engaging with parties at their house reveals an awareness for the reality of being Māori in this engagement. It demonstrates the depth of knowledge required to ensure a proper integrated process that acknowledges tikanga and provides and allows for its inclusion in the mediation process.

4. DISCUSSION

6.1 COMBINING THEORY AND PRACTICE

This chapter seeks to bring together and summarize all strands of learnings from the literature review and how the mediation process has been theorised from a Māori or indigenous perspective and the concepts that have emerged from the findings of the participant interviews to rationalise and explain the difficulties in answering the research question that was the catalyst for this research project;

To what extent are principles of kaupapa Māori reflected in the current practices of Māori mediators in Aotearoa?

In an interview on Radio Watea on the 26th of February, 2019 Shane Jones stated:

...the whole history of Māoridom in New Zealand is managing conflict between ourselves and the power culture and I think Māoridom has a lot to offer in terms of how we move forward....

(https://www.waateanews.com/waateanews/x_news/MjExODE/M%C4%81ori-navigators-to-thread-China-threat)

This supports the findings of this research that mediation has always been something that occurred in te ao Māori, and that a Māori worldview could challenge the hegemonic practice of mediation to enhance the process and outcomes for all.

There can be no doubt that most practicing Māori mediators do, to varying degree, use kaupapa Māori principles in their practice during a mediation or conflict resolution process particularly where that process involves parties that are Māori. Many do this both as a conscious decision and others at a sub-conscious level where it is inherent in them.

What this research has highlighted are; the factors that contribute to where and when these principles are and should be implemented in the process; the convergence of theory of mediation in a Māori context; the practice of mediation using kaupapa Māori principles, and; the discrepancies between the theory and practice of mediation in a Māori context.

It is my submission that given the appropriate environment and conditions the extent of convergence of theory and practice surrounding the use of kaupapa Māori principles by

practicing Māori mediators needs to align. When this alignment occurs, this provides enormous benefits to Māori participating in the process.

This is more likely to happen when the five concepts raised in the Māori health literature (Durie), Blackford and Matunga's nine evaluative criteria for a robust Māori mediation process and the seven key concepts identified from the summary findings of the participant interviews, are integrated and adequately provided for as a part of the mediation process.

In summary these are as follows:

Five Concepts from Māori Health (based on Durie's (2001) work)

1. Embedding recognition of culture in Organizations
2. Self-Awareness of staff and workforce
3. Māori solutions for Māori problems
4. Incorporate Te Tiriti Principles
5. Increase cultural training and capability

Nine Evaluative Criteria for a robust Māori Mediation process (Blackford & Matunga, 1991)

1. Tino Rangatiratanga o te iwi Māori recognized.
2. Appropriate pre-negotiation procedures and accountability processes that implement tikanga Māori into the process
3. Reflect the complexity and diversity of Māori society
4. A fair process in which all affected groups should be able to participate
5. A process that ensures Māori cultural practices maintain their mana, dignity and integrity
6. Information exchanged with integrity
7. Party input to the choice of mediator
8. The empowerment of Māori
9. Tribal structures respected in any conflict resolution process.

Seven Concepts from Interview findings (based on this research)

1. Capability
2. Rangatiratanga
3. Do the Dance
4. Statutory Limitations
5. Positioning
6. Kai Tiaki
7. Engagement

A number of the concepts are repeated (i.e. Māori solutions for Māori problems/ Recognition of Tino Rangatiratanga o te iwi Māori/ Rangatiratanga) and guide my thinking to the realisation that the driving factor to a successful Māori mediation process must be Māori themselves. The centrality of Māori and driving a mediation process design from the inside out as opposed to a process design that seeks to check boxes and go through a series of linear stages is fundamental to any process involving Māori.

As Durie (2001) describes a Māori centred approach deliberately places Māori people and Māori experience at the centre of the activity. The approach is underpinned both by political and best practice rationale and there is an emphasis on Tino Rangatiratanga with the aptly described characteristic of being by Māori and for Māori. Time and again throughout the responses by interview participants the common theme has been Rangatiratanga and the ability of parties to be empowered to resolve their issues in their own way. The tag “by Māori and for Māori” was used by some of the interview participants.

The five key concepts from Māori health research, the seven key concepts from the interview findings and the Blackford and Matunga nine evaluative criteria all interrelate as they should as in Te Ao Māori all things are connected and have a whakapapa. For instance, if statutory limitations impact on the mediation process, this will have a negative effect on rangatiratanga, restrict the amount of “dancing” that can be done and limit the possible outcomes and their durability. Alternatively, if capability is enhanced it can lead to improved rangatiratanga, better engagement, positioning, a better “dance” and the potential for improved durable outcomes.

Both the literature review and the summary findings of the participant interviews acknowledge the disparity in the balance of power and thus the loss of autonomy and Rangatiratanga where the mediation process is one that is prescribed through statutory rules and regulations. As described by interview participants the budgeted time allowed for the process does not adequately allow for or identify the cultural necessities required by Māori to ensure they are comfortable in and with the process. As a result, many disengage and feel frustrated at not being able to have their say in the way the process is designed and seek other avenues for remedy.

Further, the opportunities for consensual outcomes between the parties can be limited where the process is prescribed according to legislation, regulations and rules and do not recognize for instance spiritual outcomes that can be beneficial to both parties in dispute. Statutory regimes in the mediation process for Māori also become adversarial and are viewed by some as a win-lose and positional type process scenario because of the involvement of an outside agency such as a Court or Tribunal and where their inherent values such as Whanaungatanga and Manaakitanga are discounted.

Further synergies can be found between the theory of mediation in a Māori context and the practice of the same where both academics and practitioners agree that a Māori mediation process must be based on a foundation of tikanga and along with that a framework based on Māori values that can empower Māori and allow Rangatiratanga to flourish as opposed to negating them and thereby disempowering and disenfranchising Māori. Further, there is acknowledgement also that there should be an allowance for the current reality of the participants as to their strengths and weaknesses within Te Ao Māori including Te Reo me ona Tikanga. Here, the practitioners observe, a competent Māori mediator would act as kaitiaki for the whanau and “do the dance” to ensure the process allows for this and that no party is in anyway disadvantaged.

There would appear to be an area of uncertainty however in the allowance of the current reality between what a values-based process requires and should look like from an academic perspective, and what current Māori practitioners are doing from an initial engagement point of view. Many practicing Māori mediators are contractors to organizations that provide mediation services. Initial engagement with these

organizations for Māori participants appear to fall well short of what a competent service provider to Māori should deliver. This issue, as described by interview participants from a practitioner's perspective can be negative to the overall experience of Māori in the mediation process. This highlighted issue appears to be one of capability within the staff of these organizations.

As described earlier in Durie (2001) the solution would be to build capacity within practicing professionals within all levels of these mediation service providers that moves beyond the current pedagogy and western narrow framework and creates a professional orientation which values effective partnership and the training of both Māori and non-Māori accredited and trained according to not only professional skill matrices but also cultural ones devised by Māori.

Embedding the cultural component into the training of not only Mediators but also the mediation organization service providers that current practicing mediators contract to maybe one way of ensuring that where a values or tikanga based process is requested by Māori at the very least, the organization staff and the mediator may be aware of and can make provision for this in the mediation process. As Durie also warns earlier however, care needs to be taken to ensure the process does not dictate the cultural component or is in anyway assimilated into a western construct but remains able to stand alone and is tuturu Māori. In other words what is not required, is an add on approach that favours western modes of thinking and investigating and that operate within conventional frameworks that obscure key linkages and causal relationships such as those set out.

Morris and Shaw (2018) advise also that successfully incorporating culture into training is difficult because of the complexity and sensitivities involved. They suggest that any such cultural training is required to be comprehensive, flexible and ongoing. For this to occur in Aotearoa these organizations need to adopt a cultural strategy which allows for Māori to be Māori and such a strategy must be incorporated through all levels of the organization from top to bottom.

6.2 - CONCLUSIONS

This research sought to find out the extent to which kaupapa Māori principles were reflected in the practices of Māori mediators within Aotearoa.

As already stated there is some alignment between academic recommendations for a tikanga based mediation or dispute resolution process and the practice of mediation by Māori mediators involving parties who are Māori. Of note again is the concept of party autonomy or Rangatiratanga which continually arises throughout this research project.

Māori need to be able to determine their process in a way that is underpinned by the values they share as dictated by tikanga. Anything less, is not only a breach of the rights guaranteed by Te Tiriti but also goes against one of the fundamental core principles of the mediation process. The process needs to be driven by Māori and as such they need to be the architects of how their mediation process will proceed.

The challenge is in how to ensure the ADR system and processes in Aotearoa are robust and adaptable enough to respond appropriately to Māori in order that kaupapa Māori principles are reflected.

I have already mentioned the possibility of including a cultural competency into the ADR system and ensuring at all levels of ADR, that a cultural matrix as well as a skill based one are used for training purposes. This was highlighted in the Māori health field by Durie and others and is one concept that can be transported from the Māori health field in to the Māori mediation and ADR space.

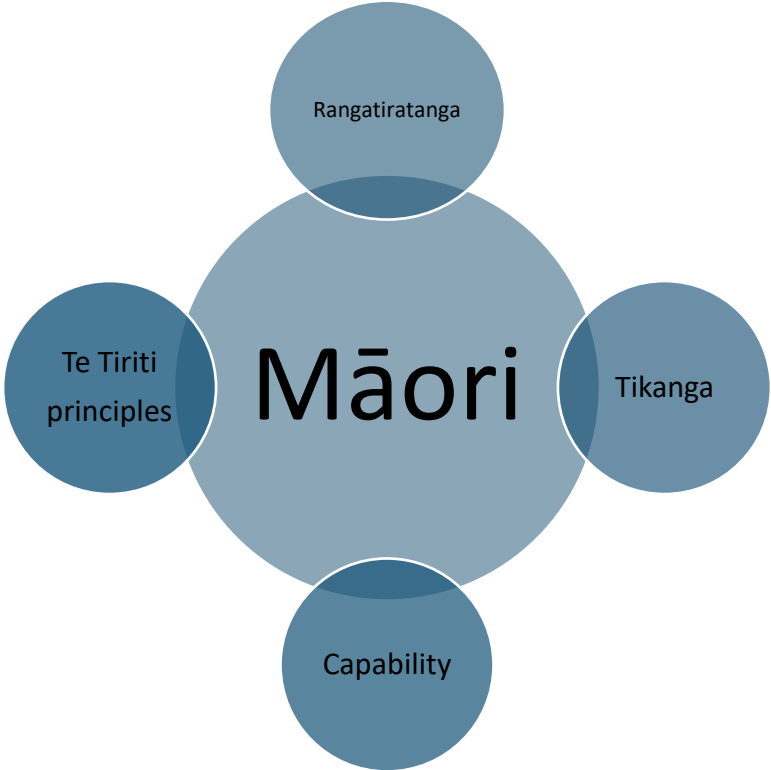
Further, embedding Te Tiriti and its' principles of participation, partnership and protection into the ADR system will also be a way of ensuring that where a values or tikanga based process is requested by Māori provision is made for this to occur within service delivery organizations.

Statutory limitations including rules, regulations and organizational policy can have a significant impact on the ability of Māori to introduce kaupapa Māori principles into the practice of ADR and need to be removed in order that appropriate outcomes for Māori

can become the norm as opposed to the exception. Where such limitations have been exposed such as in timeliness and or interventionist strategies the promotion of independent ADR processes for and by Māori should also be encouraged.

Figure 3 outlines in summary the primary concepts and their connections identified from the research project that need to be considered in Māori mediation. It highlights the need to place Māori at the centre of the mediation process in order that the process is driven from the inside out.

Figure 3: Primary Concepts to consider in Effective Māori Mediation



First, it highlights the need for **Rangatiratanga** and ensuring the process gives Māori the space to come up with their own solutions to their problems. Rangatiratanga is compatible with the key principle of self-autonomy that underpins the mediation process, however, Rangatiratanga acknowledges the cultural variable outside of the current hegemony within Mediation practice in Aotearoa.

It also ensures that **tikanga** is applied and Māori can incorporate the values of Whakapapa, Whanaungatanga, Mana, Tapu and others into and at any stage during any mediation process.

Recognition that enhancing **capability** within the mediation space is required and ensuring that this includes the need for cultural understanding and that boosting this capacity will also strengthen the overall durability of the process and willingness of Māori to engage in the process. Introducing a cultural competency matrix alongside a skills-based matrix is one way of enhancing capability in practicing Mediation organizations that engage with Māori clientele.

And last but not least, there is the understanding that the **principles of Te Tiriti** should underpin the mediation process. Here I refer to the principles of partnership, participation and protection; Partnership to enable Māori to make the decisions with the mediator and the organizations associated with providing mediation services on how the process should proceed; Participation to enable Māori to participate equitably within the process, and; Protection from those influences that would devalue, stymie and even derail the process for Māori doing things in a Māori way. The narratives of Māori mediators in this study have found ways to reflect kaupapa Māori principles throughout their mediation practice, that emphasises the value of doing mediation by Māori, with Māori and for Māori.

APPENDIX A – GLOSSARY OF MĀORI TERMS

Special Note: I loathe having to define these terms, concepts, words, as inevitably there are always dangers with trying to define something in a language foreign to the language from whence the concept originates never the less, some description is required to ensure understanding of the context in which they are used.

Aotearoa	New Zealand – Land of the long white cloud
Hapū	A collective of Whanau
Haukainga	Home people or people of your home area
Hui	A meeting
Ihoa	Jehovah
Iwi	Tribe, the largest group of the Māori social unit
Kaimahi	Worker
Kaupapa Māori	A Māori approach, a way of doing things from the perspective of a Māori world view
Kupu	Word
Mana	Power, Integrity, Charisma, Prestige, Formal and Jurisdiction
Manaakitanga	The concept of hospitality and genuine care for others
Marae	Ancestral meeting grounds and buildings
Me piki me nga heke	The ups and the downs
Ngā Atua	The Gods
Nga Tangata	The people
Noa	The state of being normal or normality

Pākehā	A New Zealander of European descent
Papatuānuku	The Earth mother
Pepeha	The way in which Māori identify who they are in relation to others (ancestral mountain, river, tribe etc..)
Pukenga	Skilled expert
Ranginui	The Sky father
Taha Māori	Maori side or things Māori
Tane	God of Forest and birds and can also mean man or male
Tangata	Person, human being
Tapu	Sacred or the sacredness of something
Tatae	Ancestry
Tika	Correct or true
Tikanga	Customs and traditional values
Te Tiriti	The Treaty
Te Ao Māori	The Māori world
Te Reo Māori	The Māori language
Te Taura Whiri	The Māori Language Commission
Te Wiki I te Reo Māori	Māori Language week
Turangawaewae	Ancestral home
Ture Tangata	Things of a physical nature
Ture Wairua	Things of a spiritual nature
Uri	people of the same blood
Utu	recompense or revenge

Whakapapa -	Family lineage, genealogy
Whakataukī	A proverb
Whanau	Family
Whanaungatanga -	The practices that bond and strengthen the kinship ties of whanau
Whiro	God of the Darkness

APPENDIX B – INTERVIEW SCHEDULE

Kaupapa Māori Principles in Mediation study: Interview schedule. Participant number: _____

Tena koe XXX. How are you? Busy day? Thanks so much for taking the time to speak with me. Should we get started?

Firstly, I would like to record this interview. Do you consent to it being recorded?

Yes No

Yes: Thank you. (Turn recorder on). We are now recording.

Note: Take as many notes as possible. After the interview, researcher to make a voice recording of the discussion summarising the key points made.

As we outlined in our prior emails/correspondence/Phone call, we are interested in your perspective as a mediator and the use of principles of kaupapa Māori in the mediation process. The interview should take between 30-45 minutes and no participants will be identified in the findings of this research. As a participant in this study, you have the right to decline to answer any question, you can ask to stop at any time, and if you for any reason wish for the information you provide to no longer be included in this study, please let me know within two weeks from today and I will remove it. You also have the right to a report on the findings.

Would you like a report on the findings? Yes No

If so, what is your email address? _____

Do you have any questions about the study you would like answered before we start?

Do you consent to participating in the study? Yes No

1) Demographics

1.1) How many years have you practiced as a mediator? _____

1.2) Do you have accreditation with a professional body? Yes No

1.3) What are the key areas in which you mediate (e.g. workplace, family, etc)

1.4) Approximately how many cases have you mediated in the last year? _____

1.5) Approximately how many of these cases have involved a party who is Maori

For the purpose of this research, we are specifically referring to Kaupapa Māori principles of Whakapapa, Whanaungatanga, Mana and Tapu

1.6) Considering these principles what is your understanding of them?

(Note if there is no understanding of principles of Kaupapa Māori an explanation will be given)

2) Your experiences of mediation and kaupapa Māori Principles

(Please make sure that the interview addresses all of these questions, but this does not necessarily mean that all questions need to be asked).

2.1) I would now like to ask some questions to further understand your experiences of mediating cases where kaupapa Māori principles may have been applied. In your experience where the principle of Whakapapa is adopted in a mediation process how effective was this principle in the mediation process?

Can you advise or describe why you think that is? Note - The above question to be asked for each principle (i.e. Whanaungatanga/Mana/Tapu

2.2) Thinking about the mediated cases where principles of kaupapa Māori principles in general were adopted compared with other cases that haven't involved kaupapa Māori principles, do you think these cases have any characteristics/features that influenced the way you conducted the mediation? Please explain these features and how they influenced the way you conducted the mediation. For instance, were parties Māori and how did this influence the way you mediated and why?

2.3) In your experience, was mediation more successful where kaupapa Māori principles were introduced or not? Why do you think that is?

2.4) Can you describe other aspects of kaupapa or tikanga Māori that you believe contributed to the final outcome positive or negative for those Mediation cases where principles of kaupapa Māori were used

- Is there a reason for that? Can you talk a bit more about why?

3) Your views on mediation and kaupapa Māori principles

Mediators can adopt Different styles when conducting mediations and every mediator comes with his/her own individual personality, skills and strengths.

K Quince says : "...that any process of dispute resolution (involving Māori) must allow for all aspects of the human being and their relationships to each other to be addressed."

3.1) Thinking about cases involving principles of kaupapa Māori you have mediated, do you have any comments about the quote

3.2) What do you personally think would be the critical factors that should be used to judge the success of a mediation process

3.3) Thinking about the cases you have mediated, and potential future mediation cases involving kaupapa Māori principles, can you talk me through your views on the use of mediation in cases involving kaupapa Māori principles

(Let the participant start the discussion. However, you can use the following points as prompts. Please go through each that have not yet been mentioned by the participant). I would like to know what your thoughts are on:

3.3.1) The balance of power between parties in the mediation involving kaupapa Māori principles (kaumatua/kuia as opposed rangatahi, tuakana teina relationship etc.)

3.3.2) The setting for the Mediation (i.e. Marae as opposed to Office environs)

3.3.3) Mediator impartiality/neutrality in cases involving kaupapa Māori principles

3.3.4) The fact that mediation is a future-oriented process (as opposed to a fact-based, evidential process, issues of relationship transformation versus finding fault/blame)

3.3.5) The fact that mediation is a consensual decision-making process (as opposed to an adjudicative process) and the relevance to principles of kaupapa Māori

3.3.6) The range of outcomes that can be reached through mediation involving principles of kaupapa Māori

That bring us to the end of the questions that I have for you. Thank you so much for your time. Do you have any final comments you would like to make?

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