

# Mnaasged Child and Family Services



## Original Dispute Resolution Policy and Procedure Manual

July 2019

*Acknowledging the Past  
Serving the Present  
Creating the Future*

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## SECTION 1: INTRODUCTION

### PREAMBLE

Alternative Dispute Resolution (ADR), in its many forms, is an integral part of ensuring the engagement of families in the planning for the health and well-being of their own Children/Youth. Aboriginal Approaches to Alternative Dispute Resolution (AADR) are a step further in anchoring the rights of families and Children/Youth to be engaged within the First Nation, Métis, and Inuit perspectives that expands those rights to include extended family and community as partners in planning and delivering supports to them. Mnaasged Child and Family Services embraces and commits to following those principles of engagement and participation with the whole system (family, extended family, collaterals, and the First Nation, Métis, and Inuit communities) that surrounds and supports Parents in the caring, protecting, and nurturing of their own members.

## SECTION 2: ALTERNATIVE DISPUTE RESOLUTION AND ABORIGINAL APPROACHES

Department: Cultural Services	POLICY #:
Section: Alternative Dispute Resolution and Aboriginal Approaches	
Subject: Alternative Dispute Resolution and Aboriginal Approaches	
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### POLICY

*Mnaasged Child and Family Services values the inclusion of Parents, extended family, and their community in planning for the provision of the supports they need to care for and to keep safe their own Children/Youth. Mnaasged Child and Family Services specifically endorses and adheres to the Values that guide the provision of Family Group Conferencing and Family Group Decision Making in Ontario. Mnaasged Child and Family Services interprets those values through an Indigenous lens in a manner that places the Child/Youth and family at the centre of all decisions affecting their well-being and safety, which is surrounded and supported by their extended family, First Nation or Indigenous community, and all others whom the family values as being supportive and caring for them.*

*Mnaasged Child and Family Services will use the Aboriginal Approaches to Alternative Dispute Resolution as the preferred approach to an Alternative Dispute Resolution, while making other approaches available as an option for families and communities as requested. In circumstances where a formal Aboriginal Approaches to Alternative Dispute Resolution process may not be necessary but broader engagement in planning is necessary, Mnaasged Child and Family Services will incorporate the use of Talking Circles as the preferred approach, while making Case Conferencing available as an option for families and communities as requested.*

*The role of an "impartial" facilitator as defined by the Ministry of Children, Community and Social Services is misleading, because in the Indigenous context we are all related and, therefore, each one of us is impacted by the outcome of any decision, including the facilitator.*

*Additionally, the term "Aboriginal" will be used here as that is what was used in the past and is used in current legislation and Regulations. Mnaasged Child and Family*

*Services is making greater efforts to utilize First Nation, Métis, and Inuit where appropriate.*

#### DEFINITION OF ALTERNATIVE DISPUTE RESOLUTION IN CHILD WELFARE IN ONTARIO

*Section 17 of the Children, Youth and Family Services Act imposes a positive obligation on all Children's Aid Societies to consider using a form of Alternative Dispute Resolution whenever they are working with a family, whether the matter is before the Court.*

*For those cases that are before the Court, the Children, Youth and Family Services Act specifically authorizes the Court to adjourn the proceeding to permit an Alternative Dispute Resolution process to take place. The Act also makes specific reference to the use of an Alternative Dispute Resolution in applications to vary or terminate Openness Orders, again permitting the Court to adjourn the proceeding to allow an Alternative Dispute Resolution to take place.*

*Section 95 of the Children, Youth and Family Services Act references the use of prescribed methods of Alternative Dispute Resolution. The Regulation sets out the five (5) criteria for an Alternative Dispute Resolution method to be a "prescribed" method:*

- a) All Participants must consent to the use of the Alternative Dispute Resolution process*
- b) Any of the Participants must be able to terminate the Alternative Dispute Resolution process at any time*
- c) Alternative Dispute Resolution must be conducted by an impartial facilitator without any decision-making power*
- d) Alternative Dispute Resolution process must meet specified requirements of confidentiality (subject to certain exceptions, no information shared during an Alternative Dispute Resolution process can be used in evidence in a civil proceeding)*
- e) Alternative Dispute Resolution process must not be an arbitration (from "Alternative Dispute Resolutions in Child Protection Cases," a paper presented by Carolyn Leach, Legal Counsel for the Office of the Children's Lawyer)*

#### POLICY REFERENCE

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Department: Cultural Services	POLICY #:
Section: Alternative Dispute Resolution and Aboriginal Approaches	
Subject: Values Guiding an Alternative Dispute Resolution	
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## VALUES GUIDING AN ALTERNATIVE DISPUTE RESOLUTION

### POLICY

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*Families and Children/Youth will be serviced by the Values guiding the Alternative Dispute Resolution:*

- 1. Children/Youth have a right to maintain their kinship and cultural connections throughout their lives.*
- 2. Children/Youth and their Parents belong to a wider family system that both nurtures and is responsible for them.*
- 3. The family group, rather than Mnaasged Child and Family Services, is the context for Child Welfare and Child Protection Resolution.*
- 4. Family groups know their own histories, and they will use that information to construct thorough plans.*
- 5. Active family group participation and leadership are essential for positive outcomes for Children/Youth, but power imbalances between family groups and Child Protection Agency Personnel must first be addressed.*

### POLICY REFERENCE

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Department: Cultural Services	POLICY #:
Section: Alternative Dispute Resolution and Aboriginal Approaches	
Subject: Values Guiding an Aboriginal Alternative Dispute Resolution Within Mnaasged	
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## VALUES GUIDING ABORIGINAL ALTERNATIVE DISPUTE RESOLUTION WITHIN MNAASGED

### POLICY

*Families and Children/Youth will be served using the following Mnaasged Child and Family Services Values and Principle Statements:*

1. *A First Nation, Métis, or Inuit community has a responsibility to its members and Children/Youth that is rooted in Tradition and culture from time immemorial.*
2. *Colonization removed the application of those Traditions and culture, along with the necessary resources for First Nation and Indigenous communities to carry out those responsibilities.*
3. *Throughout the Residential School System, the "60's Scoop," and the "Millennial Scoop" there were generations of Children/Youth who were arbitrarily denied their Traditions and culture, their relationships to family and community, their languages, their names, and their identity. Generations of Parents lost their Children without having taken any action or committing any offense that could justify such an outcome. Entire communities lost the majority of their Children/Youth, and the impact continues to be felt.*
4. *Part of the movement towards Reconciliation between First Nation and Indigenous peoples and governments in Canada requires concrete steps toward Reparation and Restoration, including systemic changes, to ensure that First Nation and Indigenous Children/Youth are never again lost to their communities.*
5. *All decisions affecting the care, safety, and well-being of First Nation and Indigenous Children/Youth must be based in a recognition of this history and must, therefore, ensure that development, maintenance, and strengthening of a family's capacity to care for their own Children/Youth includes the family's support systems from*

*extended family and First Nation and Indigenous communities as partners and as participants.*

## POLICY REFERENCE

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Department: Cultural Services	POLICY #:
Section: Alternative Dispute Resolution and Aboriginal Approaches	
Subject: Types of Alternative Dispute Resolution	
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## TYPES OF ALTERNATIVE DISPUTE RESOLUTION

### POLICY

*All families and Children/Youth will be offered opportunities for an Alternative Dispute Resolution. Mnaasged Child and Family Services will be committed to using Aboriginal Approaches to Alternative Dispute Resolution, Family Group Conferencing, Family Group Decision Making, Talking Circles, and Case Conferencing as appropriate within its Wholistic Service Model. These processes are at the heart of the approach Mnaasged Child and Family Services takes to service and to involve families and Children/Youth in every decision that will be made. Mnaasged Child and Family Services will always honour the Traditions of its people in striving for consensus, wherever possible, while ensuring Children/Youth are kept safe.*

### PROCEDURE

1. Child Protection Mediation is a process where Child Welfare Staff, the family, and any other persons approved by those parties come together with an Impartial Mediator. Although the Mediator does not have any power to impose a solution, the Mediator’s skills are used to assist the participants to explore options and to arrive at a mutually agreeable plan that addresses the Child Protection Concerns identified.
2. A Family Group Conference (FGC) or a Family Group Decision Making (FGDM) brings together family support networks—Parents, Children, aunts, uncles, grandparents, neighbours, and close family friends—to make important decisions that might otherwise be made by “professionals.” These approaches will be used in Child Welfare cases that involve families, with or without an Indigenous heritage, to engage a trained Impartial Facilitator to assist them in arriving at a plan that addresses the issues that first brought the involvement of Child Welfare. The family and the supports have an opportunity to meet apart from the “professionals” to develop a plan that will address the Child Protection Concerns and to meet the non-negotiables identified as requiring action. A Family Group Conference or a

Family Group Decision Making is a service that is coordinated within Mnaasged Child and Family Services' jurisdiction by ADR Link, a Mediation Service, or by its equivalent. A formal Protocol exists between Mnaasged Child and Family Services and ADR Link, and this will be utilized whenever their services intersect.

3. Aboriginal Approaches to Alternative Dispute Resolution is an Indigenous lens to the process, which is a customized approach to a Family Group Conference that may include the use of a Circle, the involvement of Elders as possible facilitators or participants, and the involvement of members of the broader First Nation or Indigenous community as both participants and potential resources. Within Mnaasged Child and Family Services' jurisdiction, all Aboriginal Approaches to Alternative Dispute Resolution cases involve the First Nation Band Representative or the Indigenous Community Representative and are coordinated through ADR Link or its equivalent.
4. Other Aboriginal Approaches to Alternative Dispute Resolution situations in cases involving families who are not part of a member First Nation, and where the family otherwise prefers the use of this type of process, a referral will be made by Mnaasged Child and Family Services to ADR Link or its equivalent requesting the selection of a Facilitator trained in these approaches. When the Referral has been accepted, a Facilitator will be named and will work with the family, the First Nation Band Representative or other Indigenous Community Representative, and other persons named by the family as a support to jointly determine who will be invited to participate.

## POLICY REFERENCE

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Department: Cultural Services	POLICY #:
Section: Alternative Dispute Resolution and Aboriginal Approaches	
Subject: Initiating Aboriginal Alternatives to Dispute Resolution	
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## INITIATING ABORIGINAL ALTERNATIVES TO DISPUTE RESOLUTION

### POLICY

*Mnaasged Child and Family Services will ensure that the Referral Process for Aboriginal Approaches to Alternative Dispute Resolution will be efficient and as seamless as possible.*

### PROCEDURE

1. Formal usage of an Alternative Dispute Resolution approach when using a Family Group Conference, a Family Group Decision Making, or an Aboriginal Approaches to Alternative Dispute Resolution Process will include, but not be limited to, the following:
  - a) High Conflict cases that may centre on custody or access disputes between Parents that have developed a significant Child Protection focus
  - b) Situations, in the opinion of Mnaasged, where there is a significant risk that a Child/Youth will be apprehended if there is no intervention or where a Child/Youth has been apprehended and any Party—Parent(s) and Child/Youth, extended family members, First Nation Band Representative or Indigenous Community Resource—believes it may be possible to find an alternative resolution that will protect the Child/Youth
  - c) Change in placement or discharge from Alternative Care, Customary Care, or Kin Care will be considered
  - d) Youth is being discharged from or transitioning out of Care
  - e) Any circumstance where a decision needs to be made about the future direction of a case if there is a significant difference of opinion or direction among the Parties named above

- f) At any time a Child Welfare Helper may request a consultation with the Alternative Dispute Resolution Coordinator at ADR Link or its equivalent to discuss whether the circumstance might require or be appropriate for an Alternative Dispute Resolution, a Family Group Conference, a Family Group Decision Making, or an Aboriginal Approaches to Alternative Dispute Resolution approach.
2. If the outcome of an Alternative Dispute Resolution Process is not effective, a Referral for a different form of Alternative Dispute Resolution may be initiated.

## CONFIDENTIALITY

1. All information shared by any Party that was part of referring, delivering, or documenting an Alternative Dispute Resolution must be kept confidential and will not be discussed except among the Parties. Any disclosure of information may only occur in the following situations:
  - a) Child Protection Concern will require an intervention to ensure the safety of a Child/Youth or another Party
  - b) Disclosure will be required to address the safety of any person whose life or safety may be threatened
  - c) Consent of the person whose own personal information will be disclosed
  - d) All Parties involved consent to disclosure
2. Non-identifying information may only be disclosed for research or educational purposes, and only in accordance with Mnaasged Policy.
3. A request to initiate an Aboriginal Approaches to Alternative Dispute Resolution Process in a Child Welfare case will occur in several ways. One is where a Child/Youth may become in need of protection or placement. Mnaasged's Assigned Helper will ensure that a discussion takes place with the Parent(s) or Guardian(s) and the First Nation Band Representative or Indigenous Community Representative to determine whether there is a possibility of seeking an alternative approach to address the Child's/Youth's safety or well-being needs within the Child's/Youth's family or community, rather than the Child/Youth entering into Care. If any of the Parties believe there may be an alternative solution, an Aboriginal Approaches to Alternative Dispute Resolution Referral will be initiated with at least one of the Parent's consent.
4. Planning for an alternative approach may occur without parental consent; however, limited information can be shared during this type of process. If the Child/Youth understands the matter and expresses disagreement with the plan being proposed, an Aboriginal Approaches to Alternative Dispute Resolution Referral will be made.

5. If a Child/Youth has been brought to a Place of Safety by Mnaasged, a Referral for Aboriginal Approaches to Alternative Dispute Resolution will automatically be initiated. In circumstances where the Executive Director has determined not to authorize a Court Application, an Aboriginal Approaches to Alternative Dispute Resolution will be initiated within 24 hours of the Child's/Youth's removal.
6. If a plan that was agreed to by all Parties through informal discussions has broken down or has not been followed through, an Aboriginal Approaches to Alternative Dispute Resolution will be considered, and a Referral will be made to develop a new plan or to resolve the issues in the existing plan.
7. Any Party may request an Aboriginal Approaches to Alternative Dispute Resolution to resolve issues that arose out of the involvement of Mnaasged, the family, and the Band Representative.
8. The Assigned Helper will contact the ADR Link or its equivalent to arrange and initiate the Aboriginal Approaches to Alternative Dispute Resolution Process and will complete any verbal or written Referral and documentation processes as required by the ADR Link or its equivalent in initiating, tracking, and completing the Referral and its outcome.
9. Referrals are made to the ADR Link on a form provided by them. Consultation among the ADR Link or its equivalent Alternative Dispute Resolution Coordinator, Mnaasged, and the First Nation Band Representative or Indigenous Community Representative will establish next steps regarding the sharing of additional information that may be required by the Coordinator to initiate, track, and complete the determined Alternative Dispute Resolution approach for the case.

## CHILDREN'S LAWYER

1. If a Society or a person, including a Child/Youth, who is receiving Child Welfare Services proposes that an Alternative Dispute Resolution method or process be undertaken to assist in resolving an issue relating to a Child/Youth or a plan for the Child's/Youth's Care, the Children's Lawyer may provide legal representation on behalf of the Child/Youth if, in the opinion of the Children's Lawyer, such legal representation is appropriate.
2. The Assigned Worker will consult with the In-House Legal Counsel to ensure that a referral to the Children's Lawyer is made on behalf of the Child(ren)/Youth.

## POLICY REFERENCE

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Department: Cultural Services	POLICY #:
Section: Alternative Dispute Resolution and Aboriginal Approaches	
Subject: Talking Circles and Case Conferences	
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## TALKING CIRCLES AND CASE CONFERENCES

### POLICY

*In addition to the formal use of Aboriginal Approaches to Alternative Dispute Resolution, other discussions with family to arrive at decisions should follow similar principles to these Approaches in terms of ensuring cultural relevance, wherever possible. Talking Circles and Case Conferences must not be mistaken for formal situations such as Alternative Dispute Resolution, Aboriginal Approaches to Alternative Dispute Resolution, Family Group Conference, or Family Group Decision Making that must follow a particular structure and process, including facilitation from outside of Mnaasged Child and Family Services.*

*Mnaasged Child and Family Services will include the Original Ways of decision making, conflict resolving, and helping in its relationships with families, Children/Youth, and communities. There are three (3) types of Circles that can be utilized: the Informal Family Circle, the formal Family Circle Gathering, and the formal Tputaawii (Lunaapeew Circle)/U kwe hu we ne ha (Oneida Circle)/Ma-un-ji-it-te-win (Anishinabe Circle). Tputaawii can be translated as "collectively belonging to the people" or "community." U kwe hu we ne ha means "people of the land," and ma-un-ji-it-te-win means "gathering" or "meeting." As each situation is different and each family has its own unique qualities, so too are the size and composition of each Circle.*

### PROCEDURE

#### THE INFORMAL FAMILY CIRCLE

1. Each Mnaasged Helper will have basic training in conducting the Informal Circle to accommodate any request or need for a circle at any time. As such, families can engage in the necessary Informal Circles whenever and wherever they are comfortable to do so. This will help them work toward or set goals for themselves and their Child(ren)/Youth. A

member of the Cultural Team will be present at these Informal Circles when Cultural Services are needed or requested. At this time, the Cultural Team member will listen to the family to determine which Cultural Helping Method will work best for the situation. Many of these Informal Circles will be held during in-home visits as well as utilized in crisis situations. The following will be considered before an Informal Circle can occur:

- a) Composition of the Informal Family Circle will depend on the wishes of the family
- b) Mnaasged Helper will assist in guiding the Circle once all Parties are present
- c) Family may choose to have other relatives, community Elders, community workers, church members, and other supports participate in the Circle Process

### FORMAL FAMILY CIRCLE

1. The Formal Family Circle Gathering is another Original Dispute Resolution Circle. The family will have the opportunity to be together in a facilitated Circle to decide on Child Protection issues in the best interests of the Child/Youth and to formulate a Child Safety and Family Restoration Plan. The Participants will consist of those in a close and supportive relationship with the Parent(s) and Children/Youth.
2. When it is appropriate to do so, a Circle approach may be employed in undertaking a Case Conference. The Facilitator will perform the Circle in a manner that is respectful of the cultural teachings of those involved and that addresses the prescribed outcomes and aims of the Circle.
3. Families can choose to use a bicultural approach to Case Conferencing and Circles, depending on the needs of the Child/Youth and the family. A Case Conference using the Circle principles can be employed to assist the family in any decision-making process. First Nation Band Representatives must be involved for any Child/Youth who has Status or is affiliated with a First Nation community.
4. The Circle is considered part of a sacred nature; therefore, the integrity cannot be compromised. Decisions and plans or goals set in the Circle can only be altered by reconvening the Circle and having the unanimous, or at least consensual, agreement to alter the Original Plan. The Circle can be requested by any family member or Community Service Provider to address any concerns identified throughout the Child Welfare Experience.
5. Aboriginal Approaches to Alternative Dispute Resolution or an Alternative Dispute Resolution should be used in addressing difficult family engagement issues, Alternative Care Planning, and so on whenever a family or a Client requests this type of process.
6. The process will be facilitated; however, the outcomes will be spirit driven. The aim of a Formal Family Circle will be to address the following:

- a) Restore the harmony and balance to relationships among those involved in dealing with the needs of Children/Youth and their families
- b) Restore key Traditional roles and responsibilities
- c) Encourage and strengthen family healing
- d) Not have a prescribed outcome
- e) Have participants be more aware of each other, including each other's needs
- f) Include an Elder, Knowledge Keeper, or Cultural Support person of the family's or community's choosing that will provide guidance and wisdom
- g) Address Child Protection issues
- h) For decision-making processes, an informed family choice will always be respected
- i) Undertake Case Conferences in a manner that is respectful of the cultural needs and teachings of the family
- j) When appropriate, certain relevant ceremonial practices may be used to assist with the Case Conference Process (e.g., use of talking stick)

#### *TPUTAAWII/U KWE HU WE NE HA/MA-UN-JI-IT-TE-WIN CIRCLE*

1. The largest formal Original Dispute Resolution or *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle brings together all the Parties to resolve issues on behalf of Children/Youth when the family is having difficulty making decisions or when the parties involved cannot agree on a plan. The *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle enables Participants strive to find creative solutions that will protect Children/Youth without having to involve a Family Court.
2. If needed, an Advocate will be made available to every Child/Youth in all Formal Circle Processes. Mnaasged recognizes that the Child/Youth has a right to decide on whether to participate in the Circle or have a representative stand in the Child's/Youth's place. The Child/Youth also has a right to be informed of the ongoing progress and activities happening in a Circle on behalf of their best interest.
3. General Steps in a *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle will include the following:
  - a) Mnaasged Staff or a family member will request the need to host a formal Circle
  - b) Tobacco will be offered to the Mnaasged Indigenous Knowledge Manager (IKM) to facilitate the request



- c) Indigenous Knowledge Manager will meet with the team delivering service to the family to discuss the situation, determine the outside Helpers needed in the formal Original Dispute Resolution Process, and set the goals of the *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle
- d) Indigenous Knowledge Manager will establish a time and place for the *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle (with family input) and select an appropriate Facilitator
- e) Indigenous Knowledge Manager will inform the family and the Mnaasged Team working with the family the confirmed time, date, and location of the *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle along with a list of the participants
- f) Original Dispute Resolution Facilitator, the Family Circle of Care Helper or the Children's Circle of Care Helper, and at least two (2) members of the family must be present for the Circle to proceed
- g) Each participant will sign Confidentiality Agreements before entering the Circle
- h) Original Dispute Resolution Facilitator will outline the process to be followed in the Circle, including the guidelines and responsibilities of each Participant. Each Facilitator will have their own way of leading a Circle but usually the same general ways apply for each, such as the movement of the Circle flows in one direction, each person has an equal opportunity to share without interruption, and confidentiality will be maintained
- i) Makeup of each Circle will be different from the next. In many Circles, other Elders, Healers, and Traditional Helpers will be present. The Facilitator will utilize the help and teachings of these people in the Circle if necessary, available, and on agreement
- j) Original Dispute Resolution Facilitator will lead the Circle, having previous training including the use of a sacred object (drum, feather, stone, stick, and so on) in the sharing process
- k) Mnaasged Helper will be present to record the session, handwritten or digital recorder
- l) Completion of the *Tputaawii/U Kwe Hu We Ne Ha/Ma-Un-Ji-It-Te-Win* Circle Form, with all Participants invited to sign the Agreement
- m) Copies of the completed *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle Form will be given to all Participants
- n) Next Original Dispute Resolution (update/progress meeting) may vary and may not be the same size or makeup. The Circles will continue until the Cultural Team determines there is no further need. At this time, a Final/Closing *Tputaawii/U kwe hu we ne ha/Ma-un-ji-it-te-win* Circle will be arranged

## CASE CONFERENCES

1. A Case Conference will take place when there is a need to meet with the family and their support system to address a significant Case Planning issue, such as an Admission or Discharge from Care, and the family does not wish to use the Circle approach. As with Circles, the family may invite persons who they consider support members to attend the Case Conference, including extended family, an Elder, spiritual or religious support, and so on. The family and Helper will discuss whether the input of other parties (school, medical, or collateral) needs to be part of addressing the Case Planning issue and is considered of value.

A Comparison between a Circle and a Case Conference	
<b>Circle</b> Is lead by a trained Facilitator, Elder, or other Traditional Practitioner	<b>Case Conference</b> is lead by a Child Welfare Helper
<b>Circle</b> includes a cultural ceremony, such as smudging or Traditional prayers or guidance	<b>Case Conference</b> may or may not include a cultural ceremony
<b>Circle</b> results in a plan that can be changed with the consent of the Parties (which would ordinarily require a new Circle)	<b>Case Conference</b> results in a plan that can be changed with the consent of the Parties (not necessarily requiring a new Case Conference)

## POLICY REFERENCE

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