

OVERVIEW OF AN EMERGING MODEL OF AN INTEGRATED FAMILY COURT SYSTEM

Paper presented at the
Eighth Australian Institute of Family Studies Conference
Melbourne, 12–14 February 2003

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Introduction

In July 2001 the Family Court of Western Australia (FCWA) in Perth commenced an innovative pilot project to individually case manage matters involving allegations of spousal violence, child abuse or sexual abuse, and family violence where there were significant risk issues – the Columbus Pilot project (Columbus). Columbus has acted as a catalyst for a number of changes as both the judicial officers and counselling service staff developed new skills and knowledge in this very difficult area of family litigation and dispute resolution.

Over the past eighteen months there has been a gradual integration of various external support services and the Columbus process with the result that a potential model of an integrated Family Court system is beginning to emerge. This introductory paper will provide an overview of some of these developments and present some ideas for future developments. The other papers in this symposium discuss aspects of the essential elements of the potential model (the Columbus Pilot and the Mums and Dads Forever post-separation parenting programme) in greater detail.

The views expressed in this paper are those of the two authors and should not be interpreted as reflecting the official policy or views of the Family Court of Western Australia or any other government department or agency. The aim of this paper is simply to promote discussion and give a contextual framework for the other papers in this symposium.

Background

In its advice to the Australian Federal Parliament in 1974 on the ramifications of establishing a separate Family Court in Australia, the Standing Committee on Constitutional and Legal Affairs conceived the new system with its integral counselling services as a "helping court" (SCCLA, 1974:56). Despite the original intention that the Family Court should operate 'without undue formality', there has been an increasing tendency to formalise proceedings not only as a way of dealing with the intense emotion that is so often present but also to imbue an air of authority (Fogarty, 2001:97).

There has been increasing acknowledgement that the adversarial framework so familiar to the legal profession (and which has developed over the past twenty-five years in the Family Court in Australia) is not conducive to cooperative post-separation parenting relationships, and thus not in the child's best interests (Attorney General's Department, 2001; FLPAG, 2001).

An alternative view advocates a broader and more comprehensive approach to the administration of the law. Such an approach involves the use of the 'social sciences' (sociologists, psychiatrists, social workers, psychologists, marriage and family counsellors) to examine the impact of legislation, legal procedure, and the influence that legal actors (judges, magistrates, registrars, child representatives, and legal practitioners) have on the mental and physical health of the people whom they purport to represent or assist (Cooper, 1998; Tesler, 1999; Winick, 1997).

This collaborative approach and its inherent healing effects is conceptualised as 'therapeutic jurisprudence' whereby the legal (Family Court) system itself becomes part of the healing and personal growth process required to counter the disillusionment and bewilderment which are common outcomes of relationship breakdown (Allan, 2001). Therapeutic jurisprudence represents a return to the original idealised concept of the 'helping court' advocated during the formation of the Family Court.

Notwithstanding the changes in terminology of the *Family Law Reform Act 1995*, the emotion and potential for conflict remain as parents adjust to their new post-separation roles and responsibilities (Funder and Smyth, 1996; Harrison, 1999). The *Reform Act* also envisaged a degree of cooperation and communication between separated or divorced parents which, if it had existed, would possibly not have resulted in the parents separating in the first place (Campbell and Pike, 1998; Harrison, 1999).

It is this continuing parental conflict and inability to communicate which is often expressed in repeated reliance on the Family Court systems to adjudicate on seemingly simple parenting or administrative issues (such as variations in contact times or liability to provide transport for contact visits). All of these factors are complicated when there is evidence, or allegations, of domestic violence, sexual abuse, child abuse, or family violence.

The Columbus project in the Family Court of Western Australia has been developed to assist, enable, and encourage separated parents to acknowledge the debilitating effect of these issues and to encourage such couples to resolve their differences without recourse to prolonged litigation. A vicarious long-term outcome of the Columbus project may be an improved ability for the parents either to negotiate the myriad of changes and issues which will inevitably arise as the children grow and mature or at least to know how to seek assistance. This approach, together with relevant alternative avenues for dispute resolution as well as an emerging suite of support and education programmes, is consistent with the notion that the Family Court system can become an agent for therapeutic jurisprudence.

An Emerging Model of an Integrated System

The concept of an integrated Family Court system is not new and many jurisdictions have struggled with the inherent complexities and implications of moving too far from the procedures which have developed over the past twenty-five years (Oregon Judicial Department, 2002; Rhoades, 2002; Williams, 2002). Others such as Geraghty and Mlyniec (2002) have cautioned that enthusiasm for change must be tempered with caution. Experience in Perth over the past eighteen months confirms both of these views but also highlights the possibilities for positive change when the Family Court is able to access a range of external services in direct support of its aim to provide better services to separating parents and better outcomes for their children.

As outlined in Appendix A, there are three components in this system – the Family Court of WA (including the Columbus Pilot project), the Legal Aid Commission (and their ADR programme), together with various government and non-government support and education programmes.

The Family Court of Western Australia (FCWA)

FCWA was established in 1976 as an independent State-based Family Court with its own legislative framework – the *Family Court Act* – that mirrors the *Family Law Act* that applies to the rest of the country. The only FCWA Registry is in Perth but the five Judges and seven Magistrate/Registrars, together with eleven Court Counselling Staff, service an area almost five times the size of France with a population of about 2.5 million people. One Magistrate, accompanied by a Court Counsellor, is ‘on circuit’ to one of six regional centres for most of the year.

FCWA opens about 6,000 new files annually. The Court hears about 3,500 applications for various Orders in respect of children’s issues (primarily contact and residency). Most of these couples are also seen by the Family Court Counselling Service, many on the day of their first Court appearance (FCCS, 2002).

The Columbus Pilot project was developed to assist, enable, and encourage separated parents to acknowledge the debilitating effect of continuing conflict, violence or abusive behaviour and to encourage couples to resolve their differences without recourse to prolonged litigation in the Family Court.

The Columbus Pilot in the Family Court of WA

The Columbus Pilot has extended the concept of individualized case management inherent in the earlier Magellan project (Brown, Sheehan, Frederico and Hewitt, 2001) to include cases where there have been allegations of domestic violence, child abuse, child sexual abuse, or family violence where there are risk issues in respect of the children.

The distinctive features of Columbus are:

- the expansion of the types of matters which are included in the programme;
- proceeds of conferences are not admissible in evidence (privileged);
- cases are individually managed (not just fast tracked) through a series of family conferences which are jointly chaired by a Registrar and a Family Court Counsellor until either a stable, safe contact regime is established or the matter is referred back to the general court system;
- the inclusion of therapeutic services and referrals as part of the conference process.

The Registrars and FCCS staff have agreed that joint case conferencing will continue as standard case management procedure in the FCWA – “Columbus is no longer a pilot, it is a programme of the Family Court of Western Australia” (announced by the Principal Registrar at Columbus Reference group meeting October 2002). (The second paper in this symposium presents some early findings from the evaluation of the pilot project.)

A significant impact of the Columbus project has been the new working relationships that have developed between the judicial officers and counselling staff as they jointly manage the Columbus Conferences. All seven Registrars in FCWA now chair conferences with a designated counsellor. All available Columbus staff have met fortnightly over the past year to review processes and techniques, share experiences, and to develop joint approaches aimed at achieving the best possible outcomes for the clients and their children. This cross-fertilisation of experience and expertise has led to greater awareness, understanding and collegial support among Columbus staff, and to better practice in other spheres of both professions' work.

Integral to the Columbus Pilot has been the work of the Columbus Reference Group which is chaired jointly by the Director of Family Court Counselling and the Principal Registrar. This group of professionals from both government and non-government agencies in the 'Family Court sector' meets quarterly to:

- review the progress of the Pilot,
- suggest avenues for improvement or modification in the programme,
- provide input into the development of inter-agency collaborative Protocols, and
- provide guidance to the evaluation team (who present some of their preliminary findings in the second paper).

Members of the Reference Group have also been instrumental in promoting wider community support together with an awareness of the pressures on the general Family Court system through the Family Court Foundation.

Legal Aid Commission of Western Australia (LAWA)

There are two aspects to the Legal Aid Commission's position in the model. The first aspect is that, in addition to appointing Child Representatives for cases that fall within the guidelines outlined in *Re K*, the Director of Legal Aid undertook to provide a Child Representative for each case allocated to the Columbus Pilot. A total of 150 Child Representatives (of whom about one third were Columbus cases) were appointed to Family Court matters in the past twelve months.

The Child Representative has become an increasingly important participant in the Columbus conferencing process to the extent that they are often acting as the 'broker' in arranging referrals to support services. LAWA is also responsible for appointing Court Experts to report on family dynamics as requested by the Court.

Alternative Dispute Resolution (ADR)

The second aspect has been the development of a comprehensive Alternative Dispute Resolution (ADR) service. In an endeavour to assist as many people seeking Legal Aid to identify their needs at the earliest possible opportunity and to assist a broader range of them to resolve their family law disputes in a fair and durable way without resorting to litigation, LAWA introduced a greatly expanded ADR programme in January 2002 (Brown and Larkin, 2001).

The four levels of this service (creatively named ADR 1, ADR2, ADR3, and ADR4) deal with increasingly more complex issues. The ADR 1 conferences are chaired by a trained mediator and deal with 'simple' contact and residency. The other three levels (which address increasingly

more complex issues and provide for parties to be legally represented) are chaired by experienced legal practitioners. There is provision for Heads of Agreement negotiated during a conference to be endorsed as Court Orders.

This programme has been in operation for twelve months and appears to be achieving positive and durable outcomes in a high proportion of matters considered in each of the four streams. The ADR programme has recently received a State West Achievement Award for excellence in the public sector.

The Family Court Network

The Family Court Network is an evolving body of government and non-government agencies as well as professional and academic bodies.

Department for Community Development (DCD)

The Department for Community Development is the statutory authority for investigating and reporting on allegations of child abuse. Detailed Protocols have been established to enable notifications of suspected child abuse to be expeditiously investigated and reported. In some cases, the DCD Investigating Officer has attended the Columbus conference to report on the outcome of the inquiry and to assist the conference in recommending appropriate action and / or interventions.

Non-Government Agencies (NGOs)

An integral element of the Pilot is the ability of the conferences to refer parents to a variety of support services (such as the Indigenous Conflict Resolution Service), therapeutic services (such as behaviour modification groups or personal counselling), education programmes (such as Anglicare(WA)'s Mums and Dads Forever,) and supervised contact services provided by agencies such as Anglicare, Relationships Australia, and Mother Hen.

Protocols are being developed to allow for some information sharing between agencies with the over-riding aim of facilitating safe, stable contact regimes for children and their parents.

The Columbus Pilot programme (and to some degree the general court process) makes extensive use of these services and many of them are becoming essential elements of the emerging integrated model. The support services depend on a variety of funding sources that are not necessarily linked to court-based outcomes. This is proving increasingly problematic as agencies tailor services to meet the needs of the court without any certainty over continuity of supply. It may be that consideration should be given to having court-linked services funded from a suitably increased Family Court budget which would ensure continuity subject to meeting the requirements of the Court.

The Family Law Network

In addition to the agencies noted above, the Family Court in WA also has an extensive support network represented by the Law Society, the Family Law Practitioners' Association (FLPA) and legal practitioners generally. The President of FLPA also sits as a member of the Columbus Reference Group.

Conclusion

The Columbus Pilot project has acted as a catalyst for change in a number of areas of the Family Court system in Perth. Registrars and counsellors have agreed to extend the Columbus process on a trial basis to matters involving allegations of drug and other substance abuse. This small pilot is scheduled to begin in mid-2003.

The project has led to the Family Court of Western Australia becoming the centre of a number of potential inter-disciplinary research and professional education initiatives involving social scientists, legal academics, and practitioners. These changes have led to practitioners in many areas (registrars, lawyers, counsellors, and agency staff) developing a greater understanding of the Family Court and its processes, and promoting new collaborative working relationships.

All of these changes not only appear to be producing better outcomes for parents and their children but are also encouraging a new model of practice in the Family Court of Western Australia.

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