

# Keynote address: The New Zealand experience

## Better outcomes in family disputes for New Zealanders

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### Principal Family Court Judge Peter Boshier, New Zealand

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Peter Boshier is the Principal Family Court Judge of New Zealand and was appointed to that role on 12 March 2004. Judge Boshier was born and educated in Gisborne and then attended Victoria University, where he graduated in 1975 with the degree of LLB (Hons). He practised law in Wellington, mainly in the areas of criminal, civil and family law and was appointed a District Court Judge specialising in Family Court work in April 1988.

In 1993, Judge Boshier completed a review of the Family Court as a result of a request for an overview of the operation of the Court by Principal Family Court Judge Patrick Mahony. That report has formed the basis of a number of reforms and it features in recommendations for change made by the Law Commission in its report 'Dispute resolution in the Family Court', Report 82, March 2003.

Judge Boshier is also a Youth Court Judge, and sees an important place for both courts to work together where there are young people at risk. Recently, he spent 18 months in the Pacific training judicial officers in Micronesia, Melanesia and Polynesia and so he has a good appreciation of specific cultural issues. Judge Boshier's term as Principal Family Court Judge is for eight years.

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In the twelve-month period between July 2004 and June 2005, 66 499 substantive applications were filed in the Family Court. The breakdown of those applications is as shown in Table 1 (on page 176).

The vast majority of this work involved children. Cases under the Guardianship Act 1968 alone constituted 37.5 per cent of all applications and protection cases under the Children, Young Persons and their Families Act 1989 constituted 16.6 per cent. Domestic violence cases, which most often involve the protection of children who are the victims of violence, accounted for 12.2 per cent.

When there are family disputes and when arrangements need to be made for children, or protection obtained from the Court, what most New Zealanders seek is speedy and user-friendly access to justice.

We know that the majority of cases coming into the Family Court involving children do not require a formal defended hearing from the Court. For instance, of cases brought under the Guardianship Act 1968, those actually requiring an order of the court were around 6 per cent. The number of orders made as a result of defended hearings in which a determination was sought from the Court was even less.

**Table 1 Breakdown of applications to the Family Court, July 2004 to June 2005**

<b>Area of application</b>	<b>Number</b>
Alcohol and drugs	97
Adoption	600
Child support	368
Children, Young Persons and their Families Act 1989	11 036
Dissolution/marriage	10 598
Domestic violence	8 119
Estates	208
Family proceedings	1 120
Guardianship	24 905
Hague	75
Mental health	5 304
Miscellaneous	23
Protection of Personal and Property Rights (PPPR) Act 1988	2 196
Property	1 850

Delay is always an issue for those using the Family Court, and it is corrosive and injurious to the welfare of children. In its report to Parliament on the Second Reading of the Care of Children Bill last year, the Justice and Electoral Select Committee reported on the question of delay:

We note the need for urgency in matters involving children was mentioned by a number of submitters, and this informed our proposed reference to time frames ‘appropriate to the child’s sense of time’.<sup>1</sup>

In its far-reaching report on dispute resolution in the Family Court,<sup>2</sup> of the need for access to justice, the Law Commission said:

The Family Court should be the place where family legal disputes are resolved as quickly [as] possible, in a way that meets the needs of families—especially children.<sup>3</sup>

There is an important emphasis on reduction of delay in the Care of Children Act 2004 and in the Government’s recent commitment to parent information programs.<sup>4</sup>

I believe it is therefore timely to look at how further reforms to our Family Court processes may reduce delay, make access to justice easier for most litigants who will not require a defended hearing, and give better access to justice to those who are most vulnerable and who most need the protection of the Court.

## **The historical position**

The Family Court was created in 1980 as a result of the 1978 Royal Commission on the Courts. The Family Court was seen by the Royal Commission as primarily a conciliation service, with the Family Court attached as a last resort. The Royal Commission described it like this:

<sup>1</sup> Justice and Electoral Committee Report, Care of Children Bill, p. 2.

<sup>2</sup> Law Commission. (2003). *Dispute resolution in the Family Court* (Report 82). Wellington.

<sup>3</sup> Law Commission, *supra* note 2, para 4.

<sup>4</sup> See press release of Hon. Phil Goff, *Parenting programme to reduce separation stress*, 18 June 2005, available at [www.beehive.govt.nz/ViewDocument.aspx?DocumentID=23076](http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=23076) on 25 July 2005

The Family Court concept demands that the Family Court should be essentially a conciliation service with court appearance as a last resort, rather than a court with a conciliation service. The emphasis is thus placed on mediation rather than adjudication.<sup>5</sup>

The Law Commission also discussed this duality required in family dispute resolution in its report number 82 and said:

The Royal Commission on the Courts recognised the conflict between the functions of a court and those of a social agency. It nevertheless considered that the Family Court should undertake conciliation, and aim, where possible, to resolve disputes before embarking on an adversarial process.<sup>6</sup>

To give effect to the Royal Commission's recommendations, the Family Courts Act and Family Proceedings Act:

- established the ability to refer parties applying to the Family Court to counselling<sup>7</sup>
- provided for judges to mediate where disputes did not settle with counselling and before a hearing<sup>8</sup>
- created a Family Court which was informal and with relaxed rules of evidence.<sup>9</sup>

The Guardianship Act 1968 enabled those applying to the Court for orders in relation to the care of children to be referred to counselling under ss10 and 19 of the Family Proceedings Act. The purpose of counselling was strictly circumscribed, as was the ability of a counsellor to report on the outcome of counselling. The relevant provisions are:

#### **Family Proceedings Act s12: Duty on counsellors**

A counsellor to whom a matter is referred under section 9 or section 10 of this Act

- (a) Shall explore the possibility of reconciliation between the spouses, civil union partners, or de facto partners; and
- (b) If reconciliation does not appear to be possible, shall attempt to promote conciliation between the spouses, civil union partners, or de facto partners.

#### **Family Proceedings Act s18: Privilege**

- (1) No evidence shall be admissible in any Court, or before any person acting judicially, of any information, statement, or admission disclosed or made
  - (a) To a counsellor exercising his functions under this Part of this Act; or
  - (b) In the course of a mediation conference.

In a wide-ranging review of the Family Court undertaken for the then Principal Family Court Judge (Judge P. D. Mahony) in April 1993, a committee found that there were conceptual difficulties with the counselling provided by the Family Court, and suggested establishing a separate conciliation service. The essential recommendations in that respect from the committee were:

- to establish a separate and distinct Family Conciliation Service

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5 Royal Commission on the Courts. (1978). *Report of the Royal Commission on the Courts*. Wellington: Government Printer, para 484.

6 Law Commission, *supra* note 2, para 30.

7 Family Proceedings Act, ss10 and 19.

8 Family Proceedings Act, ss13–17.

9 Family Proceedings Act, s164, Family Courts Act, s10.

- that the dispute resolution method employed by the Family Conciliation Service should be mediation, carried out by trained and accredited mediators
- that counselling coordinators should have a key role in the Family Conciliation Service, being responsible for early classification and referral of cases, and public education
- that judges should not be involved in mediation, as currently occurs, but rather explore settlement options at a settlement conference<sup>10</sup>
- that there should be clear delineation that the counselling service is an alternative to an adversarial court hearing, rather than being merely a preliminary.<sup>11</sup>

The Law Commission, in its report number 82, referred to the reasons why it had received a reference, and included in those reasons the comment that:

matters generally take too long to resolve; children suffer because of these delays; and, not all Family Court professionals are properly trained and skilled.<sup>12</sup>

The Law Commission suggested setting up a new expanded conciliation service which should operate out of the Family Court. Specifically, the Commission recommended that:

- a new, expanded conciliation service should operate out of the Family Court. Legislation will have to be amended so services such as counselling and mediation are available for a wider range of matters than they are now
- the conciliation service should include information sessions for guardianship disputes, and referrals for counselling, mediation and specialist counselling
- the conciliation service should be managed by the Family Court Coordinator or Conciliation Service Coordinator
- information sessions and counselling, mediation and specialist counselling referrals will be contracted to groups and individuals but managed by the Family Court, which, along with the Department for Courts, will oversee quality control.<sup>13</sup>

Importantly, the Commission also suggested that:

- conciliation services should be available to all parties who apply, or by court direction
- intake interviews should be available through the Conciliation Service Coordinator, who will facilitate the most appropriate referral to the parties concerned.<sup>14</sup>

The Law Commission suggested that the present Family Court Coordinators should be doubled in number and should undertake the intake interviews and references to conciliation.

Like the 1993 review report, the Law Commission stressed the difference between counselling (essentially therapeutic) and conciliation (essentially agreement forming), something that the Family Proceedings Act 1980 had failed to do properly.

However, the present position remains that parties who enter the Family Court in a range of disputes may seek counselling, but no more. The purpose and extent

10 Boshier, P. (1993). *A review of the Family Court: A report for the Principal Family Court Judge*. Auckland, para 1.

11 *ibid*, para 5.1.1.

12 Law Commission, *supra* note 2, para 1.

13 Law Commission, *supra* note 2, pp. 14–15.

14 Law Commission, *supra* note 2, p. 16.

of counselling continues to be strictly circumscribed. The Care of Children Act provides:

**Care of Children Act s44: Disputes between guardians**

- (1) If 2 or more guardians of a child are unable to agree on a matter concerning the exercise of their guardianship, any of them may
  - (a) request counselling in respect of their dispute under section 65(2); or
  - (b) apply to the Court for its direction.

**Care of Children Act s45: Family Proceedings Act 1980 dispute resolution provisions apply to certain proceedings**

- (1) This subsection applies to proceedings resulting from a spouse, civil union partner, or de facto partner applying for an order under this Act relating to the role of providing day-to-day care for a child of the marriage, civil union, or de facto relationship, or contact with a child of that kind, or both of those matters.
- (2) The following sections of the Family Proceedings Act 1980 apply to proceedings to which subsection (1) applies:
  - (a) section 10(4) and (5) (under which a Family Court Judge may refer the matter to a counsellor, in which case a Family Court hearing generally does not proceed unless either spouse, civil union partner, or de facto partner, not less than 28 days after the date of the reference, requests that the hearing should proceed); and
  - (b) section 19(1) (which, among other things, requires the Court to consider the possibility of a reconciliation between the spouses, civil union partners, or de facto partners, or of conciliation between them on any matter in issue).

While the Care of Children Act has strengthened children's right to participation at the hearing, the Act has not extended any ability to involve children in the conciliation process. This is particularly significant when considering that only a small minority of cases require judicial determination. Only a small minority of children will thus receive any benefit.

While a number of important reforms have occurred in family law, those have not included better access to conciliation and the involvement of children. It is time that these outstanding issues are now addressed.

## Recent reforms

A number of other suggestions made by the Law Commission in its report have been addressed. In particular:

- The views of children and the need to have children better represented in the Family Court have been addressed by the Care of Children Act 2004. In particular, the Care of Children Act states a principle of the Act is to respect children's views and that children must be given a reasonable opportunity to express their views. The role of the lawyer for the child is enhanced, by specifying that a key aspect of their job is to ascertain the child's views and put them to the Court. The Act also aims to improve the communication between the lawyer and child, thereby giving the child greater involvement and better representation. The following provisions illustrate the point:

### **Care of Children Act s6: Child's views**

- (1) This subsection applies to proceedings involving
  - (a) the guardianship of, or the role of providing day-to-day care for, or contact with, a child; or
  - (b) the administration of property belonging to, or held in trust for, a child; or
  - (c) the application of the income of property of that kind.
- (2) In proceedings to which subsection (1) applies,
  - (a) a child must be given reasonable opportunities to express views on matters affecting the child; and
  - (b) any views the child expresses (either directly or through a representative) must be taken into account.

### **Care of Children Act s7: Lawyer to act for child**

- (1) A Court may appoint a lawyer to act for a child who is the subject of, or who is a party to, proceedings (other than criminal proceedings) under this Act.
- (2) However, unless it is satisfied the appointment would serve no useful purpose, the Court must make an appointment under subsection (1) if the proceedings
  - (a) involve the role of providing day-to-day care for the child, or contact with the child; and
  - (b) appear likely to proceed to a hearing.
- (3) To facilitate performance of the lawyer's duties and compliance with section 6 (child's views), the lawyer must, unless he or she considers it inappropriate to do so because of exceptional circumstances, meet with the child.

### **Care of Children Act s55: Content and explanation of parenting orders...**

- (4) A lawyer acting for, or other person representing, a child, must take all reasonable steps to ensure that the effect of an order under section 48(1) is explained to the child, to an extent and in a manner and in language that the child understands.
- A parent information program, strongly recommended by the Commission, has been trialled in Auckland and, as a result of a budget directive, parent information programs will be rolled out nationally within the next year.<sup>15</sup>
  - Delays have been partly addressed by mandatory provisions in the Care of Children Act requiring that orders made without notice be returned to promptly. S57 sets out prescriptive time limits for dealing with certain cases.
  - A family mediation pilot has commenced in four courts to trial the recommendations of the Law Commission that judge-led mediation conferences should cease and that the Family Court should contract mediation services from approved mediators.<sup>16</sup> The Law Commission had recommended:

We believe that necessary professional expertise is better accessed by contract than by attempting to employ fulltime mediators. We foresee a grave risk that the qualifications and training of fulltime mediators

<sup>15</sup> *Children in the Middle*, supra note 4.

<sup>16</sup> Law Commission, supra note 2, pp. 76 and 88.

would be of a lower standard than that of professionals contracted from the wider community.<sup>17</sup>

- The availability of information was partly addressed by the launch of a Family Court website in July 2004. The website contains information for those who may use the Family Court, including how to use the process, forms, decisions and statements of principle. The website is constantly being added to.

## Reforms in Australia

The basis of Australian family law is set out in the *Family Law Act 1975*. Much change has occurred since the initial legislation was enacted.

Very recently, the government released an abstract signalling legislative reform, in which the essential proposals are:<sup>18</sup>

- to set up sixty-five Family Relationship Centres (FRCs) throughout Australia. These are to be separate from the Family Court and offer a community-based disputes resolution service
- that all those wishing to enter the Family Court of Australia will be required, in the first instance, to attend a Family Relationship Centre
- that four hundred million dollars be allocated to set up this service
- that the Centres will be contracted out to existing providers, such as Relationships Australia, and the Centres will provide a variety of services, including an initial free three hours of mediation, some legal advice and the ability to refer on to specialist services
- that where the Centres do not exist, parties wishing to resolve family disputes must attend an alternative agency
- that an exemption may be obtained if a case involves sexual abuse, violence or contravention of a court order. Once evidence of that has been filed in the Family Court, direct use of the Family Court may be made.

The purpose of the setting up of Family Relationship Centres is to divert people away from litigation, emphasise the importance of using community resources, and endeavour to resolve disputes quickly and without the expense of entering the court process.

### *The Australian court conciliation model*

The Family Court of Australia has always had an in-house mediation/specialist service. Each court has attached to it a number of specialist mediators who undertake a dual function of counselling and mediation, as well as preparing specialist family reports for the Family Court.

Most cases entering the Family Court are required to enter a resolution phase, which is undertaken by registrars and the mediators to whom I have just referred. A case assessment conference is the first event, at which both a legally qualified registrar and court mediator sit with the parties and their legal advisors to define the issues and decide on the way forward. The next event is a conciliation conference, where again the registrar and mediator endeavour to assist the parties to come to an agreement.

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17 Law Commission, *supra* note 2, para 52.

18 See Australian Government. (2005). *A new family law system: Government response to 'Every picture tells a story'*, and Family Law Amendment (Shared Parental Responsibility) Bill 2005 (Exposure draft, 23 June 2005).

If this resolution phase does not settle a case, it enters the determination phase and then awaits the allocation of a trial notice, filing of affidavits, and subsequent trial.

There are significant delays between the end of the resolution phase and trial. Presently, these stand at about twelve to sixteen months.

Family Court litigants are also encouraged to use, at their own expense, non-court counselling and conciliation services. The ability of Family Court mediators to assist in therapeutic counselling and conciliation is, of course, limited by their numbers and the number of cases coming into the court.

### *Further Australian reforms*

In a paper entitled *Integrated model for child dispute services*, Dianne Gibson, the Principal Mediator of the Family Court of Australia, is proposing a revamp of the structure of the conciliation process of the Family Court (see also her paper in these proceedings). This is, of course, in part driven by the government's wish to create Family Relationship Centres and to move the emphasis of conciliation to outside the Court. The aim of this restructuring is to synchronise the Family Relationship Centre process with that of the Family Court:

To ensure a logical progression of services for families from the community sector to Family Courts, the new child disputes model would be non-privileged and include expert assessment and opinion to families, legal practitioners and the Courts, in a way that is not available in the community models.<sup>19</sup>

The principal mediator proposes the structure shown in Figure 1.

### *The Children's Cases Program*

Largely because of delays in reaching determination once cases enter the determination phase, and because issues were not being defined early enough, the Australians are trialling a non-adversarial method of resolving disputes in children's cases, called the Children's Cases Program (CCP). The pilot is running in the Family Courts at Sydney and Parramatta and is shortly to receive an interim evaluation. A preliminary look at the results available so far shows the CCP has decreased the costs to the parties, achieved a more efficient and productive use of judicial time, and reduced the number of appeals in children's cases.<sup>20</sup> The final evaluation will occur in March 2006. However, the government has already signalled in the discussion abstract that it intends to legislate to facilitate formal recognition of the non-adversarial method of dispute resolution.<sup>21</sup> The essential nature of the program is set out in a practice note issued by the former Chief Justice, the Honourable Alistair Nicholson, in *Children's Cases Program*, Practice Direction, No. 2 of 2004, 1 March 2004. The steps involved in this process are:

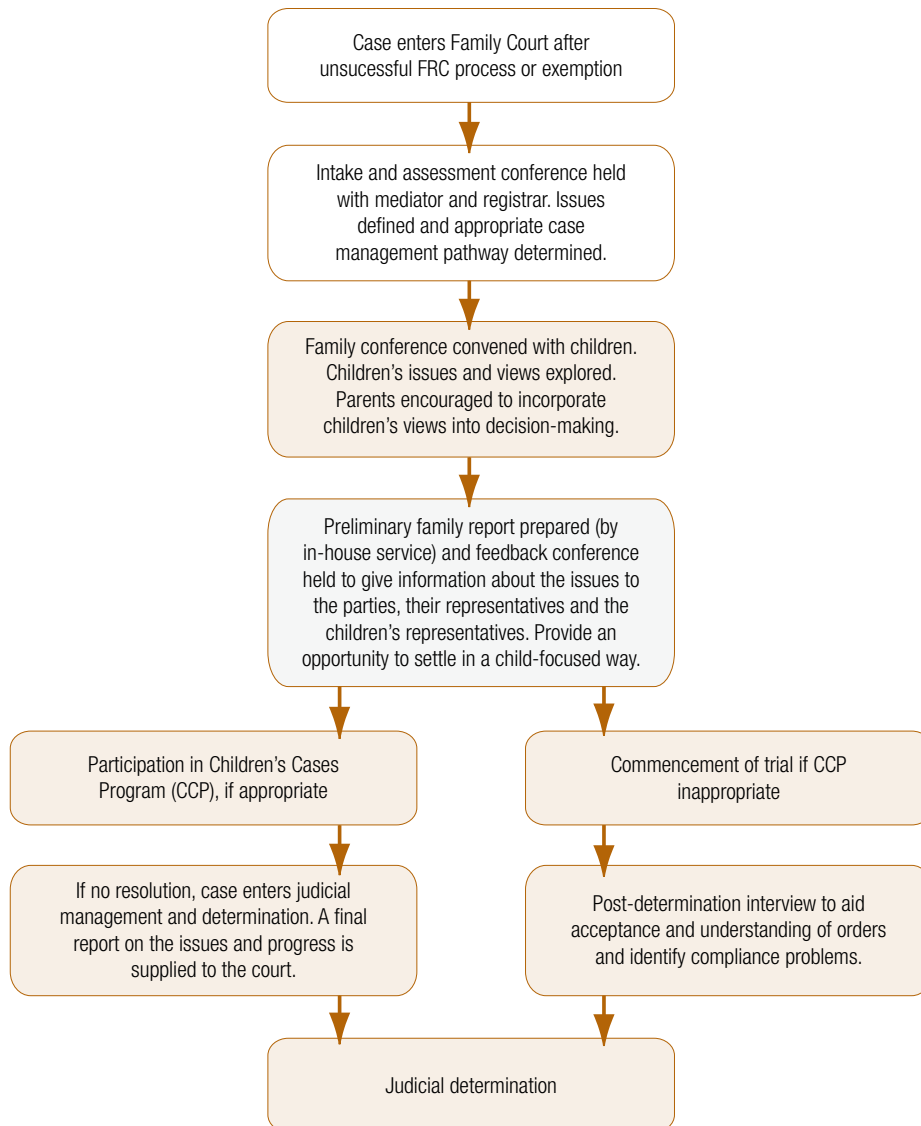
- Case enters the Family Court and receives an intake hearing before a judge within six weeks.
- Questionnaire filled out by parties stating positions and defining issues. Consent to process given.

<sup>19</sup> Gibson, D. (2005). *Integrated model for disputes services*. p. 1.

<sup>20</sup> Meredith, G. (2005). *The Children's Cases Program Pilot: Was it a success and is it the way of the future?* *Australian Family Lawyer*, 18(2), p. 11, at p. 14.

<sup>21</sup> Australian Government. (2005). *A new family law system: Government response to 'Every Picture tells a story'*. p. 15.

Figure 1



- Case is called in court and presided over by a judge, with a Family Court mediator also present. Child representative appointed and present.
- Parties are sworn and advised that everything said thereafter will be regarded as evidence.
- Parties are asked to state their positions simply to the judge. The judge hears the facilitator of the case and defines the issues and suggests possible outcomes.
- At any time a judge may make a decision on a particular issue.
- If evidence is required to be tested, a hearing is allocated for that purpose and questions are asked of witnesses. However the judge defines the evidence to be called and the method of testing it.
- At the end of the process, when final determination is given, the decision or other decisions already given may be appealed.

The purpose of the program is to:

- reduce delay
- remove the filing of irrelevant evidence
- ensure that the issues litigated are relevant and important to the children
- provide due process and fairness, but primarily by enquiry and only through testing the evidence by traditional means, if actually required.

I mention these reforms occurring within Australia for two reasons. The first is to identify that the issues they are facing are very similar to those that we face here. The second is to describe the processes that the Australian Government has decided to adopt to deal with changes that it wishes to see in the family law structure. It is useful to have regard to what is occurring in Australia as we look at what is happening in our country and how we might do things better.

## Refining the New Zealand process

Better processes could be created for New Zealanders using our Family Court. These can occur in both an improved conciliation service and in a better use of the Family Court itself.

I do not believe that these should be the same models as the Australians are adopting. Our needs and experiences are quite different. We are both trying to achieve similar objects in making dispute resolution more accessible and reducing delays both before and in the course of the court process. But I think we should do it differently.

Our ‘counselling service’ is out-of-date, in both name and approach. Speedier and more enduring resolution can occur with a refined service, which incorporates the soon-to-be set up parent information programs and the piloting of the non-judge led family mediation service.

### *A new conciliation service*

It may not matter whether a conciliation service is a standalone structure, as recommended in the 1993 review report, or remains a part of the Family Court. The important thing is that it is enhanced and is distinctly different from the Family Court itself. The Law Commission recognised that it is crucial for the two processes to be distinct, to ensure they each provide the resolution method they are intended to—being conciliation or adjudication—and that the parties have a realistic perception of the differences. The Law Commission put it in this way:

We believe conciliation must be clearly delineated from processes leading to adjudication. One process must not bleed into the other.<sup>22</sup>

For purely pragmatic reasons, it may well be best to run the service from court precincts and to build upon the expertise and experience of Family Court Coordinators.

The process might look like that shown in Figure 2.

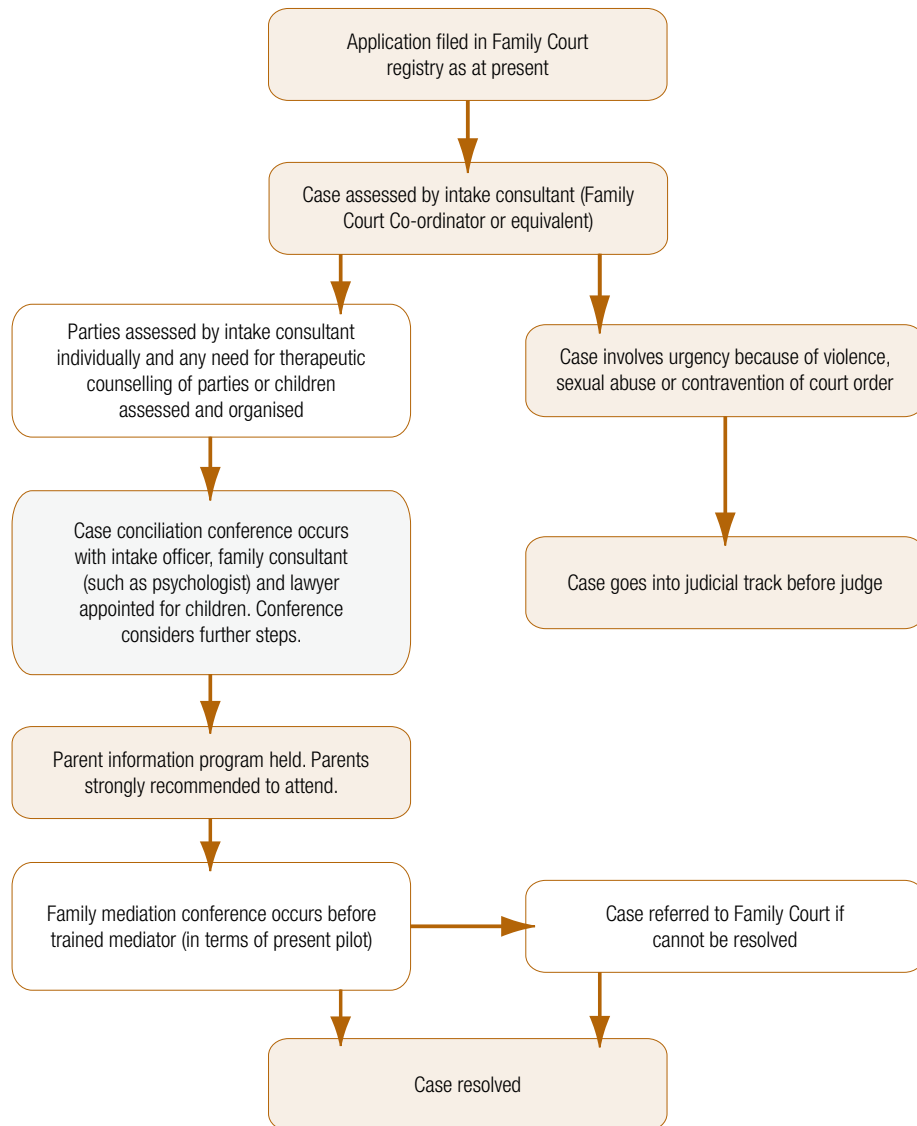
### *Court management*

Cases that enter the Family Court, either because of demonstrable risk, or unsuccessful resolution in the conciliation service, should be not only managed by members of the Family Court staff (called Case Officers), but also by legally qualified registrars

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<sup>22</sup> Law Commission, *supra* note 2, para 41.

**Figure 2 A new conciliation service, New Zealand**



who have experience in family law and who have the confidence and ability to attend to a range of more demanding administrative tasks.

Registrars in Australia have long had the ability to undertake the following types of tasks:

- make a parenting order in an undefended case
- make an order for child maintenance, or vary or discharge a child maintenance order
- make an order for the recovery of arrears due under a child maintenance order
- make a location order
- make an order to deliver up a passport to a registrar until further order
- make an order that a child be made available for psychiatric or psychological examination
- make an order in relation to the parentage of a child

- make, vary or discharge a spousal maintenance order or approve a maintenance agreement.<sup>23</sup>

At present, Family Court judges in New Zealand routinely undertake administrative 'box work' which includes an enormous variety of sometimes menial tasks. I refer to permitting summonses to be issued, making references to counselling and signing off interlocutory applications, such as abridgement of time. Although Family Court staff have the ability to undertake many of these tasks, most do not do so because of other calls on their time and a perception that their pay structure does not promote the exercise of this responsibility. Some examples of existing powers that are not fully utilised are based on the following provisions:

**Family Court Rule 12: Powers of Registrars under rules**

- (1) A Registrar has all the powers of a Judge to do any of the following if, and to the extent that, these rules authorise the Registrar to do any of the following:
  - (a) hear and determine any proceedings;
  - (b) make any direction or order.
- (2) Nothing in this rule
  - (a) authorises a Registrar to commit a person to a penal institution or to enforce an order by committal;
  - (b) limits any right of review by a Judge of a decision of a Registrar.
- (3) An order made by a Registrar under these rules has the same effect, and is enforceable in the same manner, as if it were an order of a Judge.
- (4) An order made by a Judge may be signed by a Registrar in his or her own name and description.

**Family Court Rule 50: Witness summons**

- (1) A party to proceedings may ask a Registrar to issue a witness summons in form G 18 for a person if the party wants the person to attend any hearing of the application and
  - (a) give oral evidence in accordance with a Judge's direction under rule 48;
  - (b) produce any document relating to a matter in question in the proceedings in the person's possession or power.
- (2) On receiving a request under subclause (1), the Registrar must issue to the party the witness summons and a copy of it.

**Family Proceedings Act s9: Requests for counselling**

- (1) Either party to a marriage may request a Registrar of a Family Court to arrange counselling in respect of the marriage...

The Law Commission favoured registrars being used to a greater extent, both in terms of exercising those powers they already have, and taking on further responsibilities to better make use of judicial time. The Law Commission said: 'Registrars are not currently exercising their jurisdiction to the full'<sup>24</sup> and 'If registrars could undertake some of the tasks performed currently by judges it would make more time for judicial task that cannot be delegated'.<sup>25</sup>

The Commission also stated that if registrars are to be given greater responsibility and workload, this must be recognised. The expanded role cannot simply be incorporated into the existing structure. More experienced people would be required, and they would need to be paid more. The Law Commission put it:

<sup>23</sup> Principal Registrar. (2005). *Registrar powers and role: Information package*. (12 July).

<sup>24</sup> Law Commission, *supra* note 2, para 459.

<sup>25</sup> Law Commission *supra* note 2, para 458.

If demands on judicial time are to be reduced by expanding registrar's powers and alternative dispute resolution, the heavier work load that this will place on other Court staff must be recognised.<sup>26</sup>

Adding in this further ingredient into the Family Court process, and better utilising those powers already available, is an essential part of achieving better access to the Family Court for New Zealanders.

The creation of legally qualified registrars to process a number of interim and procedural steps will speed up the process and relieve judges of enormous administrative work. This would enable better concentration on the core business of high-risk cases.

### *The judicial process*

Where allegations of sexual abuse are made, rights of both children and parents can be affected forever and it is important that these cases are resolved speedily. The same applies where allegations of violence are made or where one of the parties is interrupting good parenting. Delay is the single greatest injurious factor in such cases.

Only children's cases involving risk to welfare of children should enter the Family Court directly and be closely managed and determined by Judges.

Just as the Australians are trialing a Children's Cases Program, so also ought we to trial a Care of Children Programme, the essential steps of which will be as show in Figure 3.

### *Adding to public information and access*

Many New Zealanders who have family disputes will learn more about the Family Court as a result of parent information programs and accessing the Family Court website. Many others will, of course, continue to use Family Court lawyers and consult Citizens Advice Bureaus, as they have in the past.

However, a characteristic of many Family Court litigants is anxiety and pre-occupation with the crisis that they are in. Many calls are made directly to the Family Court seeking advice or information. It is very difficult for Family Court registries to address this, in view of the primary requirement to run the courts and to attend to the management of files.

A further essential ingredient in a successful new Family Court model will involve setting up a call centre. The Law Commission made this recommendation in its paper, *Dispute resolution in the Family Court*:

Consideration should be given to an 0800 telephone number for information, advice and referrals to community services and lawyers.<sup>27</sup>

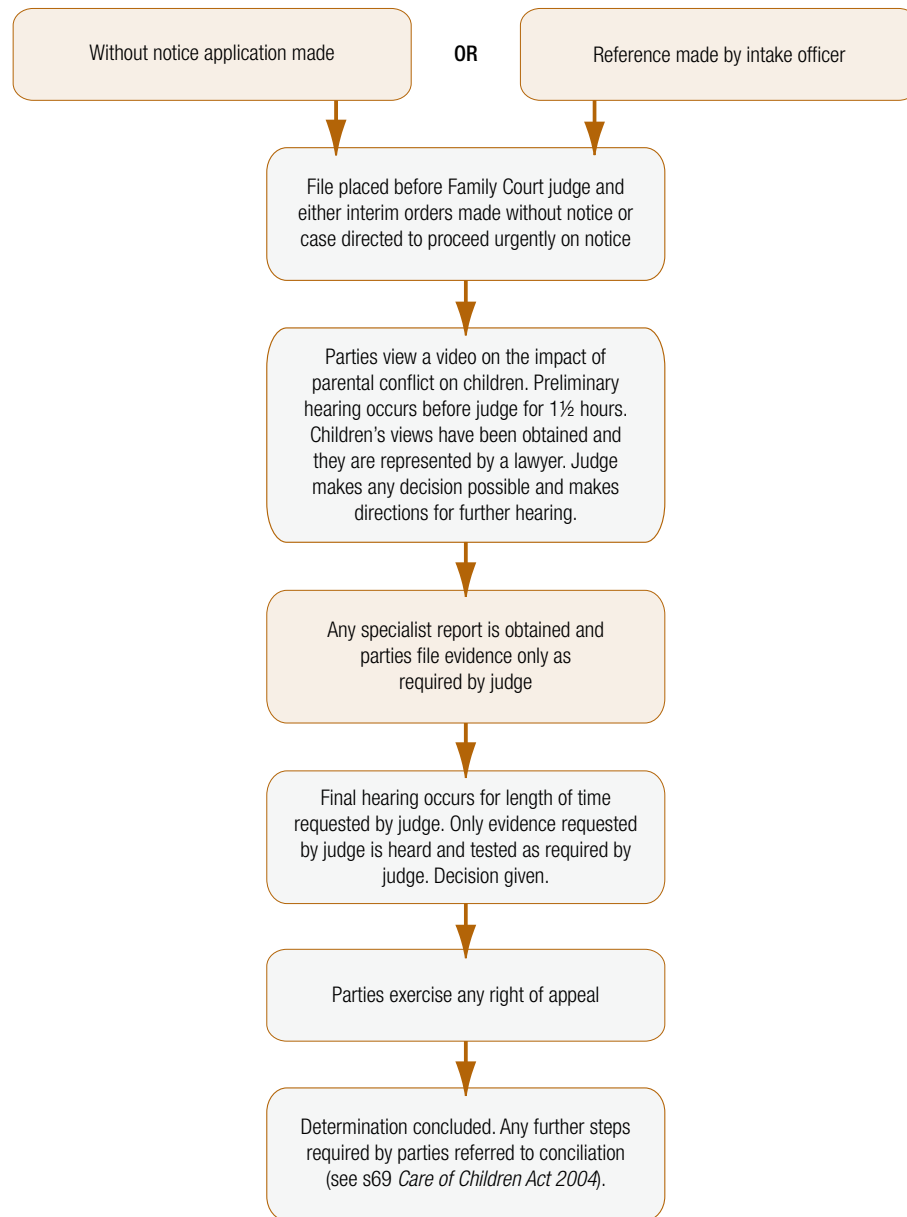
A call centre can provide easy access to information for the public, while making more efficient use of existing court resources. If the conciliation service is to remain a part of the overall Family Court structure, it will be necessary to create better access to information for those wanting initial advice. In short, enquiries need to be answered from those seeking a reference or guidance on what to do next.

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<sup>26</sup> Law Commission supra note 2, p. 101.

<sup>27</sup> Law Commission, supra note 2, p. 195.

Figure 3



Other government departments have acknowledged this and run successful call centres. The Ministry of Justice Collections Service, Department of Inland Revenue, Department of Child, Youth and Family Services, and Accident Compensation Corporation are examples.

The Family Court of Australia has also recognised this and begins a call centre on a trial basis, for New South Wales, early in 2006. It is appropriate that we too give real consideration to the provision of such a service.

Another modern and important way of communicating with the public is through a user-friendly and comprehensive website. Many government departments in New

Zealand use this facility well. We have commended the building of a Family Court website in New Zealand, but it is well short of what is required to:

- convey information easily
- provide forms and information that enable people to use the court system effectively
- give regular updates on developments of interest
- give access to cases which can be easily searched in order to provide guidance on issues.

Our Family Court website was based on the initial website developed by the Family Court of Australia. Their website continues to be improved and has now left ours well behind (see their website at [www.familycourt.gov.au](http://www.familycourt.gov.au)). A commitment to maintaining a truly effective website is now required.

## Conclusions

The Family Court of New Zealand model has been successful, so much so that the jurisdiction of the Court has grown enormously. Most originating work initially undertaken by the then Supreme Court and now High Court involving family law is now done by the Family Court.

If good access to justice—so fundamental to a democracy—is to continue, refinements must be made to the Family Court process, to maintain confidence and to give effect to Parliament’s wish that delays be reduced.

By refining and expanding the conciliation service, and by providing enhanced resources to the Family Court by introducing a more deliberate method of resolving Family Court cases that require judicial determination, better outcomes can be achieved for New Zealanders with family disputes.

I think it will be apparent to you that some of the changes I am suggesting are a refinement of the court process and can be introduced through judge leadership and cooperation with the Family Court Bar.

However, some other reforms that we might introduce, and I talk in particular of an expanded conciliation service and more comprehensive access by children to counselling, will require legislative amendment.

It is, of course, not my function to suggest that change should occur and give rise to an expectation that that will follow. That is clearly a legislative function, not mine. However, I do think it is my responsibility to highlight the themes that are now so common amongst us, and that is that the way we do things can be done better and that we should be all trying to achieve that. Legislative endorsement is vital to this process.