



The New Zealand Centre for Political Debate

Disgruntled Dads and the Family Court

In the past few weeks I have fielded a series of queries by reporters asking why fathers are protesting about the Family Court. Suddenly the matter is newsworthy, and, just as suddenly, the phase will pass. That is the ephemeral nature of news.

Fathers' concerns are ongoing and serious, and they are important for society as a whole. They deserve to be treated to careful deliberation over an extended period, not as short term entertainment. Four years ago I published an Issues Paper addressing exactly the same question. [*Inclusion or Exclusion II: Why the Family Court Protests?* June 2002, available from: <http://econ.massey.ac.nz/cppe/papers/cppeip12/cppeip12.htm>] Little has changed since that time, and people seem scarcely any more informed.

A major concern is the off-hand way men's concerns about the Family Court are dismissed. Neil Billington has the title, Senior Judicial Communications Adviser. In *Metro* of September 2001 he belittlingly set aside such concerns as those of "disaffected litigants". In the *New Zealand Herald* of 9 May 2006, he talked of "disgruntled fathers". You would be struggling to find examples of the Family Court acknowledging that some fathers may have legitimate concerns. Even where there is now some recognition that children may be alienated from a parent (something long ignored), and that Court action has lifelong effects, the Court does not mention the damage caused by past mistakes or misguided decisions.

It is said that the Family Court is secret. It is not. There are severe restrictions on reporting on individual cases, but there is a lot of information about the thinking in, and operation of, the court. There are articles the *New Zealand Family Law Journal*, and decisions published the *New Zealand Family Law Reports*.

There are papers on family law presented at law conferences available in some libraries, and key speeches can be found on the Ministry of Justice web: : <http://www.justice.govt.nz/family/media/speeches.html>. Media releases from the Family Law section of the New Zealand Law Society are available at: <http://www.familylaw.org.nz/media/media.asp>. A notable book, edited by Mark Henaghan and Bill Atkin, *Family*

Law in New Zealand, is in its second edition. I have even written some critical commentary myself, including several pieces in the *New Zealand Law Journal*.

All this writing is very revealing of the thinking and degree of understanding of people working in family law. However, we see very little debate between those people and those evaluating family law and the Family Court from the outside. Neil Billington's language is indicative of the defensiveness of those who have such a great say in many people's lives. It is puzzling to me that issues of business and finance can be handled in the media by focusing on the issues and factual information, but all too often issues of family, family law and gender focus on the personal angle. They are treated as "human interest" stories, with an emphasis on emotion, seldom addressing the issues.

A common comment is that, faced with some given situation, such as over who should care for a child, it is hard to see what other decision could be made. It was expressed in a speech by one Family Court Judge with a question something like, "Who would come to a different decision on which parent should have custody?" What the Judge did not see was that the question might have been wrong. Giving one parent custody (as it was then termed) meant that the other parent's was being removed from an active parenting role. An alternative question might have been, "Who could decide that it was in the best interest of the child to be denied a parent?" Alternatively, it could be asked, "Is it good for a child that one parent should have the power to exclude the other parent from that child's life?" If those in the Court do not see these questions, how can they understand the feelings of fathers who have been excluded in this way?

It is also often said that a central aspect of our laws is that a person is innocent until proven guilty. It has to be demonstrated that a person is guilty, rather than requiring an accused person to demonstrate innocence. That is patently not the case in relation to the Domestic Violence Act. You do not have to take my word for it. See for yourself: (<http://www.courts.govt.nz/family/pamphlets/html/courts001v2.html>), or the police web site here (<http://www.police.govt.nz/safety/home.domesticviolenc>

[e.html](#)). Note that the judge does not have to see the applicant before making an order, the respondent may not know that an order has been made until told by a bailiff. It is then up to the respondent to oppose the order before it is automatically made permanent.

The Women's Consultative Group of the NZ Law Society has stated, in a submission: (http://www.lawyers.org.nz/wcg/submissionsdiscussfiles/battered_defendants.html), "At the heart of the current law on domestic violence in New Zealand, as embodied in the Domestic Violence Act 1995, lies a very simple concept: domestic violence is about the use of power by men to control their women partners". This is based on the Duluth patriarchal power and control model, which has been so influential as to dominate policy over all alternative approaches. It has a major failing, however. Numerous large-scale studies have found that women are as likely to be violent as men, and in many cases when one partner is violent, the other is also.

We could ask more generally whether the people who are employed to address family law matters are properly trained, not just in terms of domestic violence, but in the whole range of issues surrounding family relationships, care of children, relationship property, child support, and so on. Proper training requires a theoretical and practical knowledge of several areas of psychology, sociology, social work and economics, in addition to law. We might consider brain surgeons to be very intelligent, but we might be reluctant to have one fix our car. Similarly, even an intelligent lawyer may be poorly suited to deliberating on family matters. At the same time, other specialists may also have limitations. There may be a big difference between the way a psychologist, say, might

interact with and assess a client, and the perspective required to obtain suitable evidence for a court. In addition, while courts may be able to make decisions on specific, one off situations (such as a crime, or the interpretation of a contract), it is far more complicated to address issues such as parent-child relationships, which consist of numerous small events spread over years, and which change and evolve as people grow and other life-events occur.

It is prudent to recognize the limitations of our knowledge and abilities. Such limitations, if accepted, should lead us to be cautious about significant intervention in people's lives. Otherwise we run the danger of large, unforeseen and possibly very costly consequences. Moreover, we should not assess the influence of the Family Court by looking at individual cases alone. There can be serious, long-term effects on society as a whole, not least in terms of the signals being given about behaviour, about the nature of families, about relationships, and about the law.

There are issues I have mentioned here about which debate has hardly begun. That is unfortunate, because they are not new. Perhaps that is why some fathers are taking action. One reporter asked me if there was any point to the protests. I said to him, "But for them, you would not be talking to me now."

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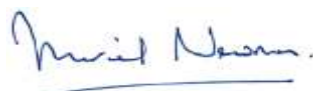
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Regards

Muriel Newman

(founder & director of



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