Winston Churchill Memorial Trust Report

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CHILD - INCLUSION IN DISPUTE RESOLUTION IN BRITAIN

In order to outline the outcomes of my visit to the United Kingdom as a Churchill sponsored Fellow, I will briefly examine the context which gave rise to the questions which informed my visit.

My work in New Zealand is that of conciliation counsellor and researcher. In this role, I receive referrals both privately and from the Family Court to work with parents who are separating.

In New Zealand, under the Family Proceedings Act 1980, legislation entitles those applying to the court for resolution of relationship and child care issues up to six hours of counselling in an attempt to resolve disputes outside more formal legal processes.

It has come to my attention, over many years of practice, that many parents wish for the involvement of their children in the counselling process. Under the Family Proceedings Act there is no legal mandate for children to be seen, although the Family Court Matters Bill, now tabled before parliament, will allow step parents and grandparents to be part of the counselling.

There are significant gaps in New Zealand's current research field regarding the connection between family law intervention and its impact on the wellbeing of children and their families. In particular, there are gaps in the research on how and when children's voices should be heard.

Principal Family Court Judge Peter Boshier (2005) commented:

"While a number of important reforms have occurred in family law, those have not included better access to conciliation and the involvement of children. Perhaps it is time for these outstanding issues to now be addressed. Reforms we might introduce include more comprehensive access by children to counselling and this will require legislative amendment".

Strong recommendations about including children's views at the earlier (counselling) stage of the Family Court process have been made for some considerable time.

Following the 2003 Commission of Inquiry into Dispute Resolution, Section 6 of the Care of Children Act 2004 enhanced the ascertainment of children's views at proceedings. Given however, that the vast majority of parenting disputes over children's post-separation care arrangements settle at earlier and less formal stages of dispute resolution, the vast majority of children are not currently being given an opportunity to express their views. This not only runs counter to Article 12 in UNCROC, but is also an

enigma in a country renowned for its pioneering of child inclusive Family Group Conferences (CYPF Act 1989).

I am currently receiving many "word of mouth" referred requests from separating parents who believe in the value of child inclusion, but for the overwhelming majority of the New Zealand community general access to such a professional service is not available because there is no government funding nor legislative mandate .It is surprising that the Family Court Matters Bill will allow step parents and grandparents to be part of counselling, but not children.

The focus on what contributes to child adjustment to divorce and separation is now superseding the more traditional concerns of the long-term impacts of separation and divorce, such as depression, unstable adult relationships and compromised circumstances. (Hetherington and Kelly 2003, Long and Forehand 2002). Rather than examining these latter effects, current research is centering increasingly on the ongoing distress children experience when exposed to conflict between parents at the time of separation. Such conflict is shown to seriously compromise child mental health (Kelly 2000, McIntosh 2000, Pryor and Rodgers 2001). Hence it appears the transmission of risk lies less in the divorce per se, but in the degree and extent of the conflict surrounding the separation (Cummings and Davies 2002; Kelly 2000).

The ability of parents to nurture and protect their children diminishes markedly over separation and the year or two following. (Amato 1994; Lamb, Sternberg and Thompson 1997). This diminished parenting capacity is caused in part by such factors as a higher incidence of physical and psychological problems, task overload, economic distress and unresolved relationship issues and the net result is that parents often get out of touch with their children's emotional needs and hence, parent-child communication declines. Consequently, far from being able to help their children over this time, parents often inadvertently add to their children's stress.

In 2006, I received funding from the Families Commission to run a pilot study with seventeen separated families referred from the Auckland District Court for child inclusive mediation. The Commission subsequently published my research report entitled *"Hello,I'm a voice, let me talk: Child inclusive mediation in family separation"*.
(http://www.familiescommission.govt.nz/download/innovativepractice-goldson.pdf)

The early timing of the child-inclusive counselling intervention, along with a methodology *which allows children to participate with both parents at strategic points of the process*, contributed to the overwhelmingly positive findings in my pilot study. It can be provided for only minimal extra cost (eight sessions instead of the currently funded six) and has attracted favourable comment and citations from professionals here and overseas, as well as from the participants themselves. The steep decline of engagement in further legal processes and an implicit component of divorce education are further features which have added to the success of the intervention.

As a result of this publication I was awarded, in June last year, an AFCC (Association of Family and Conciliation Courts) scholarship to attend their 44th International Conference

in Washington DC. Judge Boshier invited me to present my work on an international panel at that conference.

I believe it is likely that New Zealand will follow other countries (eg Canada, United Kingdom, United States of America and Australia) in developing child inclusive family law practices as a result of the favourable empirical findings. We can therefore expect amendment of our law to accommodate this new service.

The importance of the investigation into other forms of child inclusive mediation cannot be overestimated. Amongst the key outcomes of child inclusive practice, as described by overseas researchers and replicated in my New Zealand research, are: the vital importance of clear emphasis on the child's needs and a parenting focus during negotiations between the parties; empowerment of the child by increasing his or her knowledge of the situation; improvement of child-parent communication; an increase in the likelihood that children are aware of parental co-operation; an enhancement of aligned parental view and significant improvement in the quality of the resultant parental agreement. (Goldson, 2006).

Parents who settle outside court determination, whilst avoiding the strain of a defended hearing, are not provided with the means to protect their ability to parent from the stresses and trauma of separation. Significantly, neither are their children.

A common sense solution, which is informed by evidence based research, could reduce the incalculable cost of distressed children and their parents.

Conflict at separation can and does take place outside legal processes and symptoms expressed by children and young people may be the only sign to schools, youth justice and the community at large that the ensuing psychological damage is a public health issue. Furthermore, such intervention would go a long way towards modifying the expenditure on protracted dispute resolution and defended hearings.

Thus my receipt of a 2008 Winston Churchill Memorial Trust Fellowship to visit child inclusive family law practice models in the United Kingdom has given me the welcome opportunity to visit sites in the United Kingdom where dispute resolution schemes are actively involving children in the intervention.

My key questions were about the range of models being used currently in Britain and the results being shown as a result of these interventions.

I was also interested in the relevance of such models to the New Zealand context and the training used in the United Kingdom for the use of such intervention. Such information has given me the material to make recommendations pertinent to the current New Zealand context.

I gathered my knowledge by initially making contact with the CEO of Cafcass, Anthony Douglas. Cafcass (Children and Family Court Advisory Service) is the major organisation in Britain supporting and representing the children going through the family courts. The organisation deals with public law cases (where social services are involved and children may need to be removed for their own safety), adoption cases and private law where parents are separating. It is this latter area that was the focus of my research visit.

Three million of the twelve million children in Britain will experience the separation of their parents in childhood; this is six hundred and fifty children per day, with two thirds under the age of sixteen.

A small but growing minority of parental separations involves court proceedings to make residence and contact arrangements. Residence and contact orders are made under Section eight of the Children Act 1989 where the court considers this necessary to promote and safeguard the welfare of a child (usually where there is a dispute between parents about arrangements). Section seven of the act gives provision for a report to be written for the court by a Cafcass Family Court Adviser (FCA)

Practitioners working with children and families and since 2001 have a duty to give due weight to the wishes and feelings of the child concerned. The importance of hearing the views of children is strengthened by rule 9.5 of the Family Proceedings Rules, 1991, which allows the court to make a child a party to Section eight proceedings. The requirement to ascertain the children's wishes and to provide them with representation is laid out in the United Nations Convention on the Rights of the Child (to which New Zealand is also a signatory) which states that children and young people shall be "provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or body".

Cafcass practitioners, known as Family Court Advisors (FCA), are all social work qualified and are almost exclusively recruited from local authorities. Typically the FCA's have between three to ten years post qualifying experience before joining Cafcass and all receive induction training on joining. This is a five day course covering all the roles they will be asked to act in, that is in public law, private law and adoption work. This is a national programme with no variations. Further to this there are mandatory training programmes in domestic violence which every practitioner and administrator has to attend. Other national programmes include training on national standards and dispute resolution casework. From April 2008, each member of staff will have their own continuous professional development budget in which training or books can be purchased directly. On average, Cafcass practitioners will receive between ten and fifteen days training per year. As an organisation, they are independent of the courts, social services, education and health authorities. They have close working relationships with senior politicians, judges, including the President of the High Court Family Division, Sir Mark Potter, and all other key agencies.

Many of the service and practice developments in Cafcass are new child inclusive practice tools of wider international relevance e.g., the Needs, Wishes and Feelings Resource pack; a Court Life Record for children; use of impact statements and the currently development of online services such as facilitated dispute resolution for children young people and their families. Also in place is a peer mentoring service for children provided by trained peer mentors who are young people themselves.

My research interest was finding out about some of the dispute resolution schemes which Cafcass is offering.

Intervention in dispute resolution in the United Kingdom takes place at the time of a First Directions Hearing in court where the parties to the dispute, and their legal representatives, are present. Dispute resolution as an early intervention measure is becoming more successful and is leading to a decline in the number of welfare reports requested by the courts at the time of the first hearing. At this hearing, the court will make a decision about how to move ahead with the application that has been made about the children. Aspects being considered might be issues of child safety and the route to agreement being reached between the parties.

There are essentially two types of family conflict resolution: in-court conciliation and dispute resolution which is usually undertaken by Cafcass. This is directive, unprivileged and non-voluntary. In certain circumstances it can be developed into extended dispute resolution. It is the intent of Cafcass to continue to both divert resources from report writing to more dispute resolution interventions and to research, pilot and implement ways of best accessing the views of the child.

Work is also undertaken by Cafcass and mediation services to better understand each other's skills and to work in partnership.

In court, FCA's asked to help families to try to agree on arrangements for their children. Sometimes an agreement can be reached immediately and no further intervention is necessary. When, as in many cases, agreement on some, or all of the issues is reached during a meeting at the First Directions Hearing, the court may then allow some time to see if the agreement works. If no agreement is reached, the FCA may be asked to continue to work with the family on resolving the outstanding issues. The local dispute resolution scheme will determine how this is done and variables will include the age of the child and the nature of the application.

If matters are still not agreed via dispute resolution, or in some courts mediation, the court will usually ask the FCA to carry out further work and report back (Section seven report) with a positive recommendation about the best way forward. This may include further work with the family and will involve an interview with the children to access their needs, wishes and feelings. It usually takes about ten weeks to complete.

If there are issues of violence or harm, real or potential, initially the parties are seen separately and then together, if appropriate, and if agreed upon by the parties.

The children are also talked to on their own to allow the court information about their wishes and feelings. Police, social services, child protection registers and information already held by Cafcass can all be accessed when appropriate. Children's Guardians represent the interests of a child during cases in which social services have become involved and in contested adoptions. In cases when divorcing or separating parents have not been able to reach agreement and which are quite extreme in terms of high conflict and hostility, the child is made party to the proceedings and a solicitor is appointed for that child. The Children's Guardian meets with the child and ascertains the views and wishes of the child as well as meeting with other involved parties, including parents and writes a report for the court which reports the views of all concerned parties and makes recommendations. This report is available for all those involved in the case to read. The child has the right to attend the court hearings and to meet with the Judge or Magistrate. All these roles, in both public and private law, are about prioritising the best interests of the child and advocating for those interests.

I began my visits in London at the Cafcass office in Archway in North London. The most efficacious way of gathering material was by interviewing the practitioners who have put together these new forms of practice. Owing to the delicate nature and confidentiality of these processes it was not appropriate for me to be party to the intervention.

I met with Zafer Yilkan who has been working on a pilot scheme using Family Group Conferences in private law cases. This was of particular interest to me as the concept of Family Group Conferences was piloted here in New Zealand under the CYPF Act of 1989 and is used in this country as a family participation in child protection practice. The model evolved here in New Zealand based on traditional indigenous decision-making practices and it revolutionised social work with children and families both here and overseas.

A referral is made by an FCA to a conference coordinator following the First Directions Hearing. Upon receipt of the referral the coordinator identifies with the parties and their children, others who should be invited to the meeting. The coordinator discusses the process with the participants. Practical arrangements are made and invitations sent out.

In the three distinct phases of the conference the coordinator will clarify for all attendees the purpose of the conference, any welfare concerns which may affect what can be agreed to in the plan, information about resources and support and what action will be taken if the family cannot make a plan or the plan is not agreed.

The second phase is private family time during which the family is left on their own to come up with a plan and to identify resources from agencies to help them with the implementation of the plan. Advocates for the child and family are available outside the meeting room if needed during this process.

In the third phase, the Family Court Advisor and other information givers, plus the coordinator, meet with the family to discuss and agree the plan and negotiate resources.

Contingency plans, monitoring arrangements and how to review the plan also need to be discussed and agreed. Copies of the plan are distributed to all participants and all sign it. Where a plan is not agreed by the FCA, the reasons for not accepting it must be made clear immediately and the family given the opportunity to respond to the concerns and change or add to the plan. Dates for implementation and review are set.

Zafer Yilkan reports a 98% success rate of reaching resolution on disputes.

Some of the pluses include the speed of the process, the involvement of the wider family, its cost-effective nature, an inbuilt review system and the involvement of children's voices.

Following this visit, I travelled up to the Cambridge Mediation Centre on 4th December 2007 and met with the manager, Sarah Fairburn, and mediator, Jane Bridge and counsellor, Mary Carnell.

At the Cambridge Mediation Centre, a pilot has been run (Legal Services Commission Pilot Project for Court Referred Family Cases). Families at First Directions Hearings are referred to mediation. This is a joint initiative between Justice and Cafcass and the evaluation was warmly received both locally and internationally. Unfortunately, no further funding was available to continue this work for publicly funded (legal aid) cases. However, the Centre is hopeful that the pilot work will offer a useful model nationwide. There is a continual client demand for mediation and the Centre self-funds the presence of a mediator in the local Family Court at First Directions Hearings. Currently, when parents are in court, they are given a recess of twenty to thirty minutes and meet with a mediator to see if they can reach some agreement. A steady stream of referrals comes from the judiciary and sometimes from Cafcass.

An outreach counselling service to schools is also offered from the Centre and children who are struggling academically as a result of family break-up are seen individually and in groups. There are also training groups run for Teaching Assistants on the impact of divorce on children and teaching for secondary school children on the impact of divorce and separation and ways to help both themselves and any friends in that situation.. The counselling service also offers support via parent group sessions to discuss separation issues and individual counselling sessions for children from four to nineteen years of age. Parents and children are offered an initial session before this counselling begins so that the work can be explained. Information is only fed back to the parents if the child agrees (unless there are child protection issues). Children, however, are encouraged to share their feelings with their parents. Mediators and counsellors in this work receive training from the Institute of Family Therapy in London.

The following day, I travelled to the Norfolk branch of Cafcass in Norwich. I met there with Sarah Parsons, Manager and with Family Court Advisor, Yvonne Rae, who has been running the Extended Dispute Resolution pilot for approximately four years.

This model ran between June 2005 and April 2006 and covered two county courts. The aim was to encourage parents to take responsibility, negotiate arrangements and to try and improve their communication concerning their children.

An FCA at court assessed referrals to the EDR according to established criteria. If appropriate, the matter would be adjourned by the Court for six weeks to allow the meetings to take place.

The rationale behind EDR was, as in the Family Group Conference model, that a family are best assisted when facilitated to find their own solutions. It was envisaged that consideration for EDR would take place prior to any decision calling for a Cafcass report except where a complexity of issues would necessitate a full report. This builds on the fact that empirical research shows that, regardless of animosity, the majority of parents who are helped in the initial stages of litigation to focus on their children can devise a viable child focused co-parenting plan, without recourse to a court hearing. A central plank in this intervention is that children are both informed and listened to and that co-operative parenting is promoted.

Hence in the EDR initiative parents are given information about the scheme and are required to sign a consent form. An immediate appointment is given to the parties along with a date for the first appointment. A leaflet is also given to the children which explains the scheme and explaining why attendance at one of the sessions is called for. The matter is then adjourned for six weeks to allow attendance at the sessions. Issues of domestic violence, child protection and significant social services involvement preclude referral to this scheme.

Two FCA's, one male and one female, co-work with each referred family. The parents attend a session of two hours duration once a week for four weeks at the Cafcass offices at Norwich. The children are invited to attend the third session with both parents in attendance.

In the first session, the FCA's meet with each parent individually for a brief period to ensure that they are prepared to meet together. The parents are then brought together and introduced to the process, with the emphasis on the opportunity for them to find their own solutions through negotiation, given their expert knowledge of their children's needs. The session includes discussion about the history of the relationship from which patterns and issues are identified and how that has influenced their present communication. The session provides the parents with the opportunity for each of them to tell their story. The various emotional stages following divorce are discussed and the opportunity given for both parents to describe their situation post separation. This is linked with any of the difficulties they were experiencing in deciding their children's needs. Blame is discouraged and an emphasis is on shared responsibility for meeting their children's needs.

In the second session, feedback is given from the first session and the parents are able to comment on any aspects which they feel do not constitute an accurate reflection. The importance of parents taking ownership is emphasised.

Throughout this process, the focus remains on the parental understanding of their children's experiences of the separation. The impact of parental conflict on children is explored at this point and the transition from separation to shared parenting emphasised. Preparation at this stage takes place for the involvement of children at the next session which allows the parents to prepare their children.

In the third session, when the children arrive with one parent, it is explained to them why it was important that they participate. The children are informed about the fact that their parents are already known and that the workers are not strangers to the situation and that their parents have already "vetted" and approved of the process. Once the scene is set, the children are introduced into the situation and after a little more of the dialogue the children are asked to participate in the drawing up of a family tree with their parents' help.

Once this process is completed, the children are invited to speak without their parents' help. Drawings, finger puppets, models and dolls houses give information about the thoughts of the children on the impact of this transition on their lives. At the end of this session, discussion is held with the children about how they feel regarding meeting with their parents to discuss their feelings and wishes .A meeting with the parents and their children is held if the children are comfortable with the process.

The final session commences with the parents with a review of the time spent with the children and discussion about the needs of the children. File notes are shared with the parents. The aim of this final session is to enable the parents to negotiate a workable set of arrangements that take into account their children's needs.

A short report is then prepared summarising the sessions and any agreement reached and the parents receive this before the date of the next Directions Hearing. If no agreement is possible, the report will propose the next stage of addressing the outstanding issues which will have been agreed upon by the parents.

The pilot resulted in a 78% agreement rate with overwhelmingly positive comments from the participants about their sense of empowerment in working out satisfactory solutions. The professionals working on this pilot believe that the children involved had their needs more extensively canvassed as a result of participating in this model.

My fifth visit, on 22nd December 2007, was to the Leeds Cafcass office where I met with Linda Grey, Change Manager for Cafcass in the Leeds jurisdiction.

In 2004, Judiciary in Leeds, enthused by a similar practice at the Principal Registry in London, indicated that they wished to involve children nine years and over in the First Hearing Dispute Resolutions meetings with Cafcass. They were concerned that children

were not being given the opportunity to make their views known at the time decisions were being made about them and that there were long waiting lists for the Section 7 (welfare) reports. Initially concern was expressed by the Family Court Advisors that children would find the process onerous and potentially harmful and that parents might object. After discussion and careful planning, however, agreement was reached and the scheme commenced in April 2005 with the children attending in the Cafcass office whilst their parents/other parties were in the court. The Family Court Advisor would go back and report to the Judge and the parents on the children's views. The Judge would make a decision which the FCA would then report back to the children. Research into this scheme demonstrated an overwhelmingly positive response from children and parents alike. Their comments indicated that they welcomed the opportunity to receive information and to be heard and involved. The age of involvement was subsequently reduced to eight years to open up the scheme to more children.

A further scheme in Leeds is the Leeds Family Resolution Pilot which allows parents to agree at the First Directions Hearing that they will attend project meetings. A date for a Further Directions Hearing is set for eight weeks time.

The parents firstly attend an information and discussion session at the Cafcass office. At this point they will be able to opt for family mediation if they choose and they can exit the Family Resolutions scheme at this time. If however, they remain in the scheme, they attend a parent planning session with a focus on problem solving and dispute resolution. There will be a separate session in the family playroom at the Cafcass office for the child/ren to have the opportunity of expressing their wishes and feelings.

A brief report is prepared for Court for the next hearing and this outlines agreements reached or indicates if further work is needed. If the dispute cannot be resolved then a Section 7 welfare report can be prepared by the same Cafcass officer who will advise the court on a suitable filing date.

These processes cannot be used where there are risk issues or serious allegations requiring investigation. Any child protection issues raised within the sessions may require other inquiries and an early return to court. The project is not legally privileged.

A further intervention in the United Kingdom is the use of Family Support workers. These professionals are vocationally qualified and usually have over three years of prior regular experience. When making an order, a judge can make a family assistance order which entails a Cafcass Family Support worker making contact within ten days of the order with all the people named in the order. Children are part of the meetings and also have the right to meet individually with the worker. Written plans and goals are prepared and the worker can meet with the parties for up to a year. At the end of the order period, a short written review is given to everyone named in the order. Thinking and practice by Cafcass is continuing to evolve the more traditional implications of such an order and increasingly the intervention is a social work model rather than a socio-legal intervention.

As in New Zealand, separating parents in the United Kingdom are encouraged to remain the primary decision makers for their children. The court will only intervene when the dispute is such that the parents are unable to agree. Although in-court resolution has undoubtedly proven successful for many families in that country (and this has been further assisted by willingness of District Judges to order reviews to monitor progress), it is, nonetheless, subject to many time pressures and children are not included in the process. Furthermore, agreement at the door of the court for many parents is simply not possible. Research backs up the fact that reaching an agreement about contact does not necessarily help parents collaborate effectively. United Kingdom studies suggest new working methods, which move towards active problem solving and support of agreements, achieve better outcomes for all involved (Trinder 2007). The types of programmes I have described in this report are representative of such methods.

My visit has reinforced findings from my own research about the relevance and benefit of the inclusion of children in dispute resolution. There is a need to continue to work on an appropriate model to do this in New Zealand law. Further reinforced by this visit is the sense of the enigma that there is a lack of legal mandate in New Zealand for child inclusion in family law dispute resolution. This is compounded by the fact that our indigenous model is being accepted for this very purpose elsewhere whilst currently prohibited here.

My visit has influenced the need to seriously query the lack of dispute resolution interventions in New Zealand. There is a need for a model which expands on the Family Group Conference model, customizing it to separating families whilst retaining the principle of participatory practice. Research on such modification is also underway by Cafcass.

Children in the United Kingdom whose parents are in dispute about child arrangements are not usually consulted unless in-court conciliation does not succeed. Although in New Zealand we have a provision for counselling for parents earlier in their separation, it seems provident that interventions into conflictual separation be in place child-inclusively *before* matters necessitate court intervention.

I will use the information gathered from this trip to inform my ongoing research into the design of a post graduate training curriculum for such a model of intervention. There is no specific training for Family Court counsellors relevant to this area. I believe amendment to our law is both necessary and likely, implicating a corresponding need to research an empirical model for professional intervention which is inclusive of children.

I have been asked to present my research findings at the LexusNexus Child Law Conference in Auckland in April and the Families Commission Research Seminar in Wellington in June.

Principal Family Court Judge Boshier has asked for a copy of my conference paper and I will add the information I have accessed to my political submissions for legal amendment

and also use it in refereed papers for family law journals, counselling journals and journals of social policy.

I would like to conclude by thanking the trustees of the Winston Churchill Memorial Trust for making this research visit possible.

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