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HELLO, I'M A VOICE, LET ME TALK
CHILD-INCLUSIVE MEDIATION IN FAMILY SEPARATION

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ABSTRACT

This research report has been undertaken to examine the efficacy of a model which involves working with children who are actually included with their parents in parts of the mediation process at the time of separation.

Provision for such an intervention does not exist in the Family Court jurisdiction in New Zealand and hence this model of child-inclusive mediation is innovative in its combination of type and, in particular, its timing. The following evaluation of the model facilitates a real understanding of how children and their parents experience involvement in such an intervention.

This solution-focused model, which is not costly to implement, is predicated on family collaboration and grounded in research.

Seventeen families at different stages of parental separation were interviewed following attendance at a mediation process. Children had attended parts of this mediation with their parents. The families were recruited from Family Court referrals under Section 9 of the Family Proceedings Act 1980. The 26 children ranged in age from six to 18 years.

Findings have indicated a high level of satisfaction with this process from both children and parents. Parents registered a heightened awareness of the effects of conflict on their children, recognition of a child's need for parental co-operation and an enhanced ability to make agreements about co-parenting with their former partner. Children in the study felt that their strong need for a voice and for information from within the familial context was satisfied by this involvement. They reported a decrease in anxiety about the emotional and practical issues facing them as their family life was rearranged. Parents also commented on how much less anxious their children were.

1 INTRODUCTION

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 where 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.

Family law policy has, until very recently, generally demonstrated a failure to perceive children as individuals with the right to comment on matters which affect them. The philosophy of the Care of Children Act 2004 has enhanced the right of children to have their views represented by experts, such as psychologists and Lawyer for Child. Significantly in the light of this research paper, however, the context of children's views is not one of the entire family; by the time the process of separation has reached this stage of representation by experts, the parental dispute is polarised and intransigent, with attendant adverse effects on the child entrenched. A pilot of the Parenting Hearings Programme, which enables parents to speak directly to the judge, has been introduced as this paper goes to press (Boshier 2006). Embracing legal and psychological complexities, this process reduces delays and is based on an inquisitorial rather than an adversarial model and is similar to the Children's Cases Programme in Australia. As it is only in its inception, an evaluation is yet to be made. The acknowledgement of both the need to hear views directly from the parents and minimum delays is in keeping with the current research which similarly informs the model for innovative practice described in this paper.

One of the significant features of the child-inclusive model described in this paper is that it has been designed to minimise the possibility of intransigence in the parenting relationship and recognises the significance of timing in its application. A lingering lack of dispute resolution between parents is in danger of hardening into an inflexible and bitter dispute in which children are caught up. Already frequently traumatised by their parents' separation, children are left waiting for their parents to settle, and while directly affected, have no forum from which to comment or become fully informed. Currently, legislation under the Family Proceedings Act 1980 entitles those applying to the court for resolution of relationship and childcare issues to six hours of counselling in an attempt to resolve disputes outside court determination. This provision is only for the parents but assumes benefit to the children as a trickle-down effect. Research cited in this paper strongly indicates that the trickle-down effect does not work effectively enough for children and, in fact, they benefit when they are allowed to have their views heard. Furthermore, this right to be heard on matters that affect them is enshrined in the *United Nations Convention on the Rights of the Child* (UNCROC) to which New Zealand is a signatory. The philosophy of child inclusion is already in existence in the Children, Young Person's and their Families Act 1989, as manifest in participatory decision-making at Family Group Conferences around care and protection issues. This further highlights the lack of children's participation in discussing their issues early on in the separation process as anachronistic in the New Zealand context.

The focus of this research, therefore, is to acknowledge this gap and thereby examine the experience of 17 families and their children when given access to child-inclusive mediation.

2 BACKGROUND

Parental separation impacts on children's lives very deeply. Divorce statistics in New Zealand continue to rise. In 2004 the figure was 13.2 in 1,000, but these statistics do not include separation of de facto marriages (Statistics New Zealand 2006). Many children are therefore affected by the process of separation.

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 financial circumstances (Hetherington and Kelly 2003; Long and Forehand 2002). Rather than examining these latter effects, current research is centring 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 this 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).

Research has shown, in fact, that parents' ability to nurture and protect their children diminishes markedly over separation and in the year or two following (Amato 1994; Lamb, Sternberg and Thompson 1997; Wallerstein and Kelly 1980, cited in Wallerstein 1991). 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 (Hetherington and Kelly 2003, Wallerstein 1991). 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.

The intervention described in this research paper targets this compromised capacity of parents to hear their children. Furthermore, it acknowledges and is predicated on the growing body of evidence that children suffer ongoing distress when they are not told what is happening and when adults do not take their feelings and views into account (Pryor and Rodgers 2001; Smith, Gollop and Taylor 2000). Given that children have no choice but to be involved in the actual restructuring of relationships after separation, access to a voice in the process is of high significance (Jensen and McKee 2003; McIntosh and Maloney 2002; Smart 2001).

Children tell researchers that they want to be consulted and informed (Parkinson, Cashmore and Single 2005; Rae 2006) and the inclusion of the child's voice in the negotiations about rearrangement of the family structure correlates positively with that child's ability to adapt to the rearranged family situation (Pryor and Rodgers 2001; Robinson, Butler, Scanlan, Douglas and Murch 2003; Saposnek 1991; Smart, Neale and Wade 2001; Smith, Gollop and Taylor 2000).

In terms of who children wish to talk to and receive information from, they tell researchers that they want to talk to one or two "special people" (such as a grandmother or a trusted family friend) other than their parents (Hughes 2001). However, they do not like talking to strangers and experts (Smart 2003) as it feels disloyal to them to air family matters in this way. Children primarily want to be given a voice in the family rather than a voice in legal proceedings, which are very much an adult arrangement. An emphasis on the issues as determined by legal processes, whilst necessarily enshrined in law, nonetheless has the potential to silence the particular child's ability to talk about what is important to him or her (Henaghan 2004). The family is a major part of the child's world and the child does not want to be isolated from it. This need to have a voice is equally urgent outside legal processes.

The model described draws on the expressed preferences of children to speak from within the family to a person known to that family. It is for this reason that the design of the intervention is such that the mediator is the same person who has worked with both parents. A child is far more likely to feel motivated to talk to a person who is demonstrably involved with their parents in a positive and therapeutic manner. Hence feelings of disloyalty and disjunction for the child involved are minimised and the context is literally more familiar, encouraging and conducive to the expression of authentic views.

Given that a key determinant of child wellbeing is the extent to which parents are able to co-operate and manage conflict post-separation (Cummings and Davies 2002; Emery 2004; Kelly 2000; McIntosh 2005), an intervention which encourages parents to think of their children, rather than focus on their own hostility and grief, is positively implicated in the ongoing mental health of that child.

As cited above, the lack of inclusion of children is at odds with the United Nations' *Convention on the Rights of the Child* (which New Zealand ratified in March 1993). The Convention requires governments to assure children who are capable of forming their own views the right to express those views freely in matters that affect them. This Convention recognises the need and the enshrined right of children to have a voice well before conflict becomes entrenched in later legal adversarial processes (Goldson 2003).

Strong evidence exists (Buchanan, Maccoby and Dornbush 1991; Katz and Gottman 1997) that the ability of each parent to provide the child with supportive parenting buffers the child from the more destructive aspects of parental conflict. Such conflict is likely to have been in existence for some time before the actual separation. The model evaluated in this paper reinforces research findings that parents are often unaware of the harmful effects their behaviour may be having on their children and underestimate or ignore the effects of conflict with their former spouse (Garwood 1990; McIntosh 2005; Wallerstein and Kelly 1980 cited in Wallerstein 1991).

A paradigm shift is changing the emphasis from simply working with parents and experts and is increasingly moving towards the inclusion of children. Concern is being expressed by professionals and mediators about how to find safe and strategic ways to include children in dispute resolution (McIntosh, Long, and Moloney 2004; Saposnek 1991). While various models for child inclusion proliferate, no consensus exists about the best way to do this. Clearly there is a strong desire to make family law processes child-centred and the issue seems to be increasingly one of how and when the inclusion of children's voices takes place, rather than whether they do. The model described here is innovative and flexible and constellates around strategies based on research findings about the dynamics of the rearranged family.

The overwhelming support for child-inclusive mediation by parents, children and mediators (Drapkin and Bienenfeld 1985; Garwood 1990; Gentry 1997; Irvin 1985; Kelly 2000; McIntosh, Long and Maloney 2004; Saposnek 1991), and the promising results of skilful and sensitive child-inclusive practice, make this an intervention of immense potential value for our communities. Amongst the key outcomes of child-inclusive practice, as described by the aforementioned researchers and replicated in my research, are: a 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.

Although the Care of Children Act 2004 has strengthened children's rights to participation in hearing via Family Court experts, the fact that the child's voice is still not heard in the earlier dispute resolution

process offered to the public means that the majority of children are not given a voice at this time of significant transition. Thus it follows that 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.

The introduction of divorce education programmes will go some way to ameliorate this problem; however, it can be contended that resolution of family distress via mediation with the children present with their parents at key parts of the process is of major significance in the fundamental emotional task of rearrangement. The question thus needs to be asked: What proportion of the 94 percent of cases which apparently settle do, in fact, flare up again, or simply exist with ensuing turmoil for all family members? Conflict at separation can and does take place outside legal processes and symptoms expressed by children and young people may be the only external sign to schools and the community of psychological damage.

Research into models of family law intervention in New Zealand, which could offset this damage to families, is sparse. This model of intervention, informed by research and implemented before dysfunctional patterns of reaction to separation take hold, seems a common sense solution that could reduce the incalculable cost of distressed children and their parents. Such intervention would also save immense financial resources expended in prolonged dispute resolution and defended hearings.

3 METHODOLOGY

This research was based on the collection of rich, in-depth qualitative data that highlight the lived experience of parents and children. Thematic analysis was used as the tool for interpreting the data collected as it provides a method sensitive enough to report the experiences, meanings and the reality of participants. This methodology is also known to be of use when investigating an under-researched area to be described in a relatively short research report of this nature.

All families involved in this research were interviewed at different stages of the separation process after they had made an application for counselling under the Family Proceedings Act 1980.

The emphasis on the parental sessions was to facilitate parents in recognising their own stages of adaptation to divorce whilst shifting the focus towards strategising for their children's needs, rather than emphasising blame. The systemic nature of the impact of separation and strategies for resolution were emphasised and sought. During this process they were asked to consider whether they would be prepared to involve their children in a mediated discussion. In order to do this, an information form and consent sheet were provided to both parents and children, fully informing them of the research. Excluded from this model were any parents who were suffering from mental health problems or for whom the primary focus was matrimonial property, as well as situations in which there had been abuse or where there was intractable acrimony.

Once consent was given by parents, and jointly by children and parents, the children were interviewed in an age-appropriate way on their own to give them the opportunity to have a voice in the context of their family situation. The majority of researchers in the field agree that children should be interviewed separately from their parents so that they can be heard directly and be free from perceived or actual parental pressure (Saposnek 1991). The children understood that their parents would be informed of their views, so they were fully aware that the feedback was inherent in the mediation. They were reminded that they could withdraw from the process at any point. At the end of the session, a summary of views and information received was given to the children so that they were clear what was being reported back to their parents. They were then given the opportunity to veto information if they chose (they had had it explained in advance that any information given relating to lack of safety could not be kept confidential).

The views of the children were then reported back to their parents on their own in a further mediation session. This part of the mediation model is conducted exclusive of the child to allow for parental resolution before the child is further included. The child's perception of parental unity is likely to be enhanced by the parental agreements made (Drapkin and Bienenfeld 1985; Emery 2004; Kelly 2000; McIntosh 2000; Pryor and Rodgers 2001).

The parents and children then met jointly with the mediator who joined the family in discussion and a subsequent family session was held a fortnight later to discuss the implementation of the plans and to work on outstanding issues.

Evaluation was made a month after the completion of the work by an independent evaluator trained in child interviewing, with open interview questions for parents and children respectively, and with the addition of a picture questionnaire for younger children. Linear questions were asked about the participant's experience of the mediation and notes taken as a backup to recordings. All participants were reminded that they could cease the evaluation interview and that the recording could be stopped and destroyed at any point.

The data from the transcripts were thematically analysed for identifiable themes and patterns. Once the themes were identified, a return was made to the literature to check the validity of such themes.

4 THE FAMILIES

All 17 families that formed the core of this study were referred under the Family Proceedings Act 1980 for Section 9 counselling. All parents were going through the process of separation. The selection is a random sample of typically referred cases in the Auckland District Court. The Department of Justice does not keep statistics on the demographics of this population.

Adults were typically in their mid-to-late thirties. Five families had an only child, six families had two children and three had three children. All participants elected to be part of this research. A total of 26 children ranging from six to 18 years and 34 parents were interviewed.

Three of the 17 sets of parents had been involved in previous applications to court concerning the children; two of the non-resident parents had pending prison sentences, and three of the non-resident parents lived in other cities, coming to Auckland especially for counselling.

Dissatisfaction with quantity of contact was expressed by 10 of the non-resident parents (seven fathers and three mothers). Resident parents tended to be concerned about the non-resident parent's reliability and commitment to contact. Both resident and non-resident parents were equally likely to report concerns about their ex-partner's parenting ability and all parents reported that their children found the separation difficult.

As might be anticipated from the extent of reported contact problems, the great majority of parents in the sample had experienced difficulties in establishing a positive or effective co-parenting relationship with their former partner. The level of shared decision-making was very low, as was the number of parents able to discuss their children's problems together. The ability of the co-parents to support one another was low and perceived flexibility in child-sharing arrangements was reported in only four of the 17 families.

5 FINDINGS AND DISCUSSION

The reports from children constellated around two central themes:

5.1 An expression of a need for a voice

The children in this study uniformly expressed a need to comment on their changing family relationship (Parkinson, Cashmore and Single 2005; Smith, Gollop and Taylor 2000). Children are full participants in their family crisis: that children are such keen observers and careful listeners is often underestimated by parents in the midst of their own difficulties. Children cope best with a narrative of events with clear communication and a say in changing arrangements, and the precise structuring of such arrangements is of less importance than the child-inclusive negotiations (Smart 2003; Smart, Neale and Wade 2001).

Just let the kid, like get his opinion heard ... not just be like, ok, whatever ... actually listen to them and try and like negotiate and find, you know, something the parent and child both like ... you've gotta make sure the kid's kinda been heard.
(Boy, 16)

Another strong theme was that children yearn for the chance to be problem solving rather than problem creating.

I would like say to mum, have you got a birthday present for dad?
(Boy, 7)

No one really wants to have a crap family life ... people might be like, "Oh I don't really care" ... but probably people do, they actually want it to get better.
(Girl, 15)

Historically, it has been assumed that the experience of inclusion will be traumatic for children; however the children themselves tell us they yearn for a chance to make sense of their situation by being a part of the negotiations. It would appear that to be merely a witness to hostility and silence is a far more traumatising prospect for a child:

It's like, hello, I am a voice, let me talk.
(Girl, 11)

Can you help me to talk to my dad about what's happening?
(Boy, 14)

5.2 Perceptions of help practically and emotionally

Children's responses to the question in the evaluation about whether or not the child-inclusive process had helped them fell into clear practical and emotional fields. They were able to describe concretely which actions had helped and how those had made them feel. From a practical perspective, the children were all clear about what had changed for the better in a tangible way. Children are substantially advantaged at parental separation if they are able to retain a close relationship with a non-resident parent (Pryor and Rodgers 2001) and they pay scant regard to the partisan arguments of feminist or fathers' rights lobbies. Instead they frequently seek balance in time shared with both parents and the theme of fairness prevailed:

Helps mum and dad to borrow us from each other.
(Boy, 10)

Pleased they took on board my idea of week and week about.
(Girl, 9)

I am glad because I can see dad and mum evenly.
(Girl, 8)

Children expressed the need to take an active part in the actual restructuring of relationships after separation (Smart et al 2001). Parental conflict makes this restructuring an entirely negative experience for the child who, in an attempt to retain loyalty to both parents, becomes dangerously triangulated. Several of the children commented on the fact that improved communication through the mediation process had made this restructuring process possible:

It helps us to talk and it helps us to get together.
(Boy, 9)

It's made everything easier, mum and dad don't fight so much. Now I can say what I want to say without being told I am wrong.
(Girl, 11)

Correspondingly, when asked how the process had helped, children stressed the emotional results of a mediated meeting with their parents. The fact that parents had improved communication and listened to the child minimised the likelihood of triangulation and allowed the child to positively relate to both parents:

I was able to say what I wanted to say without feeling sad or worrying about making other people feel sad.
(Boy, 12)

Finally, the children were asked to evaluate the actual process. The comments were all favourable:

I feel more comfortable inside and I feel more happy inside.
(Boy, 7)

It felt good that dad came over from Australia for the meeting, it made me feel like he cares.
(Boy, 16)

It feels better that they know I don't want to be a messenger.
(Girl, 9)

Reservations were expressed by only one child, who said:

Yes, it was good to get out what I wanted to say but they don't like hearing about it out of here.
(Boy, 14)

A strong theme inherent in this model was an acknowledgement by both parents and children that the children preferred to speak with a mediator who had had substantial previous contact with both their parents simultaneously.

In fact when a mediator was engaged in a respectful relationship with both parents, children expressed profound relief. It appeared to alleviate the acute anxiety that arises for children when attempting to ascertain the truth of their parents' respective views of each other.

I really liked that the counsellor knew mum and dad. It meant she understood the parents' positions.

(Boy, 15)

I think despite the conflict, when we were looking at the photos everybody felt a little bit softer about each other ... like we all revisited what this was all about ... you know.

(Resident mother of two children)

It's really stink if you are supposed to talk to a counsellor, like at school, and they don't even know your family ... it's like, shame ... talking about all that stuff. So it was like easy 'cos she already knew mum and dad and they liked her.

(Girl, 16)

I really liked that the counsellor had talked to dad about how I was feeling about what he said about Nana. It made it much easier for me to talk about it.

(Girl, 11)

It was funny, after that session he seemed really happy and we couldn't stop him talking, like he really picked up on the fact the counsellor knew us all and was friendly with us all and wasn't siding with anyone and I reckon it made him feel more relaxed.

(Co-parent of boy, 11)

It did more than I thought it would. It was easier with mum and dad both there than I thought, I think 'cos they had been there lots of times before.

(Girl, 15)

I saw it as empowering [my daughter] by giving her a voice ... she was so worried about hurting one or other of us and meeting with us with the counsellor stopped her worrying... I can just tell she's sort of lighter – she sees it's not her responsibility.

(Shared care parent of one child)

6 THEMES FOR PARENTS

6.1 Parental unity enhanced

In their longitudinal study, Katz and Gottman (1997) found that parental encouragement and communication with the children which excluded derogatory comments about one another buffered the children significantly from negative outcomes such as academic difficulty, negative peer relations, emotional regulation problems and child physical illness. The authors use the term 'emotional scaffolding' to describe the results of this 'parental alliance'.

The research study described in this paper is in fact a working model of the findings of the researchers above and produces results that are wholly consistent. A very strong theme ran through the parents' evaluations about the enhancement of their unity around parenting. This was mentioned in some way by each of the respondents in the evaluation:

You know, I think the kids are aware the reasons why we separated and they've got an understanding or acceptance of that and moved on 'cos they can see the working relationship if you like... Though I don't really feel like doing it, it is an opportunity for the children to see us still as a cohesive unit.

(Resident mother of two children)

It reminds you that they're not just your children – that they do belong to that other person over there too and you might not feel very good about that but it's a reality check. Mum and Dad both love the children dearly ... so that's what you come back to isn't it?

(Resident mother of three children)

Lawyers sort of keep you separate – the counselling meetings were sobering because [it] makes you respect that other person that is a husband or wife or whatever after all.

(Non-resident father of one child)

All that aggro I might be feeling and what I would like to do ... it's not fair because you've got to think what's best for the kids and they adore him and so they should.

(Resident mother of two children)

I think it was really helpful 'cos it showed the children there was, you know, passion towards them and whole family unit... At least they could see we were trying to get something done.

(Resident father of two children)

6.2 Parental awareness of effects of conflict enhanced

Parental conflict, rather than divorce, is a more potent predictor of child adjustment. Hence conflict resolution is pivotal to the child's ability to cope (Katz and Gottman 1997; Emery 2004; Kelly 2000; McIntosh 2000, 2005; Pryor and Rodgers 2001). Children's distress has been shown to diminish proportionately to the degree of conflict resolution. Parents' responses after the intervention demonstrated that a large majority became more conscious of the effect of their conflict on their children:

I started to realise how much impact our conflict was having on her ... when we talked together and she put her hands up to her face I knew she was really confused. We have

to be ultra careful about anything – even conflict now. Even when we sort of hated each other we sort of tried just to keep calm and to talk as if nothing was happening even though the night before we might have been sending each other nasty text messages.
(Co-parent of five-year-old girl)

It was good I could tell him I was very angry but that I would try not to show that in front of the children; that was a good agreement. We've had another glitch but now we have a plan for working these things out ... you know, I am not happy with some of the stuff but we don't need to fight about it, it's stopped us ripping each other to pieces verbally.
(Co-parent of two children)

As evidenced in their responses, parents recognised the need to have agreements in place:

I got involved in this with some apprehension and reluctance ... like as a male you feel the system is set against you ... that the recognition that the father should have equal access is not there ... oh Christ, I'm going into [a] situation where people will screw me in a nice way ... but it was impressive, we both loosened up and met each other half-way, realised the arguing was just sidetracking, just shit ... it was the daughter who was the issue.
(Non-resident father of one child)

I think this is bigger than just resolving things for children – it's also healing and constructive for parents ... you can't get on with your life – you just get obsessed ... it just disrupts everything you do ... we went through a year of lawyers and it didn't do nothing, did it? If we hadn't done this we could still be battling it out in court couldn't we?
(Non-resident mother of two children)

Well, it helped me and it helped [my ex-wife] ... and if we make an agreement in front of [our daughter] we are bound to it otherwise we are modelling something very flaky to our child, who will blame us. It's really tempting to bargain with the children ... it's the one thing you've got that can hurt the other person so much ... yeah ... very tempting ... but you know, my mum's still venomous about my father and that's the last thing I want for my children.
(Non-resident father of three children)

6.3 Awareness of outcomes for children

All parents in this research commented positively on the impact on their children of involvement in the mediation process. A parental refocus from rights to responsibility led to the child being buffered from conflict, and enhanced that child's ability to develop greater resilience.

We couldn't stop [our son] talking – he hasn't been like that for a long time and I think he is really starting to loosen up now. He talks to me now about what is going on at Mum's whereas before these sessions he was quiet about it ... his levels of uncertainties are reducing.
(Non-resident father of one child)

[Our daughter] said to me on the weekend 'I am so glad you can see me the same amount of time as mum – it's fair' – it was really important to her; I hadn't realised she felt so strongly.
(Shared care parent of one child)

7 CONCLUSIONS

The results of this qualitative piece of research on the effects of child-inclusive mediation have been consistent: in all cases, survey responses indicated that parental conflict was lowered and conciliation greatly enhanced. In addition, in every case, there appears to have been universal enhancement of parents' awareness of the impact of conflict and the impact of conciliation on their children's lives.

Both children and their parents independently reported that the children were more relaxed and had adapted significantly better to the situation after having been given the opportunity to have a 'voice' and having been listened to by their parents.

All parents had reached clear agreements by the end of the intervention. Whilst the children did not make the decisions, they had contributed to the negotiations and been involved in any modifications.

In a follow-up study one month after the original sessions, contentment with the process remained high. Several parents commented that if their situation deteriorated, they felt it would be productive to return to the mediation process:

I'm a very satisfied customer, it's sort of obvious really that this is the way to go, isn't it?
(Non-resident father of three)

We need interventions which are grounded in research-based evidence, which informs us about what works. Such practices stand to protect the psychological health of our communities' families and children. Social legislation needs to resonate with changing mores and when it lags behind the values and expectations of new generations, unanticipated and deep conflict arises (Goldson 2003). Family structure, as we have known it, is fundamentally changing and our legislation must respond to the need of children to have a voice between that transformation and its negotiation.

The trickle-down benefit to children from their parents' earlier dispute resolution in counselling is equivocal. Given that 94 percent of cases appear to resolve at this level (Boshier 2005), we know that the majority of children are not having their views heard at the time of parental separation. This omission not only runs counter to the principles enshrined in UNCROC but also is at odds with the philosophy of child inclusion and consultation in Family Group Conferences under the Children, Young Persons, and their Families Act 1989. This level of child participation and inclusion in care and protection matters has been heralded internationally as a farsighted and significant practice. It would be both consistent and logical to extrapolate this inclusive practice to the context of family law.

At the beginning of November 2006, a two-year pilot was introduced to the New Zealand family law context. This Parenting Hearings pilot further signifies a philosophical move towards a less adversarial model and is informed by social science research into multidisciplinary approaches to difficult cases in the Family Court. The briefing paper, written by His Honour Judge Boshier in September 2006, describes this more inquisitorial approach to difficult cases and acknowledges the importance of parent education, lack of delays and the right of parents to have their voices heard directly by the judge.

The Children's Cases Programme in the Australian Family Court is two years ahead of New Zealand and operates along lines similar to those about to be adopted in this New Zealand pilot. The Australian experience has demonstrated positive effects on parental disputes. A recent survey demonstrates high levels of satisfaction with the inquisitorial approach and positive views of the judge, contrasted with a control group which has gone through the more traditional adversarial approach (McIntosh 2006). The views of the senior legal professionals involved are that the success of the scheme is because the

interests of the child are made paramount and this is promoted by both the less traditional atmosphere of the court and the impact of the divorce education component of the scheme. Australian Family Court Chief Justice, Diana Bryant, has commented on the catharsis experienced by parents in intractable cases when able to be heard directly by a judge about how they are feeling (Bryant 2006).

Pivotal in the Children's Cases Programme in Australia is the existence of a court-appointed mediator. A key difference between the New Zealand pilot and the Australian programme is that for fiscal and legal reasons New Zealand does not have such a role. In her discussion of the Australian experience, Justice Bryant emphasises the significant role of the mediators, now called family consultants, who are either psychologists or who have a social science background. At the first hearing, the mediator gives the parents feedback on the impact on their children of the matters before the court and assists the judge, in the role of a kind of expert witness, to define and narrow the issues in the case (Bryant 2006). The manager of mediation in the Sydney Family Court, Deborah Fry, has commented in a recent research paper that the impact of the nexus of judge and mediator has a very effective impact on creating resolution between the parties in dispute (Fry, Waters and Walker 2005).

While it is outside the brief of this paper to comment on the implications of the lack of the role of mediator in such a context, it is worth noting that it may be a difficult balance for judges to retain both a judicial and mediating role simultaneously. Key to mediation is the suspension of judgement and potential dangers may exist if the parents view the judge becoming too involved in mediation discussions. In the report of Dr Jennifer McIntosh of La Trobe University in Melbourne on the Children's Cases Programme, the positive view of the judge by parents was gained in cases where the judge had the assistance of a mediator (McIntosh 2006). Once again it bears repeating that any satisfactory outcome to parental dispute needs to leave the parental coalition intact. Hence the outcome of a final hearing is of intense relevance to the emotional welfare of the involved children and research needs to continue to inform and refine such processes.

The model at the core of this innovative practice research has mediation skills in the context of family dynamics as its pivot. It thus replicates, within an accessible community context, the essence of what is being currently encapsulated by innovative judicial processes. There may well be fertile possibilities within these two contexts for the timely extension and extrapolation of the underlying innovative practice principles described herein.

The issues troubling children at the time of parental separation are frequently very different from those of their parents. Parents are not necessarily able to know exactly which details are troubling their children, who are often reluctant to add further distress in an already difficult situation. The airing of the children's issues is vital for the rearranged family as a whole. It is not suggested that children should be given responsibility for making decisions but that they be accorded their rights in democratic processes of negotiation. Similarly, parents involved in disputes are frequently embroiled in the most difficult and painful crisis of their lives and also need to be heard. A significant finding from this research is that children are saying they want to be heard from within the centre of their own families and their parents are saying they are helped by hearing their children in this context.

The positive results of the research into this innovative model strongly suggest a means to substantially reduce the risks associated with parental separation earlier on in the process. Furthermore, it may well offer potential as a modified application in a subsequent unresolved dispute.

Not only is the model accessible financially to the community but, significantly, it is perceived as effective and just by the participants themselves.

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APPENDIX 1

The families in this child-inclusive mediation study

The families who participated in this study are described briefly below:

Note: All names and identifying details have been altered to protect confidentiality.

FAMILY 1

Jenny, 36, a journalist and resident parent of Joe, aged nine. Separated for two years from Peter, 42, a teacher. Neither parent has repartnered.

Dispute about contact issues: Peter wanting to increase the time from alternate weekends to mid-week stays.

FAMILY 2

Susie, 29, a homemaker; resident parent of Michelle, aged 12, and Duncan, aged nine. Recently separated from Andrew, who is unemployed and awaiting a prison sentence on drug importation charges.

Dispute about whether the children should be able to visit their father in prison and also about the children's general distress.

FAMILY 3

Tania, 42, a hairdresser; resident parent of three children: Kevin, aged 15, Lucy, aged eight and Tim, aged seven. Separated for 18 months from Robert, a builder. Robert has relocated out of Auckland and repartnered.

Tania wants Robert to take more responsibility for planning and quality of contact time with the children.

FAMILY 4

Anthony, 52, a landscaper; resident parent of Aidan, aged 14, and Fleur, aged 11. Separated for six months from Joy, 44, a dental nurse who has relocated out of Auckland and repartnered.

Children are distressed and conflicted about contact with their mother. There are reported behaviour problems.

FAMILY 5

Jane, 45, a homemaker and resident parent of three children: Mandy, aged 16, Ben, aged 10, and Roy, aged seven. Separated 16 months from Paul, 48, a businessman. Paul has repartnered and is seeking greater involvement with the children.

Previous applications on this matter.

FAMILY 6

Tricia, 45, a teacher, repartnered; resident parent of Nigel, aged 16. Separated five years from father, Stan, 42, who has relocated to Australia.

Seeking greater support from Stan with Nigel's adolescent behaviour and greater commitment to holiday arrangements.

FAMILY 7

Jane, 38, a florist and resident parent of two children: Hayden, aged nine and Penny, aged 13.

Separated three years from James, 42, a businessman.

James has repartnered and wants more contact with the children. Previous applications.

FAMILY 8

Deborah, 41, a herbalist and shared care parent of Liz, aged 11. Separated three years from Gary, 40, unemployed. Neither have repartnered.

Each parent believes the other to be inadequate as a parent and wants to alter the arrangement.

FAMILY 9

Betty, 38, a homemaker and resident parent of twins, Rachel and Paula, aged nine and Rae, aged 11. Separated from Mark, 42, a builder who has repartnered.

Children are reluctant to visit their father and Mark is blaming Betty.

FAMILY 10

Mike, 43, shared care parent of Danielle, aged 14, Megan, aged 11 and Kate, aged eight. Separated two years ago from Wendy, 40, a secretary.

Wendy has since repartnered and says the children are reporting their father is angry all the time and that they want to spend more time with mother.

FAMILY 11

David, 38, a fireman; and June, 37, a legal secretary, separated one year ago. Two children: Lesley, aged six and Margaret, aged eight.

June wants to change the rolling 'four days on and four days off' shared parenting that fits in with David's shift roster. June feels David is tired and unreliable with the children. Children are having problems at school.

FAMILY 12

Sarah, 38, a homemaker and resident parent to Aiden, aged six, Robbie, aged eight and Grace, aged 12. Michael, 42, is unemployed and has a prison sentence pending for fraud.

Dispute about whether the children should have contact with their paternal grandparents during school holidays. Concerns about Grace's behaviour.

FAMILY 13

Kate, 37, a part-time secretary and resident parent to William, aged 14, Emma, aged nine and Jane, aged six. Separated for one year from Keith, 39, a sailmaker. Both have repartnered.

Keith wants to start having the children half of the time and Kate does not believe this will work for the children.

FAMILY 14

Fiona, 40, a journalist and Mike, 42, a cameraman, separated five months ago and have shared parenting of Sophie, aged six. Neither has repartnered.

Fiona is worried at Sophie's distress at her new school and wants help to talk to Mike about this as she finds him hostile towards her.

FAMILY 15

Nicola, 52, a teacher and resident parent to Kim, aged 16 and Lana, aged 12. Separated two years from Lionel, 53, a businessman.

Lionel has repartnered and Nicola reporting tension for the children on weekend visits to their father's home.

FAMILY 16

Gavin, 33, a painter, repartnered and sharing parenting with Cindy, 30. They have been separated for a year, and both have repartnered. Two children: Christine, aged nine and Vicky, aged eight.

They are unable to agree on arrangements for Christmas and holidays. The children are distressed.

FAMILY 17

Simon, 35, an architect and resident parent of Gemma, aged nine; separated from Milly, 34, who has recently completed an alcohol recovery programme. Separated three months ago and neither has repartnered.

Dispute about care arrangements.

APPENDIX 2

Children's questionnaire

How did you feel about coming to see a counsellor?

Did you think it was a good idea to be involved in the meeting(s) with your parents?

Did you feel that you were listened to?

Did you say what you wanted to say?

How do you feel now?

– Is it any different from how it was before you had the meeting with your parents and the counsellor?

Do you think it is a good idea for children to be involved in this way?

– Why/why not?

Can you tell me the things that helped you because of counselling?

Can you tell me about things you would like done differently?

Any other comments?

APPENDIX 3

Parents' questionnaire

Did you feel adequately informed about the research project of child-inclusive mediation?

Did you have any anxieties or concerns about involvement in this project?

What did you find helpful?

Were there any parts of the process you felt were not helpful?

Did you feel it was appropriate and/or relevant for your child(ren) to have the opportunity to express their views?

Do you believe that this opportunity has helped them to adjust to their situation? Why or why not?

Has the process had an effect on agreements reached with your child(ren)'s other parent?

Has the process had an effect on your co-parenting relationship?

Any other comments?

Innovative Practice Research

1/06 *Hello, I'm A Voice, Let Me Talk: Child-inclusive mediation In family separation*, Jill Goldson,
December 2006.

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