

Op Ed article

## Let's get the new family mediation service into our Family Courts

by Carol Powell

The Family Court in New Zealand involves some of the most difficult and sensitive matters in our judicial system.

The 58 Family Courts from Invercargill to Whangarei deal with an astonishing 65,000 new cases each year. These cases involve disputes regarding the care of children and the distribution of assets after relationship breakdowns. Domestic violence, mental health issues, and alcohol and drug addiction frequently make matters more fraught.

The Family Court is therefore a branch of the law that is closest to most people's lives, and at a time when they are suffering severe emotional distress.

On 2 September 2008, the Family Court Matters Bill passed into law. This new legislation introduces a number of significant changes to the way the Family Court works. Chief among the changes is a new family mediation service that will work with an enhanced counselling service.

Significantly, the proposed new mediation service is not judge-led. Instead, an independent mediator will work with parties to resolve their differences. This aims to divert less complex family disputes away from formal court proceedings and to resolve them quickly and inexpensively.

As Principal Family Court Judge, Peter Boshier, a strong advocate of mediation, has pointed out, the new mediation service will release judges from mediation and counselling, and allow them to focus solely on the urgent cases that require immediate judicial intervention – their core role and area of expertise.

However, it is our understanding that the mediation aspects of the Family Court reforms will not start until the new counselling provisions are in place and that these, in turn, have been delayed by government funding restraints.

In our view, this is an unacceptable and extremely frustrating delay. It is a delay that will negatively impact on the tens of thousands of New Zealand families whose lives are profoundly influenced by Family Court decisions each year.

Instead, the justice sector allocation of \$950 million from the May 2009 Budget is earmarked primarily for initiatives that crack down on violent crime – more police, more Tasers, more prisons, more criminal courts capacity etc. This is “ambulance at the bottom of the cliff” spending.

In an economic environment where families are under even greater stress than usual – why are we not making the introduction of new mediation and counselling services in the Family Court a priority?

During the bill's third reading in Parliament last year, all sides of the House gave their unequivocal support to it. The proposed legislation was “very, very profoundly important” (Dr Cullen), it dealt with “one of the most difficult areas of court work any lawyer or judge can be involved in” (Chris Finlayson), and it had the potential to “change the nature of Family Court jurisprudence in this country” (Chester Borrows).

The great value of mediation is that it offers a peaceful and constructive way to resolve conflict. It is a fast, low-cost, confidential process in which the parties to a dispute, with the help of a skilled mediator, together identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement.

Mediation can prevent incalculable damage to important ongoing relationships such as those within fractured families.

The effectiveness of family mediation was proven in a successful pilot run in 2005 and 2006 in the North Shore, Hamilton, Porirua and Christchurch Family Courts. Some 95 percent of all the completed mediations settled in part or in whole by using independent mediators. Three-quarters of all mediations were completed within four hours!

In a follow-up survey, two-thirds of participants said they were satisfied or very satisfied with the outcome of their mediation. They were particularly positive about it being in a less formal environment than the Court, which resulted in a more relaxed yet secure situation.

LEADR NZ, a professional membership organisation for New Zealand mediators, is committed to supporting the new Family Court mediation service. Despite the delays, we are forging ahead in our training programme to ensure there is a sufficient supply of trained and experienced mediators available to Family Courts around the country, ready to act when the family mediation service begins.

As we know from the mediation work we are already involved in, skilled mediators can be of immense help to stressed and divided parties, in this case helping estranged family members reach mutually agreed solutions for their own benefit as well as for their children.

But just when will this be?

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