

New Zealand Law Society Family Law Conference

9.05 am, Monday, 21 November 2011

Sky City Auckland Convention Centre,
88 Federal Street, Auckland

Opening Address: Principal Family Court Judge Peter Boshier

Conference Chair: Stephen van Bohemen, Chair of the Family Law Section of the New Zealand Law Society: Antony Mahon, Members of the Judiciary, Distinguished Guests.

It is a privilege to be asked to open this 30 year celebratory Family Law Conference.

On behalf of the Family Court Judges of New Zealand, I welcome the wealth of speaking talent from here and overseas which has been assembled for this conference. The programme is inspiring. I am sure you will all leave enriched and encouraged, but also challenged.

I also extend the warmest of welcomes to those members of the Family Court Bar of New Zealand who have gathered here for this action packed event.

My task is simply to open this conference and not to deliver a speech of any great moment. But I am mindful that as we celebrate our considerable achievements as a court we also face a comprehensive review of our purpose and function.

The keynote speaker who follows me, Professor Jeremy Waldron, has chosen as his theme, “dignity and respect within family law – what does it mean?”

I suggest this could not be a more relevant question at a time when the New Zealand public is being asked what it requires of the Family Court, as any assessment of the Court’s role and measurement of its performance according to fiscal parameters must be balanced by the need to preserve respect and dignity for court users.

Relationship breakdown, conflict and the destiny of children’s care are issues of the most complex and testing kind. They arouse emotion in a fashion that few other areas of the law could know. In this Court we have learnt that dignity and respect for parents in conflict - and just as importantly, their children - is something to be cherished and promoted.

As of this moment, at this conference, I think we have a very good opportunity to reflect on the achievements thus far of the Family Court, what we currently do well and what we could do better.

Internationally and within our own country, the court is seen as professional and specialised. It provides a remarkable service to New Zealanders in so many ways. The jurisdiction of the court has grown because New Zealanders have been comfortable with the model and, by and large, the service. Let us never lose sight of that.

Children’s interests are well-represented and, as much as in any other country in the world, they are treated with dignity and involvement in the proceedings. The court is open to the media and, subject to necessary privacy considerations, what goes on in our court can be published by the media as of

right. We continue to offer free counselling to couples in conflict who need it. Every day we deal with the care and protection of young vulnerable children, and, at the opposite end of the spectrum, older people whose lives are compromised by decreased mental capacity. We respond quickly and effectively to victims of violence who need protection, while continuing to seek ways that we can improve that protection.

But I would like to focus for a minute or two on things I would like to see us do much better. We need to be very clear as to what our objectives are. I do not believe we always are as disciplined in our approach as we might be.

Our first objective must be to promptly hear the cases that so obviously need resolution by a judge. In order to do this we have to be much more conscious of not hearing cases that either should not be before the court or are best resolved elsewhere. I talk here of repeat applications such as applications to vary parenting orders within months of a final order having been made. I also talk of genuine disputes which require firm direction but not necessarily by way of determination before a judge. We must be focussed on resolving our real litigation much more promptly than we do at present. But that cannot be achieved without other changes.

Much more efficiency in our court could occur if the Early Intervention Process that we now have, and which is capable of operating well, had a rules basis. The two tracks that we have created and the timelines and events are extremely effective. But how easy it is to drift away from the discipline of those tracks and events without the sanction of rules. To achieve this change would be one of the most helpful reforms.

Another area we need look at relates to the protection of children from violence.

Section 60 of the Care of Children Act, which was a follow-on provision from its predecessor in the Guardianship Act, requires a cumbersome and money-hungry process of inquiry into all cases where violence is alleged in order to see whether children are safe enough to have unsupervised care time or contact with the alleged perpetrator of violence.

However laudable was the legislative intention to safeguard children the effect has often fallen short of what was desired. The legislative framework requires counsel, lawyers for children, and judges, to undertake an inquiry according to a quite rigid legislative formula in circumstances where, often, such an inquiry is academic and not relevant to the circumstances of the case. I have little doubt that millions of dollars are consumed through the inefficient machinery of section 60 of the Care of Children Act.

The protection of children against all forms of violence is absolutely crucial but can easily be undertaken through the principles set out in section 5 of the Care of Children Act and specifically section 5(e).

A third area which I believe would benefit from reform relates to our conferencing. Many of you will know that in 1993, when a comprehensive review of the Family Court was undertaken, we suggested that for many cases the number of conferences should be limited and that they be categorised in nature. I saw only three types of conferences as being ideal - an issues conference, a setting-down conference and a settlement conference.

And yet we encounter cases where conferences are numerous. This is often because we as judges are not applying ourselves soon enough to the issues that require determination. Instead, it appears to be done at court and only because a conference has been convened.

It is therefore not really surprising to me that the Family Court review paper criticises the number of events and adjournments that occur in our cases.

We could do much better but only if Rules are reframed to redefine how many conferences are permitted and what their nature is to be. Otherwise I fear we will continue to drift.

I have deliberately chosen some areas where I predict that if reforms were implemented, the savings would be immense. That would then leave us to resolve in a principled fashion how best we deal with those cases that do need to come before us.

As a civilised society which believes strongly in the rule of law and access to justice without fear or favour, we must provide a court which has public confidence and which delivers justice to adults and children in a timely and efficient fashion, but which ensures that they are not treated like commuters. Positioning the court so that all who come before it feel that they have been treated with dignity and respect is vital. They must feel that they have been listened to, but without indulgence.

As the conference proceeds, I hope that the gains we have made can be celebrated and that we can look to the future with confidence, enthusiasm and courage.

[ENDS]