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INFORMATION MEETINGS – A PERSPECTIVE FOR NEW ZEALAND?

A STUDY ON THE NEW ZEALAND FAMILY COURT, CHILDREN AND THEIR ADAPTATION TO FAMILY CHANGES

LLM RESEARCH PAPER
LAW AND SOCIAL POLICY (LAWS 537)

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ABSTRACT

Dissolution of marriage is a phenomenon that is continuously increasing in all wester societies. In New Zealand statistics show that the divorce rate reached its peak in 1998 with 12.7 per 1,000 estimated existing marriages. This fact as well as de facto or same sex relationship break-ups result in the sad reality that many children suffer from their parent's separation.

This paper examines whether the current services available through the Family Court are sufficient to help parents support their children during the difficult time of family break-up. It focuses on English law where an obligatory information meeting for parents who want a marriage to be dissolved was introduced. The paper argues that even though English legislation has often been used as a predecessor for New Zealand, the two family law systems are too different to apply the new English project to the New Zealand family law proceedings. However, it will be suggested that the idea of more information for parents used in England can be applied in New Zealand in order to extend Family Court counselling and make it more efficiently focus on children and their needs.

The paper proposes a pre-counselling session for everybody who qualifies for counselling through the Family Court and further suggests a group session four to six times a year for those unwilling or unable to attend counselling.

Word Length

The text of this paper (excluding contents page and bibliography, including footnotes) comprises approximately 16.150 words.

I INTRODUCTION

Dissolution of marriage[1] rose dramatically throughout the western world in the 1960s and 1970s.[2] Some observers welcomed this change arguing that it would free people from unhappy relationships, thereby improving the sum of human happiness.[3] However, the majority of separating couples finds themselves in dispute over money, property, or children. Some of them resolve their differences without assistance, others seek outside help such as private counselling, and almost all take legal advice.[4] Many family disputes finally end in court.

The break-up of relationships is of course not necessarily related to the fact that people are married. De facto and same sex couples, which are gaining more recognition in New Zealand law,[5] are just as much at risk of falling apart.[6] This is particularly important as more and more couples are living together without marriage. Approximately 15 per cent of all heterosexual couples are in de facto relationships.[7]

But married or de facto, homosexual or heterosexual, those most affected by two people's separation are almost always their children. Parents may rather quickly get over the fact that they are leading a life without a partner as it may mean less quarrel and stress. For children to see their parents fight and finally part implies a most difficult and complex situation in which they do not really understand what is happening. They are often made to stay with one and only visit the other parent, they may feel guilt and great worries without having any influence on the situation at all.

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[1] The word "divorce" is no longer correct in the context of the Family Proceedings Act 1980, see references in ss 37(1), 38, 39, 42 and 43 of the Family Proceedings Act 1980.
[2] M J McPherson *Divorce in New Zealand* (Social Policy Research Centre, Palmerston North, 1993) 7 for New Zealand; Statistics New Zealand show that the New Zealand divorce rate reached its peak in 1998 with 12.7 per 1,000 estimated existing marriages.
[3] M D R Evans, J Kelley "Parental Divorce and Children's Education" (1995) <http://www.international-survey.org/wwa_pub/wwa_div2.htm>.
[4] S M Cretney "Divorce Reform: Humbug and Hypocrisy or a Smooth Transition?" in M Freeman (ed) *Divorce: Where Next?* (Dartmouth, Lincolnshire, 1996) 48.
[5] Currently the Matrimonial Property Act 1976 is being amended in favour of de facto partners.
[6] There are no statistics available about de facto and same sex couple's partnership break-up.
[7] Government Administration Committee *Interim Report on De Facto Relationships (Property) Bill* (House of Representatives, Wellington, 1999) 5.

This paper will examine whether the current services available through the Family Court are sufficient to help parents support their children during the difficult time of separation. It will further focus on English law where an obligatory information meeting for the parent who wants a marriage to be dissolved was introduced. The paper will argue that even though English legislation has often been used as a predecessor for New Zealand, the two family law systems are too different to apply the new English project to the New Zealand family law proceedings. However, it will be argued that the idea of more information for parents used in pilot information meetings in England can be applied in New Zealand in order to extend Family Court counselling and make it more efficiently focus on children and their needs.

Section II of this paper will look at family separation from the child's perspective. It will be outlined that the break-up of a relationship impacts on children before, during and after the actual day of the separation. Section III will discuss the New Zealand process to achieve a separation, focusing on counselling services and mediation conferences available through the Family Court. Section IV introduces the Family Law Act of England and Wales 1996, where the concept of information meetings was implemented. It will be argued that the idea behind the obligatory meetings is valuable and achievable even though the way pilot meetings in England have worked so far has been subject to much criticism. In section V it will be investigated whether information meetings would be a useful procedure for New Zealand family law. It will be seen that due to the already existing services available, another separate meeting alongside counselling, mediation conferences and hearings would not be the best solution. Section VI will show that the counselling service in New Zealand could be extended by one more session at the beginning, a pre-counselling session, to simply inform couples about the consequences of their separation on their children, to provide them with information material and to give them some advice about what they may want to do to help their children cope. It will be outlined that at the time where counselling usually takes place it would be best to integrate information and it will be seen what that first session could look like. Moreover a group session, which would take place a couple of times per year and which may be attended voluntarily by those involved in relationship break-ups, could be introduced.

II THE EFFECT OF SEPARATION ON CHILDREN

Available research shows an association between parental separation and children's lack of wellbeing.[8] Most explanations refer to the absence of the non-custodial parent, the adjustment of the custodial parent, inter-parental conflict, economic hardship, and life stress.[9]

A Consequences for Children Before the Separation

Recent studies investigating the impact of the dissolution of a marriage on children have found that many of the psychological symptoms seen in children can be accounted for in the years before the separation. Relationship conflict is a more important predictor of child adjustment than is separation itself or post-divorce conflict.[10] As many as half of behavioural and academic problems of children in "problem-marriages" were observed four to 12 years prior to the separation. The symptoms were similar to those reported in children living in divorced households: conduct disorders, antisocial behaviours, difficulty with peers and authority figures, depression, and academic and achievement problems.[11] Such symptoms were also more often found in high conflict marriages when compared to low conflict marriages.[12]

Before two people separate usually many fights occur where one partner accuses the other of all kinds of things. Psychological or even physical abuse is very often associated with the process of family break-ups. Generally, the more emotional a situation gets the harder adults find it to keep their self-control. Often they do not even realise any more what kinds of words they use, if what they say is reasonable and justified, and most important if children are around and witness what they say. Children often become beholders of verbal

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[8] A lot of research has been done on this topic. The information used in this paper was mainly taken from R Pritchard *When Parents Part How Kids Adapt* (Penguin Books, New Zealand, 1998).

[9] P R Amato "Life Span Adjustment of Children to Their Parent's Divorce" in David and Lucile Packard Foundation *The Future of Children: Children and Divorce* (1994) 143; P R Amato, B Keith "Parental Divorce and the Well-being of Children: A meta-analysis" (1991) 110 Psychological Bulletin 26.

[10] M Kline, J R Johnston, J Tschann "The Long Shadow of Marital Conflict: A Model of Children's Postdivorce Adjustment"(1991) 4 Journal of Marriage and the Family 297.

[11] A Cherlin "Longitudinal Studies of Divorce on Children in Great Britain and the United States" (1991) 252 Science 1386; B J Elliot, M P M Richards "Children and Divorce: Educational Performance and Behavior Before and After Separation" (1991) 5 International Journal of Law and Family 258.

as well as physical abuse and do not know how to cope with it. Even harder for a child is to be sent out of the room in which the parents argue and to have to listen to it from a distance. A problem closely connected with family violence of any kind is that children have difficulties talking about it, as they are ashamed of what they experience. Depending on the age, children may accuse themselves to be the reason for their parents' fight. They may also try to take sides for one or the other or mediate between them.

At this stage, information for couples about what impact family conflicts have on children may be very useful. Parents may need a variety of material to comprehend how children cope with specific problems within the family. They might even need help to learn how to discuss inter-parental difficulties with their children in an appropriate manner and how to explain conflict situations without imposing guilt on the child.

B The Meaning of a Definite Separation for the Child

Even though the particular day of separation may be experienced as a relief after what had happened before, most children suffer immensely from it.[13] Any hope for reconciliation between the parents is destroyed when they finally part. Most commonly, one parent leaves the house[14] which gives a child a feeling of being abandoned and not loved any more. Generally, both parents are equally wanted around to rely on and to provide support. In some situations the parent who leaves takes the children. This may result in the fact that children have to change schools and leave their friends behind. Also, children may miss their extended families, which might then be further away.

Many children try to take over responsibility for the left behind parent acting as "husband" or "wife" at home. Moreover and very often, severe economical consequences arise.[15] Sole parents are faced with the difficult task of caring for the children on their own

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[12] E Vandewater, J Lansford "Influences of Family Structure and Parental Conflict on Children's Well-being" (1998) 47 Family Relations 323.
[13] See case studies of R Pritchard *When Parents Part How Kids Adapt* (Penguin Books, New Zealand, 1998).
[14] F F Furstenberg, A J Cherlin *Divided Families, What Happens to Children When Parents Part* (Harvard University Press, United States, 1991) 22.
[15] A B Smith "Research on the Effect of Marital Transitions on Children" in: A B Smith, N J Taylor (eds) *Supporting Children and Parents Through Family Changes"* (University of Otago Press, Otago, 1995) 35, 36.

and remind the other party to pay child support. Sometimes they even have to start working when resources are not sufficient which will again lead to a lot of changes for the child.

However, children react differently depending on their age and ability to understand what is happening and to express and explain how they feel. Children's reactions will be influenced by the competence of the parents to provide continuing emotional support and a sense of security.

Here, again, information some time around the actual separation can help to inform parents about what consequences that particular day may have for the child. They can work out a mutually accepted solution for problems that are likely to occur and may therefore even be able to prevent difficulties in some cases.

C Possible Changes in the Separated Families After Some Time

Unlike the adult experience the child's suffering does not reach its peak at the break-up of the relationship and then level off. On the contrary, separation is a cumulative experience for children; its influence on their wellbeing increases over time.[16] At each developmental stage the impact is felt anew and in different ways. Even though hostility between parents diminishes significantly after divorce, three years later only between eight per cent and 12 per cent remain in very high conflict,[17] it is proved that children do have many difficulties particularly with the first adjustment to changes.[18] That most children will be exposed to changes after some time is very likely: The majority of divorced women and men remarry.[19] Statistics New Zealand show that out of a total of 20,135 marriages in 1998, 7,292 involved the remarriage of one or both partners.[20] Therefore many children will experience step-parenting after the separation of their biological parents. Studies of these children indicate that the process of adapting to a new partner or even a step-parent and

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[16] J Wallerstein "Findings on the 25 Year Follow-up to the Original Study" in New Zealand Law Society *Family Law and the Rights of Children and Youth* (New Zealand Law Society, Wellington, 1997) 202, 209.
[17] V King, H E Heard "Nonresident Father Visitation, Parental Conflict, and Mother's Satisfaction: What's Best for Child Well-being?" (1999) 61 Journal of Marriage and the Family 385.
[18] R Pritchard *When Parents Part How Kids Adapt* (Penguin Books, New Zealand, 1998) 173.
[19] J A Twaite, D Silotsky, A K Luchow *Children of Divorce* (Jason Aronson Inc, New Jersey, 1998) 70.
[20] Statistics New Zealand Te Tari Tatau *Marriage and Divorce Statistics – Marriages and Marriage Rates 1961-1998* (Statistics New Zealand, Wellington, December 1998 annual) Table 1.

step-siblings is a complex one.[21] They feel a lack of love by their parent who now shares time and they may question the authority of the "stranger" in the house.[22] New issues of custody arise where the step-parent applies for it, and the role of the non-custodial parent might have to be refined. Teen-agers find it particularly difficult to accept that a new family should replace their natural one.

Adolescents who are caught in the middle of their parents' disputes after divorce are more poorly adjusted than those whose parents have conflict but do not use their children to express their bickering. Children of all ages happen to be asked to send hostile messages or requests to the other parent or even to spy on him or her, and they may feel the need to conceal their feelings and thoughts about the other parent. If parents have substantial conflict, but avoid placing their youngsters in the middle, these children are not significantly different from others in families with low conflict.[23] Such findings emphasise the need for divorce interventions and legal processes, which will promote co-operation and reduce ongoing conflict. Substantial information about what to do and what to avoid may already be a significant help.

D Conclusion

Children's adjustment to separation depends on several factors, including the amount and quality of contact with non-custodial parents, the custodial parents' psychological state of mind and his or her parenting skills, the level of inter-parental conflict that precedes and follows divorce, the degree of economic hardship to which children are exposed, and the number of stressful life events that accompany and follow the break-up of the relationship. These factors can be used as guidelines to assess the probable impact of various legal and therapeutic interventions to improve the wellbeing of children of divorce.

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[21] J Pryor, F Seymour "The Impact on Children of Parent' Separation" in M-E Pipe, F Seymour (eds) *Psychology and Family Law* (University of Otago Press, Dunedin, 1994) 23.
[22] R Pritchard *When Parents Part How Kids Adapt* (Penguin Books, New Zealand, 1998) chapter 3.
[23] C M Buchanan, E Maccoby, S M Dornbusch, "Caught Between Parents: Adolescents' Experience in Divorced Homes" (1991) 62 Child Development 1008.

It is suggested that a well-functioning nuclear family with two caring parents is a better environment for children's growth and development than a single-parent family. Children of separation, as a group, are at greater risk than children from intact families, as a group, of many psychological, academic, and social problems. However, where disputes become overwhelming, often there is no other choice but to separate.

In conclusion, it is important to focus on establishing policies that will help narrow the gap in wellbeing between children of separation and children from intact families. If it is impossible to prevent children from experiencing parental break-up, steps must be taken to ease the transition.

III LEGISLATION REGARDING FAMILY SEPARATION

New Zealand Family Courts deal with wide ranging legal issues affecting children and their parents. They are confronted with numerous statutes enacted in New Zealand and are also bound by The Hague Convention on the Civil Aspects of International Child Abduction of 1988[24] and the United Nations Convention on the Rights of the Child 1989.[25] Both conventions and national law bind New Zealand courts to focus on the best interests of children in all proceedings. However, this is not always possible, as the vast majority of parents settle their disputes without recourse to the Family Court.[26] Yet, if the Family Court becomes involved most applications concerning children are governed by the Family Proceedings Act 1980 (FPA) and the Guardianship Act 1968 (GA).

In 1981 divorce provisions were removed in favour of dissolution of marriage after two years separation.[27] The specifications consolidate the view of the paramount importance of the needs of children in decisions about custody and access.[28] The best interests of the child can be ensured in all family law proceeding such as during counselling, mediation conferences, hearings and the actual dissolution of marriage.

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[24] Ratified on 10 January 1991.
[25] Ratified on 6 April 1993.
[26] Ministry of Justice *Responsibilities for Children Especially when Parents Part – Discussion Paper* (Ministry of Justice, Wellington, August 2000) 14.
[27] Section 39(2) FPA.
[28] This was already acknowledged in the GA.

However, due to the nature of increasing de facto relationships and the subsequently limited interference possibilities of the State, at first sight New Zealand's influence on children's wellbeing is less obvious than where two people have a child within a marriage.[29]

However, independent of the characteristic of the relationship and the nature of the dispute, usually the earliest intervention by the court arises when one or two parents request counselling pursuant to section 9 of the FPA.

A Counselling Services Available Through the Family Court

Counselling is defined as "the process of assisting and guiding clients, especially by a trained person on a professional basis, to resolve especially personal, social or psychological problems and difficulties."[30] The court is a facilitator for the counselling process to be arranged and undertaken, and it may be said that those couples who request or are referred to counselling often do not require further assistance from the court.[31]

1 Description

In order to reach agreements and also to discuss the future care and wellbeing of children[32] the New Zealand Family Court offers counselling sessions for the spouses.[33] The assistance of counselling is available for everybody, consequently it does not matter whether parties are married or are living in a de facto relationship. As for many people lawyers are usually the first avenue to go to, legal professionals have a duty to advise a client of available counselling facilities.[34] This gives the parties an opportunity to request counselling without formalising a dispute. However, a party may also approach the Family Court directly and ask for counselling. Section 9 of the FPA requests for counselling (voluntary counselling) have increased over the years and they now constitute over half of all counselling referrals, which shows a growing appreciation of the philosophy and

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[29] However, s 7A of the FPA was inserted by s 3 of the Family Proceedings Amendment Act 1986, which extends counselling to de facto couples.
[30] R E Allen (ed) *The Concise Oxford Dictionary* (8 ed, Clarendon Press, Oxford, 1991) "Counselling".
[31] E O K Blaikie "The Legal Realities for Children and Families – Part Three: 'Reaching the Best Agreements for Children and Families'" in: A B Smith, N J Taylor (eds) *Supporting Children and Parents Through Family Changes"* (University of Otago Press, Otago, 1995) 93, 94.
[32] P Geraghty (ed) *Family Law in New Zealand* (9 ed, Butterworths, Wellington, 1999) 136.
[33] Sections 9, 10(4) and (5), 19 (1) FPA.

benefits.[35] Once court proceedings begin, parties are referred to counselling at the judge's discretion.[36] According to section 10 of the FPA the reference is mandatory where a separation order is sought. However, separation orders pursuant to part III of the FPA are very rarely required these days. In fact, they only have meaning in situations in which the parties continue to live in the same house after they have separated. During all other proceedings the judge may adjourn the hearing and refer the parties back to counselling at any time.[37] The exception to both section 10 and section 19 referrals is where the respondent has used violence under the Domestic Violence Act 1995 against the applicant or a child of the relationship.[38]

Counselling sessions are confidential and free for the parties. The service is provided for people who are having general relationship problems or who are facing difficulties with resolving custody and access issues. However, counselling is not available to unravel matrimonial property matters, but these issues are nonetheless sometimes discussed once parties enter the session.[39] The meeting with a counsellor should help couples to come to their own workable solutions for the future. Special arrangements can be made for separate counselling sessions if either party feels unsafe in the presence of the other. In these circumstances the Family Court co-ordinator or the counsellor should be contacted to explain those concerns. New partners can be included in the session; however, this option should be discussed first.[40]

Professionally trained staff monitor the sessions. The Family Courts Act 1980 provides counselling supervisors, counsellors, and other people who may be necessary to enable Family Courts to perform appropriately when they are asked to.[41] The term "counsellor" is defined in section 2 of the FPA, and the fact that the persons have to be

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[34] Section 8 FPA.
[35] M Roberts "New Zealand's Family Court - Reflections for the Family Law Act of England and Wales" (1997) 11 International Journal of Law, Policy and the Family 246, 248; figures from the Department of Courts *Judiciary Report 1999* (Wellington, 1999) 55 show that in 1998 more than 10,000 requests for counselling have been made to the Family Court.
[36] Section 10 FPA.
[37] Section 19 FPA.
[38] Sections 10(2)(a), 19A FPA.
[39] G M Maxwell, J P Robertson *Moving Apart: A Study of the Role of Family Court Counselling Service* (Report to the Department of Justice, 1993 revision) 95.
[40] See leaflet on counselling available through the Family Court.
[41] Section 8 Family Courts Act 1980.

nominated either by an approved marriage- or counselling-organisation or by a court may guarantee their proficiency. As the number of sessions is to be determined by the registrar or the court,[42] counselling is expected to be short-term and focused on decision-making. The counsellor's role is to help the parties explore whether the relationship is definitely at an end, and if so to help them see available options.

To dissolve a marriage, section 45(1) FPA requires the court's satisfaction that arrangements for the children have been made. As several cases show,[43] the arrangements of most concern to the judges relate primarily to finances and the payment of child support. However, when it comes to custody, guardianship or access issues, section 23 of the GA safeguards the welfare of the child by treating it as paramount. In order to help judges see which arrangements have been made and if they ensure the wellbeing of the child, the counsellor submits a written report about the outcome of the sessions to the registrar.[44]

Counselling usually happens at a very early stage of the family break-up. It is suggested that for this reason a major responsibility for the outcome of the relationship as well as for the children involved in the process can be seen in counselling. The question arises whether counselling through the Family Court can be considered effective and sufficient to guarantee the child's psychological wellbeing.

2 *Evaluation*

A comprehensive study by Maxwell and Robertson shows that the main focus of counselling is to:[45]

> Help clients reach agreements. The next group of activities all involve helping clients come to terms with what has been happening to them by understanding the breakdown, by expressing their feelings, to one another and discussing future attitudes and directions. Information and practical help, personal problems and direct advice come lowest on the list but are important to some clients.

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[42] Section 12A FPA – usually there are up to six sessions available.
[43] *Duncan v Duncan* [1973] 1 NZLR 344, *Strachan v Strachan* (1989) 2 FLB 43, *Rawat v Rawat* (1989) 2 FLB 44, *Newman v Newman* [1998] NZFLR 503.
[44] Section 11(2) FPA.
[45] G M Maxwell, J P Robertson *Moving Apart: A Study of the Role of Family Court Counselling Service* (Report to the Department of Justice, 1993 revision) 95.

Counselling therefore looks backwards rather than into the future. People are made to understand their relationship difficulties with the guidance of a counsellor and subsequently are helped to move on in an appropriate way. Issues that are covered by the counsellor with the parties include the decision about the separation, violence, fear and safety-problems, property matters and children's issues. In fact, 71 per cent of 222 clients with children had at least one issue about the children discussed in counselling.[46] Issues discussed relating to children include access, custody, the child's adjustment and behaviour, decisions about children's future, and enabling the child's view to be heard and maintenance. However, sadly research shows that in the heat of conflict, children's best interests and needs are often overlooked.[47] Parents may or may not come to raise children's issues during counselling according to whether they feel there is a problem. Therefore, counselling currently is not the best means to ensure parents put their children's wellbeing first. From the fact that (only) 71 per cent come up with questions about their children during counselling can be concluded that children from 29 per cent of all other parents may suffer immensely without their parents addressing their needs.

Another problem of counselling is that Maori and Pacific Island people are less likely than pakeha to approach the Family Court for counselling or for conciliation of custody/access issues.[48] This may be due to the fact that, for many cultural groups, the concept of reconciliation or conciliation of dispute might not be appropriate. Moreover, information materials about counselling so far are only available in English while more and more African, Asian, South American and Middle East people, who may have limited English language skills, are immigrating into New Zealand.[49]

Another criticism is the lack of incentive to settle at counselling. As counselling is free for the parties it may be used to continue their dispute. That results not only in unnecessary governmental costs but also in ongoing conflict for children where no settlement is reached. On the other hand it is still believed that "counselling is effective in

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[46] G M Maxwell, J P Robertson *Moving Apart: A Study of the Role of Family Court Counselling Service* (Report to the Department of Justice, 1993 revision) 97.
[47] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 47.
[48] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 49.
[49] According to the Family Court (21 September 2000) they are currently producing a pamphlet about counselling in Maori.

resolving a large number of custody/access/guardianship disputes, at a very low cost per case".[50] The total sum expended on counselling in the year ended 30 June 2000 amounted to $ 4,634,588.[51] Thus, counselling has got the great advantage of being economical feasible. Therefore counselling could be improved to become even more efficient and accessible to more people.

3 Conclusion

Counselling may be seen as a possibility to resolve differences without having to go to court. Private ordering outside the court system is believed to be better for children as an agreed decision is thought more likely to enhance the child's welfare than a court imposed solution. If responsibility for decision-making is to be vested in parents who are in conflict with each other there must be a neutral person to guarantee proper communication in order to safeguard the best interests of the child. Yet, counselling is not primarily in place to ensure the child's wellbeing, nor is it obligatory for every parent. The sessions may promote rational discussions between two people. However, parents can still put their own interests first.

Moreover, the words "counselling" and "counsellor" have led to misunderstandings in the expectations of clients, lawyers, judges, and the counsellors themselves.[52] In order to clarify what people can expect from a counselling session and to make sure that children's interests are dealt with sufficiently, more comprehensive information for all cultural groups would be useful to help them understand what means of assistance are available and what kind of services can be taken up.

B Mediation Conferences

A unique feature of the Family Courts in New Zealand is the use of mediation as an alternative to resolution through a court hearing. The major difference between a mediation conference and counselling through the Family Court may be seen in that a mediation

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[50] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 40.
[51] Letter from Judy Moore, Department of Courts, 13 October 2000. $ 3,146,582 were spent on referrals under s 9 FPA, $ 1,072,685 on referrals under s 10 FPA and $ 415,321 on referrals under s 19 FPA.
[52] Research of A Harland *Custody and Access Orders: Interviews with Parents About Their Court Experience* (Department of Justice, Wellington, 1991).

conference is chaired by a Family Court Judge who has the power, not just to record agreements which have been reached between the parties, but to make orders with their consent.[53]

1 Description

Christopher Moore defines "Mediation" as:[54]

> the intervention into dispute, or negotiation of an acceptable, impartial and neutral third party who has no authoritative decision-making power, to assist contending parties to voluntarily reach their own mutually acceptable settlement for issues in dispute.

A mediation conference chaired by a Family Court judge can be requested by either party to a Family Court proceeding, including their counsel or counsel for the children. It may also be directed by the court at any stage of the proceeding.[55] Parties usually request mediation conferences where disputes have not been resolved during counselling or where negotiations between their solicitors have not come to a conclusion.

The mediation conference is attended by the parties, their lawyers at the party's request, and, if applicable, the counsel appointed to represent the children. On occasions, support persons for either party can, with the approval of the judge, be invited to attend. Current partners or spouses of the parties and the extended family (whanau) are included in this category. The lawyers of the parties are entitled to present the issues in dispute at the conference. However, the meaning of the meeting is to give the parties themselves an opportunity to negotiate and talk to each other in a controlled environment. The aim is to "identify matters in issue between the parties" and to try to reach agreements between them "on the resolution of those matters".[56]

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[53] Section 15 FPA.
[54] C Moore *The Mediation Process: Practical Strategies for Resolving Conflict* (Jossey-Bass, San Francisco, 1987).
[55] R 29 Family Proceeding Rules 1981.
[56] Section 14(2)(a), (b) FPA.

In the majority of cases mediation conferences take place in court and last for about one hour. Some practical ideas are developed during these sessions,[57] and most Family Courts have access to videos which parents are invited to view.[58]

2 Evaluation

Court statistics show that there are about half as many mediation conferences as there are defended hearings.[59] However, many of the hearings are dealing with issues other than the limited range for which mediation conferences are normally used. Consequently, it is not possible to determine from this information the extent to which cases concerning separation and other matters that have an impact on children are going to mediation.

A mediation conference can be useful and should not be avoided because it seems unlikely that the parties will reach agreements on all matters in issue.[60] In fact, less than half of the cases dealt with in a mediation conference are followed by a hearing.[61] Blaikie Judge holds:[62]

> I am quite convinced that any agreements reached between parents in counselling or mediation are more likely to be in the best interest of the children, adhered to and respected by the adults and less likely to produce continuing bitter and acrimonious litigation.

However, Webber claims that in reality these conferences are not mediations as usually understood, and often become pre-trial conferences.[63] This might be true as in a

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[57] For example: In a mediation conference on 23 June 2000 in Wellington it was decided that the parents could communicate about important issues through a little note-book, which their children could carry backwards and forwards.
[58] E O K Blaikie "The Legal Realities for Children and Families – Part Three: 'Reaching the Best Agreements for Children and Families'" in: A B Smith, N J Taylor (eds) *Supporting Children and Parents Through Family Changes"* (University of Otago Press, Otago, 1995), 93, 94.
[59] G M Maxwell, J P Robertson *Moving Apart: A Study of the Role of Family Court Counselling Service* (Report to the Department of Justice, 1993 revision) 181.
[60] P J Trapski (ed) *Trapski's Family Law* (Brookers, Wellington, 1994) Vol IV para H 5 (updated August 2000).
[61] G M Maxwell, J P Robertson *Moving Apart: A Study of the Role of Family Court Counselling Service* (Report to the Department of Justice, 1993 revision) 182.
[62] E O K Blaikie "The Legal Realities for Children and Families – Part Three: 'Reaching the Best Agreements for Children and Families'" in: A B Smith, N J Taylor (eds) *Supporting Children and Parents Through Family Changes"* (University of Otago Press, Otago, 1995) 93, 101.
[63] A Webber "Mediation and the Family Court" (1993) 3 Family Law Bulletin 139.

study on the Family Court mediation[64] none of the participants reported that they had control over either the mediation process or the final decision reached and many felt that the mediator imposed his or her values on the process. Parents are likely to agree to a proposition in a mediation conference as they feel that a judge's recommendation must be of value.

However, the attendance of several mediation conferences showed that some judges do have special skills in the way they can discuss issues with the parties, whereas others lack this ability and try to come to a quick agreement to be able to make an order.[65] It is suggested that parents can come to their own solution in the best interests of the child if a professional guides them properly - a solution with which both parties can comply and which therefore will also be kept. Thus, some authors recommend that judges should not continue operating as mediators as their authority may be too strong and their mediation skills too weak.[66]

The practical approach for mediation conferences taken by the courts is believed to be very useful and in the interest of many clients. Videos, as one example, are invaluable in that they may depict clearly the needs and welfare of children and the problems experienced by those whose parents are unable to communicate and co-operate. The idea of videos available could easily be extended. It would be even more helpful if parents could take videos home and if at least some of those videos were made for children of different ages to view. It is suggested that professional videos for children are one way of helping them learn to cope.

3 *Conclusion*

Often a mediation conference is the first occasion where the parties actually attend the court. It is a great chance for them to reach agreements without the distress of a hearing. Ultimately they have to accept personal responsibility and this responsibility may extend to their behaviour as parents of their children and must encompass a basic level of

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[64] M Henaghan "Legally rearranging Families" in B Atkin, M Henaghan (eds) *Family Law Policy in New Zealand* (Oxford University Press, Auckland 1992) 83, 95.
[65] Author's experience between March and October 2000 in the Family Court Wellington.
[66] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 83.

communication to achieve appropriate contact between parent and child. However, with focus on children's best interests and their needs in a family separation process, mediation conferences may come too late. The majority of parents start living apart long before the attendance of a mediation conference. Although parents may continuously learn about how to help their children during that difficult time of family break-up, the rather late stage at which mediation conferences take place cannot be seen as the best possibility to ensure that children's needs are taken notice of.

Here again, parents may feel helpless concerning their children's issues or they may not even recognise them any more. Given that parents have their own problems in the process of separation from their partner, more information about what is going on for a child at the different stages of the family split-up might be useful in order to avoid a lot of suffering.

It is suggested that practical help is most wanted and meets the needs of the majority of parents.

C Hearing/Adjudication

The last step of family proceedings is the court hearing. Here the parties appear with their solicitors, and the matter is presented to a judge by way of questioning rather than discussion. The process of cross-examination can easily become very stressful and tiring. It involves control moving from the parties to the judge, who has the authority to impose his or her decision on them. This decision is based only on the facts and evidence before the court. However, independent of the specific matter, section 23 of the GA provides that the court treats the welfare of the children involved as paramount.

Having to attend a Family Court hearing means that the parties could not reach satisfactory agreements themselves during counselling or mediation. Consequently, they have to comply with the final decision of the judge. This could mean that they have to perform according to a provision they do not agree with or find hard to keep. This could result in two problems.

Firstly, it may be that - even though the decision was imposed on the parties - it is the best for their children. However, parents may not agree and consequently may not comply with the rules. Examples such as withholding the child from the other parent, making access impossible, discussing facts with the child that they are not supposed to, or even not returning the child after access hours are not uncommon. In all these situations the children become objects to their parent's emotional reactions and conduct. Unless someone reports this misbehaviour the State does not have any influence on the welfare of these children.

Secondly, the decision made by the judge might be taken in the belief that it was the best for all children involved. However, this might not be the case. Psychological reports may be unreliable, or the view parents hold about what their children want and need and subsequently what they tell the court may be extremely subjective. The judge does not have inside information about what is really going on in the particular family.

It is therefore argued that it is best for children and their wellbeing if parents find their own solutions and manage to work out a parenting plan together. A "self-made" solution is more likely to be kept and - given that children need stability - more likely to ensure their welfare. Moreover, a hearing takes place at the latest stage of a family separation, which means that a lot of distress has already occurred for the children.

D Conclusion

In many family upheavals both counselling and mediation are necessary. Counselling is needed to alleviate the emotional distress of the parties, and mediation is required to focus on the specific issues, which need to be determined for the family. However, in many cases a hearing is inevitable to come to a final solution. In all three proceedings the welfare of children plays an important role. Still, none of them is perfect to guarantee their best interest.

At the earliest stage possible parents may need some advice about how they can help their children adjust to family changes, what consequences a separation has and what it means to their children. They might also want to be informed about where they can go

and what they can do to help their children cope, what they can expect from counselling and mediation and how they can safeguard their children's interests.

IV INFORMATION MEETINGS IN ENGLAND

England, in reforming its Family Law, recently passed new legislation: The Family Law Act 1996 (FLA) received the Royal Assent and will probably be implemented late in the year 2000.[67] The FLA will bring major changes for dissolution of marriages in England and Wales,[68] not only by realising the "no-fault-divorce" but also by making information meetings obligatory for parties who want to obtain a dissolution of their marriage.

A Scope of the Act

The FLA supports the institution of marriage and encourages couples to take all practical steps to save their relationship. The principles of the Act are summarised by the Parliamentary Secretary, Lord Chancellor's Department, Jane Kennedy:[69]

> [T]he institution of marriage must be supported as the best proven method of bringing up children, within a stable family relationship by two parents; secondly, the parties of a marriage that may have broken down are to be encouraged to take all practical steps, by marriage counselling or otherwise, to save the marriage; and thirdly, a marriage that has irretrievably broken down and is being brought to an end should be brought to an end with minimum distress to the parties and the children affected and with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children involved as it is possible in the circumstances.

Another objective is that the relationship should be finished "without costs being unreasonably incurred in connection with the procedures to be followed in bringing the

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[67] However, on 17 June 1999, Lord Irvine of Lairg, the Lord Chancellor, announced that he would not be implementing Part II of the FLA during the course of 2000 because of the disappointing interim results of the pilot studies on information meetings, which are an integral element of Part II. Currently (July 2000) the Lord Chancellor is awaiting receipt of the final research report on the information meeting pilots before reaching a decision.

[68] M Richards "The Family Law Act 1996 of England and Wales - Pilot Research on Information Meetings" [1999] Butterworths Family Law Journal 43.

[69] J Kennedy, House of Commons, Hansard Debates for 4 April 2000 (pt 45) <http://www.parliament.the-stationery-office.co.uk>

marriage to an end."[70] However, the FLA is not designed to obtain an easy dissolution of marriage. Although a no-fault-divorce will become possible, which may appear to facilitate the process, several provisions show that an "easy divorce" is not the aim of the Act. Its scope lies rather in the idea of making mediation between the parties more attractive and, by doing this, saving time and costs and avoiding unsatisfactory decisions for them.

The FLA is divided into five parts the most critical of which is the second, which deals with the new divorce law. Part II calls for the introduction of obligatory information meetings.

B Requirement of Information Meetings

Except in exceptional circumstances the FLA will require a spouse (or spouses if they act jointly) to attend an information meeting at least three months before they decide to initiate the divorce process by making a statement of marital breakdown.[71] The three months between the information meeting and the statement of marital breakdown are supposed to be a "cooling off period"[72] with the intention of encouraging the parties use this time to reconsider commencing the divorce process. There is then "a period of reflection and consideration", to allow couples to think through their decision, to be fully aware of the consequences and to have the opportunity to make proper arrangements for living apart. This period of reflection and consideration will last another minimum of nine months. These nine months may be extended by a further six months if one of the parties requests this or if there are children aged 16 or under involved in the separation process. However, the period may not be extended if there is a domestic violence order in force against one of the partners or if the court is satisfied that the delay would be contrary to the welfare of the children involved. The couple will also be able to have an additional 12 months to decide arrangements before applying for divorce.[73]

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[70] Section 1(c)(iii) FLA.
[71] Section 6 FLA.
[72] M Roberts "New Zealand's Family Court - Reflections for the Family Law Act of England and Wales" (1997) 11 International Journal of Law, Policy and the Family 246, 250.
[73] See on the whole subject: The Law Commission for England and Wales *Working for a Better Law – Family Law Act 1996* <http://www.lawcom.gov.uk/library/lc244/pt6.htm>

As it can be seen, after the implementation of the FLA the whole procedure of separation will begin with an obligatory information meeting.

1 Structure of Information Meetings

The meeting is intended to focus parents' attention on the needs of their children and how, in particular terms, they may best address these. The Act requires at least one spouse to attend the meeting. However, according to section 8 of the FLA, if both spouses attend they are not required to go to the same meeting. Within nine areas of information that must be covered and are laid down in the Act the following can be found:

- the importance to be attached to the welfare, wishes and feelings of children, section 8(9)(b) of the FLA;
- how the parties may acquire a better understanding of the ways in which children can be helped to cope with the breakdown of a marriage, section 8(9)(c) of the FLA;
- the nature of the financial questions that may arise on divorce or separation, and services which are available to help the parties, section 8(9)(d) of the FLA;
- mediation, section 8(9)(f) of the FLA;
- the principles of legal aid and where the parties can get advice about obtaining legal aid, section 8(9)(h) of the FLA;
- the divorce and separation process, section 8(9)(i) of the FLA.

As the wide range of topics shows, there is the potential to deal with a great variety of situations from which attendees will come, as well as the possibility of addressing the needs of those for whom information meetings are unwelcome. It is intended that the information meeting will provide the parties only with information on all the services available, not with individual advice.[74] It is designed to empower and facilitate individuals, but does not tell them directly what to do.[75] However, the extent of issues that may be discussed in the meetings, which range from legal to psychological to purely informational

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[74] Chapter 7, White Paper.

[75] R Collier "The Dashing of a 'Liberal Dream'? - the Information Meeting, the 'New Family' and the Limits of Law" (1999) 11 Child and Family Law Quarterly 257, 262.

topics, requires highly professional and very flexible providers. Regarding the question of who is able to provide the information, Geoff Hoon MP states the following:[76]

> The earlier pilots are organised by marriage and mediation services and Probation Committees. We hope that [other] pilots will be organised by firms of solicitors. A number of pilots are in addition supported by a multi-disciplinary consortium.

However, it is hard to determine the provider of information when the exact structure of the meetings is not decided as yet. Between June 1997 and June 1999, 14 information meeting pilots were established, covering 11 different areas of England and Wales, and testing six different models of information delivery (including group presentation and the use of CD-ROM).[77] During the pilots, 5,961 people attended an individual information meeting, 2,460 participated in a group conference, 1,468 people received postal packs with information and did not need to attend at all, and 508 people met with a marriage counsellor. The duration of the meetings is not yet determined either. The individual models tested so far lasted for up to one hour. The other pilot consisted of two part meetings – the first part being on an individual basis lasting up to half an hour, followed on a later occasion by an information presentation for a number of people together, lasting up to an hour.[78]

The primary conclusion reached about the expenses for information meetings is that the average cost of a one-hour individual session with one presenter will be between £60 and £100, based on a projected number of 360,000 to 400,000 information meetings per year.[79] But here again, as long as there is no decision on the specific structure of the meeting, no definite figures can be given.

On 17 June 1999, the Lord Chancellor confirmed in a written parliamentary answer that the Government "did not intend implementing"[80] Part II of the FLA, which contains the

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[76] G Hoon *Speech to the Annual Conference of the Solicitors' Family Law Association* (no publisher, Blackpool, 21 February 1998).
[77] J Walker "Information Meetings Revisited" [2000] Fam Law 330, 332.
[78] G Hoon *Speech to the Annual Conference of the Solicitors' Family Law Association* (no publisher, Blackpool, 21 February 1998).
[79] *Information Meetings & Provisions – Section 6: Looking to the Future* <http://www.open.gov.uk/lcd/research/general/srp/srpsec6.htm>.
[80] Lord Chancellor's Department Press Release No 159/1999, 17 June 1999 (LCD Press Release, 1999).

idea of obligatory information meetings, in the year 2000. And even today, many question marks still hang over the implementation of this part of the Act.

2 Criticism on Information Meetings

The uncertainty about whether Part II of the FLA should be implemented or not arises mainly from ongoing controversial discussions, research surveys and criticism on mandatory information meetings for several reasons.

Firstly, criticism includes the use of group conferences as opposed to individual sessions:[81]

> One of the most frequent complaints about information meetings was that it failed to address the attendees' personal circumstances. This has presented problems for attendees and presenters alike, who expect a one-to-one meeting to be more interactive and less scripted.

It is argued that parents should have the possibility of gaining individual advice through an information meeting in order to make the session as effective as possible. In this context, individual advice does not necessarily mean legal advice, and it is suggested that lawyers should still be exercising their profession, which includes the presentation of legal advice, in the same way as before without even the government's attempt to substitute lawyers with information meetings. However, information meetings should focus on the specific situation and problems of the couples that attend them. Material that is too general does not attract anybody's interest and attention. It was also found that the attendees' ability to absorb the information provided depended largely on whether it was thought relevant for the individual situation.[82] If the meetings are to impact on what people do afterwards they need to be as interactive and responsive to individual circumstances as possible. However, this may not be possible in group meetings, as people may not want to discuss their personal relationships and problems that result from it with other people who just listen but cannot contribute.

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[81] R Collier "The Dashing of a 'Liberal Dream'? - the Information Meeting, the 'New Family' and the Limits of Law" (1999) 11 Child and Family Law Quarterly 257, 262.
[82] J Walker "Information Meetings Revisited" [2000] Fam Law 330, 333.

Secondly, research surveys[83] indicate that lawyers in particular are unenthusiastic about an information meeting becoming a first step in the divorce process.[84] Many lawyers felt that people going to information meetings would not get anything from these sessions that they could not have received by consulting a solicitor. Some suggested they could already meet the client's need for information adequately themselves. However, it is believed that lawyers criticised information meetings at least partly because they perceived them as a threat to the survival of their role in the divorce process.[85]

Thirdly, it may be criticised that information meetings are made obligatory. It is true that people are more willing and capable to absorb information if they actually want it in the first place. However, some couples might think that they already know how to react to their children's behaviour within the separation process, whereas in fact they do not; or they might lose feeling for the problems of their children while they are very busy with their own. It is argued that information cannot harm anybody, whether the people hearing it believe they need it or consider it unnecessary. Children may only profit from their parents' knowledge about certain possibilities for them. Obligatory information is also different from mandatory counselling or mediation.[86] With the latter couples must be willing to talk, co-operate and achieve agreements, whereas information can just be absorbed to get the idea about what is likely to happen after the separation, what children may go through and experience, and where one can turn to when something unexpected occurs. Arguably, obligatory counselling or mediation may fail to reach its purpose.[87] However, information meetings are designed to focus on more than communication or legal issues. They primarily concentrate on "the importance to be attached to the welfare, wishes and feelings of

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[83] A total of 1195 people attended consultation briefings and completed a questionnaire; of these 586 were legal professionals, 222 non-lawyers involved in divorce-associated professions, and 387 were involved in other professions not directly related to marriage and divorce.

[84] P McCarthy, J Walker "Mediation and Divorce Reform Law – the Lawyer's View" [1995] Fam Law 361; P McCarthy, J Walker "Mediation and Divorce – the FMA View" [1996] Fam Law 109.

[85] P McCarthy "Providing Information – The View of Professionals" [2000] Fam Law 550, 553.

[86] In fact M Roberts "New Zealand's Family Court - Reflections for the Family Law Act of England and Wales" (1997) 11 International Journal of Law, Policy and the Family 246, 252 feels that "mandatory counselling/conciliation (mediation) is a contradiction in terms".

[87] R Pritchard "Access to the Family Court – Meeting the Needs and Finances of the Consumer – A Counsellors' Perspective" in New Zealand Law Society *The Family Court Ten Years on* (New Zealand Law Society, Wellington, 1991) 210.

children".[88] The obligatory character of such meetings may therefore not be of great concern.

Fourthly, supporters of information meetings may argue that one information meeting before the dissolution of marriage is not enough, especially if the spouses are not required to attend it together. Both parents still have guardianship of the child even when they separate.[89] They might therefore be obliged to take the responsibility together and talk things over with a third person, even after separation. This could be reasonable and useful because, as discussed above, the problems occurring for children with their parents' separation do not end with the formal dissolution of the marriage. These children may need later protection, such as from poor care by the custodial parent,[90] financial disadvantages, lack of love or from the feelings of responsibility and guilt a child may develop after one parent has left the house. However, acknowledging that some problems do arise only after separation, the question is how far the State's interference into people's lives should reach. As the name indicates, information meetings are intended to inform, not to control families with their children. Couples may feel that they do not want to be supervised by the State any more after a certain time and that they are well capable of dealing with problems on their own. It is argued that the State's intervention should end where families' privacy is interfered with too much. An information meeting that would follow up some years after the separation would be an example of such a violation of personal privacy.

Finally, with the focus on the best interests of children it has to be taken into consideration that information meetings are only made obligatory for spouses who want to dissolve their marriage. However, given that the number of de facto and same sex couples who have children is continuously increasing, there is a gap in the system. Due to the fact that those couples are not married (or legally are not able to marry), children from these relationships cannot profit from those meetings.

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[88] Section 8(9)(b) FLA.
[89] Section 6(1) GA.
[90] I Hassal, G Maxwell *A Children's Rights Approach to Custody and Access: Time for a Radical Rethink* (Office for the Commissioner of Children, Wellington, 1992).

3 *Positive aspects of Information Meetings*

However, the FLA contains some very good ideas: It tries to bring marriages to an end without affecting the children too much and without costs being unreasonably incurred in connection with the procedures to be followed. The former Lord Chancellor, Lord Mackay of Clashfern, stated that giving information:[91]

> is intended to be one of the ways whereby, before they can take steps obtaining a divorce, couples will be made aware of the enormous emotional, social and economic upheaval involved in divorce and, very importantly, the services available to help and support couples… It will communicate the facts that will help people make decisions on a basis of knowledge.

Parents may be made aware of what really happens to their children and their property when they part. They might reflect more consciously about the steps they are going to take and they may be grateful for being informed about what possibilities they have and how they are able to save legal fees. In a one-to-one meeting they might take the chance to ask questions such as about the meaning of counselling and mediation and what they can expect from it. In fact, the introduction of pilot information meetings in England offered the prospect of increased counselling and mediation services. Over 90 per cent of the attendees found the meetings useful, and 57 per cent stated that they would consider going to mediation in the future if it then seemed appropriate.[92]

An information meeting may encourage parents to look forward at a moment when many couples would appear to look back to what went wrong in their relationship. This may be very much of benefit for the children involved.

C Conclusion

Although a lot has been criticised about pilot information meetings in England, the idea behind it is very valuable. As it was discussed above, many New Zealand people in family break-up situations feel they want to know more about what is going on, what they can expect from counselling and mediation, and where they can seek help. It is also true

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[91] Walker, Hornick *Communication in Marriage and Divorce* (BT Forum, England, 1996) 59.

that even if by law the welfare of the child needs to be treated as paramount in all stages of family proceedings, it may easily be forgotten in the light of matrimonial property issues or personal problems the couples face. Obligatory information at the beginning of family proceedings therefore seems to be very useful. However, information needs to be presented in a variety of accessible, understandable forms, emphasising the needs for those who do not read easily or whose first language is not English.

V *INFORMATION MEETINGS – A PERSPECTIVE FOR NEW ZEALAND?*

It has been discussed that giving information at a very early stage of the separation process is valuable and important to many people. It is also believed that children may profit to a great extent from information which their parents receive. The question arises whether information meetings as set up in England and Wales would be appropriate to be implemented into New Zealand Family Law proceedings.

A A Review of the Family Court and the Family Conciliation Service

One reform has already been proposed in New Zealand. The 1993 report *A Review of the Family Court* suggests that a Family Conciliation Service be set up alongside the Family Court structure.[93] All disputes under the Guardianship Act 1968 should be filed directly with the Family Conciliation Service without the need to obtain legal representation or entitlement to legal aid, unless there are urgent serious issues requiring the intervention of the court. It is proposed that the co-ordinators hold an initial interview with the parties in order to classify and allocate the dispute to the most appropriate counselling or mediation session. Certain matters will therefore be denied access to the courts. The authors of the review suggest that the first step for couples to solve a problem should be that they either approach the Family Conciliation Service for assistance themselves or that they are referred to the Conciliation Service by a solicitor.[94] *A Review of the Family Court* was driven by the concern about escalating costs of the Family Court system, especially the

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[92] R Collier "The Dashing of a 'Liberal Dream'? - the Information Meeting, the 'New Family' and the Limits of Law" (1999) 11 Child and Family Law Quarterly 257, 266.
[93] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 52.
[94] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 59.

cost of legal aid. It was hoped that the Family Conciliation Service would avoid the use of lawyers, and it was proposed that information sessions would be held to prepare the parties for mediation. This would include the promotion of consideration of the interests of children.[95]

It is suggested that the proposal for a Family Conciliation Service as outlined in *A Review of the Family Court* has not been moved forward until today for several reasons.

It is argued that the current stages a couple needs to go through before final decisions can be obtained are very time-consuming. Although the Family Conciliation Service was suggested to replace or cut back the use of lawyers, it is believed that it would simply add another step to the already long lasting proceedings. Lawyers are still needed for legal advice, and a Conciliation Service that is followed up by counselling and/or mediation cannot overtake every task a lawyer is able to carry out. The suggestion is that a more rapid but precise and lasting solution is better for all parties - and particularly the children - than an on-going process which does not seem to come to an end.

Moreover, it is feared that where lawyers are avoided and not consulted the parties could come to a solution which is not necessarily best for them. There might be more opportunities and rights for everybody involved in the proceedings than a Conciliation Service would be able to present. It is suggested that Conciliation Services could end up in legal advice giving even though the advisors might not be legally professionally trained. This is especially the case where the distinction between information and advice is fine. Some parties may want to know straight away how the law affects their particular situation, and it might be difficult for them to understand they cannot be told anything about how the abstract suggestions and information affect their own case.[96] That might tempt the Counselling Co-ordinator, who is supposed to do the first interview with the parties,[97] or the mediator, who will do the information session,[98] to give some legal advice. However, due to

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[95] M Roberts "New Zealand's Family Court - Reflections for the Family Law Act of England and Wales" (1997) 11 International Journal of Law, Policy and the Family 246, 265.
[96] M Roberts "New Zealand's Family Court - Reflections for the Family Law Act of England and Wales" (1997) 11 International Journal of Law, Policy and the Family 246, 265.
[97] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 59.
[98] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 60.

their lack of legal knowledge, this may not be to the advantage of children or their parents and should therefore be avoided.

Another reason for the non-adaptation of the new proposal might be that with the introduction of the Domestic Violence Act 1995, there has been a gradual awareness that violence in public and private is unacceptable. This was a great change to the former non-interventionist approach. However, with the acknowledgement that domestic violence is an issue in many family separation processes it seems inappropriate to request the parties to go to an information session together. Moreover, the report *A Review of the Family Court* suggests that after the information session mediation should be mandatory.[99] Again, especially where violence between the parties is at issue, mediation is not suitable.

Finally, the re-structuring of the Family Court and the implementation of a Conciliation Service itself would cost a lot of money. It involves the development of pilot schemes, and mediators would need to be elected, trained and supervised.

However, the fact that a new idea was brought forward by *A Review of the Family Court* supports the suggestion that amendments should be made to the current family law proceedings. The main engine that currently drives reform ideas seems to be Family Court costs and the lack of information couples in separation situations are confronted with.

B Information Meetings

It is suggested that information meetings as proposed in England and Wales would not have a chance of establishing themselves in New Zealand for the following reasons.

Firstly, the two family law systems are too different to apply information meetings as they are proposed in England to the New Zealand family law proceedings. The main difference lies in the way that a dissolution of marriage can be achieved. In England the parties have to attend an information meeting before they may file for divorce, and only after that does the period of mandatory living apart begin.

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[99] P Boshier *A Review of the Family Court – Report April 1993* (no publisher, Auckland, 1993) 52.

As opposed to that, in New Zealand a couple who files for the dissolution of their marriage just has to show that they have already been living separately for two years. This means that the actual separation happens long before the final dissolution of the relationship. Therefore by the time a New Zealand couple files for divorce an information meeting would be of little or no use to the parties and the children involved. It may be argued that the requirement of the obligatory two years apart before the dissolution should be abolished. This would mean that couples could have their marriage dissolved straight after they applied for it. An obligatory information meeting could then be useful as the period of living separately might not be as long and the children may subsequently still profit from their parents' knowledge about how to help them adapt. However, it is suggested that the obligation of living apart for two years is very useful and should not be removed from the FPA-requirements. The time might be helpful to think a relationship over properly before it is finally dissolved and to become very clear about whether it is definitely over. It may be argued that if the process is made too easy, dissolution of marriage may increase, and the decisions about getting married or getting divorced might not be taken seriously enough any more.

Secondly, a lot of criticism that has been brought forward against information meetings in England and Wales is justified and would cause the same problems in New Zealand. Of particular concern is the fact that wrong advice may be given by a non-knowledgeable or insufficiently professional person. Also lawyers might feel they loose part of their expert work, as their usual task of advice giving might be overtaken by someone else.

Thirdly, information meetings are only related to the dissolution of the marriage, whereas in New Zealand more and more people decide to live together and have children without getting legally married. The law of guardianship and matrimonial property rights is currently being amended to give recognition to the changes in society. It would be a step backwards to introduce another system that would only be available to married couples. However, even if information sessions were open to de facto couples they would not be covered by the obligation to attend the meetings as they do not require a dissolution of their partnership through court.

Finally, bearing in mind that New Zealand already has got a very developed counselling system that is appreciated by many who experienced it, a complete new institution like a separate information session might be superfluous. This is true in terms of cost, time and efficiency. A lot of research and effort has already been put into counselling through the Family Court to make it as successful as possible. It could be argued that with the introduction of a mandatory information meeting, voluntary requests for counselling could increase. However, it is suggested that with an obligatory step the parties need to take, requests for counselling through the Family Court would become less attractive. This is certainly true as parties would gain a broader perspective of what other services are available and realise that once proceedings begin they might be referred to counselling anyway.

C Conclusion

It can be concluded that the information meeting as set up in England and Wales, although very valuable in its content, does not fit well into the New Zealand Family Court proceedings. New Zealand's system of counselling and mediation supplements legal services. As discussed, parties have usually seen and been advised by a lawyer first. The clear agenda in England and Wales is to avoid lawyers, and thereby reduce legal costs. Consequently the information meeting was introduced with the FLA.

However, there are clear indications that New Zealand will have to reconsider the workings of the Family Court. When the Court was established in 1981, it was seen as being in partnership with the conciliation avenue, with close interaction of all professionals. It has more recently been recognised in *A Review of the Family Court* that this model is hard to sustain due to economic reality and demands on judges' time. However, it has also been seen that counselling through the Family Court works well and is worth keeping. This is especially true as its use is cheap, reduces hearings and consequently cuts down immense legal costs. Moreover, counselling does not demand judges' time in any way, as they do not play a role in it. Consequently the focus should be on how to improve counselling sessions and make them more efficient rather than on establishing a new institution such as obligatory information meetings.

VI COUNSELLING SERVICE REVISITED

It has been discussed that more information in a family split up situation is needed particularly in order to tackle children's problems and to treat their feelings as paramount. In 1993 the *Review of the Family Court* acknowledged that reform is inevitable. Many people do not know how to cope with their children's difficulties to adapt to family changes or feel helpless with the choice of the right way to proceed. They may not understand what they can expect from counselling or mediation and may be reluctant to consult a lawyer to ask for information and advice that is not necessarily restricted to legal material.

The question arises where information could come in best to provide the parties and more importantly their children most efficiently with clear material and advice. The crucial point is that most people still resolve their difficulties without the Family Court[100] and are therefore hard to approach by the State. However, New Zealand does have a responsibility to care for its children.

A *Information with Application for a Separation Order*

One possibility would be to approach people with information when they apply for a separation order. According to sections 20 to 26 of the FPA a separation order can be sought by either party to a marriage. Persons who have entered into a de facto relationship cannot be granted a separation order.[101] The effect of a separation order is "a licence of the parties to live apart".[102] "It affects a party's right as to any property", [103] and removes any obligation to cohabit with the other party, but does not otherwise affect the marriage or the status, rights, and obligations of the parties to the marriage.[104] In fact, applications for separation orders have become very rare. Most couples just agree to live apart without seeking such order.

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[100] Ministry of Justice *Responsibilities for Children Especially when Parents Part – Discussion Paper* (Ministry of Justice, Wellington, August 2000) 14.
[101] *Abbott-Gray v Abbott-Gray* (1970) 13 MDC 153.
[102] *Feasy v Feasy* [1984] 3 NZFLR 97, 98.
[103] P J Trapski (ed) *Trapski's Family Law* (Brookers, Wellington, 1994) Vol VIb para FA 23.05 (updated August 2000).
[104] Section 23 FPA.

Because of the fact that separation orders have become practically non-existent not many people, and only married couples, would profit from information that would be given on such an application. Thus this stage of the separation process does not seem to be a good time and place to approach the parties with information.

B Information with Counselling through the Family Court

Another option is to combine information giving with the counselling service. There are many advantages of connecting the two.

Firstly, counselling is available for married and de facto couples. While many stages of the FPA still focus sharply on the dissolution of marriage, since 1986 the counselling service has been extended to non-married parents.[105] This is a clear benefit for information to be provided, bearing in mind that most children from separating families should be reached. This is an especially valid argument as more people decide to have children without getting legally married.

Secondly, counselling usually takes place at a very early stage of the separation process. As discussed above either the parties ask for it in the Family Court[106] or they are referred to counselling by a judge. Often, lawyers advise their clients directly to attend counselling sessions. Information at this very early stage is suggested to be more suitable for everybody involved than at a time where most problems associated with family break-up have already reached a higher level.

Thirdly, counselling happens only if considered appropriate. This means that in cases where domestic violence is at issue parties are automatically not considered for counselling, nor would they usually apply for any themselves. Consequently, a pre-selection by means of suitability for the parties has taken place by the time the couple attends the first session.

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[105] Section 7A of the FPA was inserted by s 3 of the Family Proceedings Amendment Act 1986.
[106] Section 9 FPA.

Fourthly, counselling is connected to many different issues. Whether the parties are in dispute over guardianship, custody, access or child support does not make any difference to the availability of counselling for them. Consequently, almost independently from the specific topic the parties have to deal with in their separation process, counselling is a stage they have to go through. Information during one of the sessions would therefore reach a wide range of people who find themselves in a break-up situation. However, counselling is not available for parties who deal with matrimonial property issues only, but resolve their differences over the children themselves. Thus, the combination of counselling and information would not cover those parents who only have matrimonial property topics to solve through the Family Court. It is suggested that at least some of those couples may need information for the sake of their children also. Often, children's needs might be forgotten or underestimated while money seems to be more important. However, research shows, that most people who have young children and cannot agree on matrimonial issues do have a couple of other topics that concern their children as well.[107] This means that counselling is available for them, too. Yet, for the few couples with matrimonial property issues only, a group meeting could be organised, where information would be provided.[108] However, it has to be seen that for all couples for whom counselling is not mandatory information would not be obligatory either.

Finally, a counselling service is already established and highly appreciated by many attendees. Thus it is reasonable to combine the offer of suitable information with the counselling service through the Family Court. It is suggested that this solution may be efficient and may save time and costs. This is of course dependent on how the availability of information is organised.

1 Timing

It is suggested that the best time for information would be before the very first counselling session the couple attends. This has some advantages over a separate information session for the parties independent of any other proceedings they have to go

[107] Observation from the extern programme with Margaret Powell & Wendy Davis Law Office between March and October 2000.
[108] See further below.

through. A session independent of the common six counselling sessions would result in more time and costs for the government, whereas an integrated pre-session would cover all people who attend counselling and reach them at the earliest stage possible. Moreover, the introduction of a pre-counselling session of pure information allows for the creation of an understanding of what will await the parties once the actual counselling starts and could give them an idea about what they might want to do beyond that. It is believed that one to one-and-a-half hours would be sufficient to cover the information the parties would need.

More practically speaking, every couple who is referred to counselling or applies for it voluntarily would automatically be confronted with an information session before the actual counselling starts. If the parties wanted follow-up sessions for information only they would have the chance to attend one of the group sessions.[109]

2 Information that should be provided

It is certainly easier to define what information giving is not: It is neither advice giving, nor mediation, nor counselling. Establishing what it is presents more problems.

Firstly, information givers should explain thoroughly what the parties can expect from the counselling sessions that are to follow as well as what a mediation conference and a final hearing would mean for them. This is important as some people misunderstand the significance of counselling in particular.[110] It is suggested that a clear idea about what is going to happen and the opportunity to ask questions will help many people to face the difficult situations that might await them. It is also believed that knowledge diminishes concern as people usually do not fear things to the same extent when they have an idea about what they can expect. The difference between the pre-counselling session and the actual counselling is suggested to be that in the first meeting parties receive pure information without the counsellor's attempt to reconcile them and without trying to make them reach agreements.

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[109] See further below.
[110] See discussion above.

Secondly, couples should be made aware of the enormous emotional, social and economical upheaval involved in the separation, particularly with regards to their children. It is argued that many parents may focus mainly on themselves and on the difficulties they are confronted with. Children may be put second where parents suffer from emotional stress and family changes. It may be important to remind them that children feel more of the quarrels than they may clearly show, and it seems useful to name signals children may give. An express part of the one-to-one session could be devoted to what parents should tell and explain to their children and why other matters are preferably left undiscussed with them. It is argued that more emphasis on parents' responsibilities towards their children would be a better focus for resolving issues when parents separate.[111]

Thirdly and most importantly, couples should be informed about the services available to help and support their children as well as themselves. Information about the different possibilities should be age-specific, should relate to the number of children in the family and should also focus on the specific circumstances of every case. An information session where only the people concerned are present also allows for questions and case-related information.

Fourthly, attendees should be provided with information material, useful for their children and for themselves. Such material could be available through the Family Court and should be published age-specifically. Books and videos to borrow as well as leaflets to take away may be included in the variety of accessibilities. It is also important to produce information material in at least English and Maori and ideally in more languages, so that more cultural groups could profit.

Finally, it might be useful to ask attendees to complete a questionnaire and to invite them to participate in follow-up research. This would give feed-back to the counsellor and help the Family Court improve the information sessions.

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[111] Ministry of Justice *Responsibilities for Children Especially when Parents Part – Discussion Paper* (Ministry of Justice, Wellington, August 2000) 12.

In England concern was expressed during the passage of the Family Law Bill about who should provide the information at information meetings.[112] Firstly, the material about emotional effects of a separation on children calls for some level of expertise. But also, during training and throughout their practice, presenters referred to the dilemma between delivering a standard, structured script and attempting to tailor the information to the individual. Linked to this was the anxiety about whether it is possible to convey neutral information in a one-to-one meeting without inadvertently giving advice or steering the recipient in a particular direction:[113]

> [One of the most difficult aspects of the role of the information presenter is] [m]aintaining the interaction between presenter and attendee whilst keeping to the time schedule of the presentation – this may be as little as eye-contact, nodding, giving brief answers, acknowledging distress – but carrying on keeping to the brief. It is managing the dynamics of the situation so that the attendee maintains concentration, can contribute if they want to, their response/behaviours are recognised and valued, and the presentation can continue to maximum effect.

In New Zealand and with an approach of combining the presentation of information with counselling it would be most convenient to let counsellors present the information in the pre-counselling session. Research shows that the qualification of the counsellors available through the Family Court reach from psychiatrists to clinical psychologists, educational psychologists, social workers, marriage guidance and community experts.[114] Some work for hospitals or governmental agencies, others are members of community agencies, and the majority works in private practice. The variety of professions as well as the many different professional backgrounds show that there is not one single category of counsellors. However, it is apparent that lawyers do not work as counsellors for the Family Court. The fact that lawyers would therefore not undertake the role of information givers either has got the advantage that the information material would be at less risk of being legal but purely informative. It is suggested that it could be possible without great effort to

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[112] *Information Meetings & Provisions – Section 5: Delivering Information Meetings* <http://www.open.gov.uk/lcd/research/general/srp/srpsec6.htm>.
[113] Information presenter in one of the pilot groups in England.
[114] G Maxwell *Family Court Counselling Services and the Changing New Zealand Family* (Department of Justice, Wellington, 1989) 59.

train the current counsellors to know about the availability of all services to the public and to urge them to purely inform and not to counsel in the pre-counsel session. However, counsellors might not be able to easily distinguish between their job as information presenters and their later task as counsellors and might slip into counselling straight away. On the other hand in the first session parties and counsellor do not know each other and a precise plan and schedule of what to present in the first meeting might help counsellors to stick to neutral information. This is especially important if more family members than just the parents attend the session.

4 Who should primarily attend the pre-counselling session?

The main question which needs to be answered is whether every couple that is suitable for counselling would attend pre-counselling sessions or if these information sessions are only designed for couples with children. As already discussed above, apart from general information about counselling and mediation, the main impact in pre-counselling sessions would be on children, their wellbeing and needs. It is therefore suggested that childless couples and those whose children have already reached the age of 17 may not be suitable for pre-counselling sessions.[115] Such children may already be independent from their parents and might not want their help and care anymore. Therefore information for this group of people might be unnecessary and consequently pre-counselling sessions should not happen automatically. However, if parents with older or without children still wanted to attend an information session, they could always participate in a group session.[116]

In conclusion, parents with children under 17 should be the only target group for one-to-one pre-counselling sessions as information seems most suitable for them and of great use to their children. It is suggested that each party should be allowed to bring along one support person if that makes them feel save or more comfortable.[117] Support persons may lessen the distress of the parties and subsequently intensify their ability to absorb information.

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[115] The age of 17 was chosen according to s 2 of the Children, Young Persons and Their Families Act 1989, which defines boys and girls between 14 and under 17 as "Young Persons".
[116] See further below.
[117] The idea of support persons can be found in s 83(2) Domestic Violence Act 1995.

5 *Should the whanau be allowed to attend the pre- counselling sessions?*

The current law about family separation is mainly focused on parents and children. It has very little recognition for the role which the wider family (whanau) might have in bringing up a child. Yet "it is quite common for a broader group of adults to help raise a child, with grandparents and aunts and uncles often being very important in the nurturing of a child."[118] This is especially true for Maori and Pacific Island families due to their cultural values and approach.[119]

It is suggested that it would be useful to include the whanau in the first counselling session, where parents are provided with information on assistance for the child. It should be a voluntary decision of each participant if they think the presence of extended family members is appropriate and would be useful due to the intensity of the relationship with the child. However, if the parties disagree about the attendance of extended family members it may be necessary to let the counsellors take a final decision on a case-to-case basis. It is suggested that counsellors have a feeling for the situation and are able to discern whether a party is only opposed to the presence of other family members to upset the other side or if there is a reasonable explanation to the aversion. However, the general guideline should be to involve the whanau in the information process. It may be important to some family members to gather direct information about what they need to do and what they can provide the children with to help them cope. This might be particularly the case where children live with their grandparents or other extended family. The possibility of including the whanau in the pre-counselling session might be a great advantage for the children involved. Moreover by doing that, the values and aspirations of Maori and Pacific Island families may be incorporated in the family separation process. Changing the law by recognising a greater diversity of New Zealand cultures could even result in higher appreciation of counselling and therefore in an increasing request for it by more ethnic groups.

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[118] Ministry of Justice *Responsibilities for Children Especially when Parents Part – Discussion Paper* (Ministry of Justice, Wellington, August 2000) 12.
[119] J Metge, D Durie-Hall "Kua tutu te puehu, Kia mau: Maori Aspirations and Family Law" in M Henaghan, B Atkin (eds) *Family Law Policy in New Zealand* (Oxford University Press, Auckland, 1992) 54.

6 *Should the child be allowed to attend these pre- counselling sessions?*

There is no specific provision under the FPA to include or consult children in the counselling or mediation process. Neither does the English Family Law Act make such provision. In England it is believed that the interests of children will be sufficiently safeguarded by providing information about their needs at the information meeting.

With the United Nations Convention on the Rights of the Child, the international community's commitment towards children and the recognition of their fundamental rights has reached new heights. A primary right of the Convention is the child's right to be heard and to express his or her views as provided by article 12 of the Convention. Of all the rights protected, this right is probably the most often invoked before the courts of the different member states.[120] Many New Zealand cases also show that during court hearings judges do decide according to that provision and take the child's view on custody and access into account.[121] The Ministry of Justice confirmed that very recently in its discussion paper on the Guardianship Act stating:[122]

> The Court must find out the wishes of the child or young person, if they are able to express them, and take them into account to such an extent, bearing in mind the age and maturity of the child or young person. The Court may use counsel appointed to represent the child for this purpose.

However, the question arises whether a child, after having reached a certain age, should attend the pre- counselling session where parents would get information about how to help children cope.

In England during the early months of the pilots some focus groups were conducted with children who had experienced their parents' separation. The findings showed that children usually wanted their parents to explain what is happening, and that most parents do not do this. Moreover, children said that they valued books and leaflets and other

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[120] C Neirinck *Le droit de l'enfance après la Convention des Nations Unies* (Delmas, Paris, 1993) 154.
[121] See for example *Clark v Carson* [1995] NFLR 926; *McLeod v Makea* (28 January 2000) unreported, Family Court, Hastings, 020 259 93; *Johnston v Johnston* (25 March 1997) unreported, Family Court, New Plymouth, FP 043 239 86.
[122] Ministry of Justice *Responsibilities for Children Especially when Parents Part – Discussion Paper* (Ministry of Justice, Wellington, August 2000) 9.

information which was targeted to their needs.[123] They were more reluctant to accept that other people than their parents talk about them and try to figure out what they need.

Bearing in mind that children are already assessed by many different people in the process of family separation[124] and are confronted with the obligation to share their experiences within the family with their lawyer[125] and psychologists, it is suggested that the rule should be to not include children in the first counselling session. It is believed that it is the parents' task to help their children cope, and if they cannot do it themselves to gain information about outside assistance for their children. For the child, a meeting with a counsellor and both parents, whose problem often is non-communication, seems to be an unnecessary anguish. Their presence during these meetings are considered particularly out of place as the main purpose of these pre-counselling sessions should be to achieve information about how children can be helped to cope with the family break-up situation. However, the non-attendance of children can only be made a rule with exceptions. In certain situations and dependent on the age it might be a good idea to let children participate during the meetings. Especially where there is more than one child in the family and where the age difference between the children involved is apparent, older children might want to contribute in the separation process by taking on a helpful role. They might want to gain some knowledge about how to help their younger siblings and, by doing that, help themselves cope with the situation.

C Voluntary Group Sessions for People who Seek General Advice

There is always the problem that many people would like to be advised about how they can cope with their children's adjustment to family break-ups, but are reluctant to go to counselling or fear attending a one-to-one meeting. The reason for this may be that the word counselling is misunderstood, or that they only seek very general advice without any connection to their personal situation. Those couples will not request counselling in the first place and may therefore not be provided with the necessary information at an early stage. The other situation where voluntary counselling does not occur is if one partner is reluctant

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[123] *Information Meetings & Provisions – Section 4: Gaining Knowledge and Moving on* <http://www.open.gov.uk/lcd/research/general/srp/srpsec6.htm>.
[124] See for example the s 29A GA – psychological report, which is very common in separation processes.
[125] Counsellor for the Child.

to attend a meeting even though the other partner may want to be counselled and advised – sometimes maybe only for their children. And finally, counselling never happens where the parties only have matrimonial property issues to resolve with outside assistance, but manage their children's issues by themselves.

It is suggested that an information session in the form of a group meeting be set up along side the Family Court. Such meetings could be held once every two to three months, depending on the demand. The Family Court as well as lawyers could keep schedules for the dates of the meetings and the Family Court should register people for attendance in order to have an overview of the number of requests. However, attendance without earlier registration should also be possible to cover people who spontaneously decide to come along. The Family Court could allocate each group session to a different counsellor, which would mean that there would be no over-demand on one single counsellor's time.

Group sessions could be held with the assistance of Videos or CD-ROM, attendees should have the opportunity to ask questions, and the information pack, which is also available after the individual meetings, could be distributed to everybody after the session. It is believed that such group sessions would be held in English. However, if there was an increasing demand from Maori or Pacific Island people, it might be useful to set up specific sessions for these ethnic groups.

Such group sessions are suggested to be a valid alternative to the pre-counselling meetings and are believed to achieve high demand due to the availability for everybody and without the obligation to identify themselves and their own problems during the meeting. People could attend on their own or with their partner or ex-partner, according to the situation and without anybody controlling them. Group sessions may also be interesting for people who already attended counselling and might want to take part in a follow-up session, where they can ask questions again or bring their new partner and establish contacts.

VII CONCLUSION

One of the fundamental concerns about dissolution of marriage or any family separation is the potential impact on children.[126] This paper seeks to protect children's interests by suggesting separating parents should be informed about their children's needs and about the importance of giving them clear age-appropriate information, and encouraging them to find amicable ways of continuing their role as guardians irrespective of living arrangements.

A pre-counselling session in order to inform parents about their children's needs, feelings and emotional situation during a family break-up and to give them an idea about the availability of help seems to be an invaluable progress to the current family law proceedings in New Zealand. A group session that would be held four to six times a year would accomplish the concept of responsibility of the State which has to guarantee the wellbeing of the children is paramount. More information could help parents concentrate on their children's situation and pay greater attention to their behaviour during the difficult time of separation. More information would also lead to a better use of the services available and could therefore reduce costs. Finally, with the introduction of pre-counselling and group meetings greater attention would be paid to a wider range of cultural groups by integrating the extended family and acknowledging the role they play for their children.

Information meetings in England and Wales provide a good example. However, it was seen that their direct adaptation into New Zealand law would not be suitable due to the divergence of the two different systems. Pre-counselling sessions and group sessions are believed to be favourable over such information meetings. It is hoped that these institutes will manage to ameliorate situations for children in difficult times of family break-ups. Tori Larson illustratively expresses the need for improvement and the necessity to focus more on children and their needs in the following poem:

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[126] In her speech before the Family Law Section of the New Zealand Law Society on 16 October 2000 the Attorney General, Hon Margaret Wilson said that children's wellbeing was in fact the greatest concern of the present government.

Divorce

The deadly plague it blows its breath,
And snatches children from their nests,
And helpless lovers beg and cry,
As weary mothers breathe their sighs,
The callous reapers who design,
To strip sweet childhood out of time,
And grab their lovers, dancing slow,
And tell their children, I must go,
"But shed no tears for none is lost,"
Their lying tongues don't count the cost,
But those that linger, left behind,
Know well the pain lost love can twine.

Gold and silver cannot fill,
That gnawing emptiness until
You beat your breast in rage and grief,
Your love was stolen by a thief.

Now childhood laughter's song is hollow,
As broken dreams and promises follow,
And quiet rage replaces hope,
The deadly reaper's interlope.

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