

Achieving Equity: Our Children's Right to Opportunity

Public Health Conference

Wednesday, 5 September 2012

1.45pm – 2.30pm

Rutherford House, Lecture Theatre 1

Pipitea Campus, Victoria University, Wellington

Much has been happening concerning family law, and the place of children in New Zealand, in recent times. This heightened focus on vulnerable children and family law is understandable, given both the reality of New Zealand's appalling rates of child abuse, neglect and poverty, and also given the huge amounts these issues are costing the State. The other reason I believe the focus on family law is warranted is because it is one of the most important areas of law for it affects New Zealanders across the spectrum, from childhood to death.

The Government has described the recent Family Court reforms as "putting children first" and exhorted us to have a more child focussed approach.¹ This followed earlier signals from the Government that private family law disputes — the disputes between parents concerning who should care for their children — were costing too much money and were diverting attention from the cases that really matter.² This meant the Government, unsurprisingly influenced by the current fiscal climate, focused on scrutinising processes for Care of Children Act cases, which make up around 40% the Family Court's workload.

While those parents and children caught up in parental conflict may suffer stress, anxiety and potential damage, once the parental conflict is resolved, most parents manage to continue to

¹ Hon Judith Collins, Minister of Justice, "Family Court Reforms Put Children First" (Thursday 2 August 2011, Press Release at 1.

² Cabinet Domestic Policy Committee "A Review of the Family Court" 19 April 2011.

provide a level of parenting which offers their children the best possible start in life. Other parents are simply not capable of this. Sadly, it is the children of these parents who do not have access to the same opportunities as most New Zealand children at the outset.

If the proposed reforms do have the claimed effect of reducing some of the “clog” of the Courts, then I hope that a flow on consequence will be that we have the ability to really concentrate on children at risk and to afford them a better life opportunity than we have historically. At present we are not doing good enough.

The Green Paper outlines some statistics for New Zealand children including the 21, 000 confirmed cases of abuse and neglect in 2009/10, over 1300 hospital admissions in 2008/09 for children and young people that could have been avoided and the fact that more than 30,000 students are truant from schools on any given day.³ These awful statistics are a call to action but the other impetus to act to make real change for these children is drawn from a moral obligation as members of a civilised society to protect and safeguard the most vulnerable members of our society. All the research points us towards the inescapable position that early intervention is an absolute necessity. Certainly, in the *Inquiry into the Identification, Rehabilitation, and Care and Protection of Child Offenders* report, released on 20 June 2012, the Social Services Committee wasted no time in indicating that early intervention for children who were seen as being at risk early on simply had to occur and that Government agencies owed children a duty to share their information much better and to ensure that they were accountable for their outcomes in relation to these children.⁴

After setting out the underpinning framework of children’s rights, I want to explore some of the characteristics of the children and young people I believe we should be focussing on. Finally, I will make some practical suggestions that I believe will have a real impact on improving the value of children’s lives.

A Rights Based Approach for Children in Need of Care and Protection

New Zealand adopted the United Nations Convention on the Rights of the Child (UNCROC) in 1989 and ratified it on 6 April 1993. Since then, there has certainly been an integration of parts of the

³ The Green Paper for Vulnerable Children, 2011 at 2.

⁴ Social Services Committee *Inquiry into the Identification, Rehabilitation, and Care and Protection of Child Offenders* (20 June 2012) at 18.

UNCROC into legislation and policy and it has become an important touchstone for policy development in this area. In particular, article 12 of the UNCROC has been given effect by appointing lawyers to represent children both in proceedings in the Family Court to ensure there is an opportunity for their voice to be heard. There is also legislative direction to take a child's views into account in the two main statutes affecting children — the Care of Children Act 2004 and the Children, Young Persons and Their Families Act 1989.⁵ While not included in the UNCROC, I believe that as a society we also have a collective sense that children born in New Zealand are born with a right to opportunity. Results from a Longitudinal study of migrants who have been granted permanent residence in New Zealand show that the top reasons for choosing New Zealand as a place to live are “relaxed place or lifestyle, climate or the green environment, and a better future for my children.”⁶ We are lucky to live in a country with stable, democratic government, a beautiful and life-giving environment and one which provides many opportunities.

That some children are deprived of these opportunities because of poor parenting, societal ambivalence to inequality and unsatisfactory agency response is unacceptable in a country as civilised as ours. Children do have rights and we must hold our heads high so far as our international obligations are concerned. Now is the time for this country to be concentrating on our children at risk and we must address the issues earlier than we have been prepared to as children's chances in life occur in their very early years.

Children in Need of Care and Protection

Many of the children and young people I believe we should be focusing on will already be known to Child, Youth and Family. In 2010/2011, Child Youth and Family received 150, 747 care and protection notifications, an increase of 20.7 per cent from 2009/2010.⁷ The Ministry of Social Development suggest this increase was due, in part, “to the number of family violence referrals from the New Zealand Police and the greater visibility of child abuse in the community.”⁸ If there is a significant concern about a child or young person, Child, Youth and Family or the Police may make an

⁵ Care of Children Act 2004, s 6(2)(b); Children, Young Persons and Their Families Act 1989, s 5(d).

⁶ Department of Labour “Motives and Processes of Migration” (International Migration, Settlement and Employment Dynamics, Fast Facts 4) <dol.govt.nz/research >.

⁷ Ministry of Social Development Annual Report 2010/2011 at 15.

⁸ Ibid at 15.

application to the Family Court for a declaration that the child is in need of care and protection.⁹ These children and young people share unhappy similarities: often a history of parental drug and alcohol abuse, family violence, neglect, offending and economic hardship.

We already know that many children who come into the care of Child, Youth and Family do have dysfunctional histories. For instance, Gateway Assessments — provided to every child or young person entering care — that were undertaken between July 2011 and March 2012 showed that the health needs of children included:

Emotional, behavioural, mental health	49%
Dental	31%
Parental alcohol and other drug	26%
Incomplete immunisation	20%
Developmental delays	19%
Speech and Language	15%
Skin	15%
Hearing	14%
Vision	8%

When I spoke to a Rotary group earlier this year, I referred to the Christchurch Longitudinal Study which suggests that a child who is raised in a poor family faces a barrier to future educational and economic success independent of the child's academic ability and the family context.¹⁰ It also suggests that addressing child poverty and reducing income inequality will have "far reaching effects on the long term wellbeing of children and young people."¹¹ A further incentive to identify and intervene early is that children with care and protection histories are more likely to go on to be involved in the youth justice system.¹² We must act now to change these patterns.

⁹ Children, Young Persons and Their Families Act 1989, s 68.

¹⁰ Fergusson et al "Childhood family income and later outcomes: results of a 30 year longitudinal study" in *Children: A Newsletter from the Office of the Children's Commissioner*, Summer 2011 at 26.

¹¹ David Fergusson et al "Childhood family income and later outcomes: results of a 30 year longitudinal study" in *Children: A Newsletter from the Office of the Children's Commissioner*, Summer 2011 at 26.

¹² Three quarters three quarters (73%) of youth justice clients are also known for care and protection concerns – Centre for Social Research and Evaluation Te Rokapu Rangahau Arotake Hapori *Crossover between child protection and youth justice, and transition to the adult system* (July 2010) at 8.

Practical Steps

Having acknowledged that within the Family Court context, there may have been too much of an emphasis on Care of Children Act cases in the past, and that there are some very vulnerable children and young people in need of coordinated intervention, what steps can be taken to practically make a difference and ensure children are valued from the start? I want to touch on three ideas I think should be given immediate attention: information sharing, a specialist division of the Family Court, and increased power to compel agencies to act.

Information sharing

Last year, the former Ombudsman Mel Smith reported on a West Auckland case of shocking abuse and in his recommendations he referred to the lamentable lack of inter-agency co-operation and information sharing.¹³

The sharing of information and dialogue between the holders of information is a critical, if not the most critical, component of multi agency and inter-professional liaison and cooperation as argued earlier in this report. As has been indicated in investigations into earlier cases, opportunities for appropriate interventions have been lost because no single agency, or others involved in any particular case, has comprehensive knowledge or a complete understanding of risk, potential or otherwise, to the safety and welfare of a child. Time and again it has been argued that professionals working in isolation from each other have prejudiced an outcome when they failed to recognise the need to focus on the safety and welfare of a child.

This was also a key theme that came through in the submissions on the Green Paper for Vulnerable Children.¹⁴ In 2009 the same point was made by the Independent Experts' Forum on Child Abuse in recommendations to the Minister of Social Development, who argued that the Government needed to take the necessary steps to allow for data sharing between agencies to happen as a matter of course.¹⁵ Calls for sharing, and ideas such as the 'always-open file'¹⁶ are not new but of course,

¹³ Mel Smith *Report to Paula Bennett, Minister for Social Development and Employment: Following an Inquiry into the Serious Abuse of a Nine Year Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand* (31 March 2011) at 71.

¹⁴ Submissions typically supported information-sharing where it would contribute to the wellbeing of the child. Protocols to facilitate information-sharing and address privacy concerns were suggested. Summary of Submissions on the Green Paper for Vulnerable Children <www.msd.govt.nz>.

¹⁵ Independent Experts Forum Recommendations to the Minister of Social Development, 9 – 10 November 2009 (<http://www.beehive.govt.nz/release/experts-focus-child-abuse>).

changes around data and information sharing carry with them a duty to consider privacy impacts and the risks around stigmatising any individuals or families. However, the longer we wait, the more children and young people are suffering. In the health context, calls for better information management have also been made repeatedly. Just last week the Expert Advisory Group on Solutions to Child Poverty recommended the “development of a single enrolment information system, combining information collected by the National Health Index, NIR, Well Child/Tamariki Ora and the Shared Maternity Record of Care, through to age 18.”¹⁷ I believe that it is time to start implementing these ideas and I hope that the Government’s upcoming announcements on the results of the Green Paper will squarely address this issue.

Specialist division of the Family Court

Another recommendation in the Mel Smith report was the establishment of a separate child protection court so that specialist judges, dedicated staff and social workers committed to this large group of children, could be better resourced and be given special commitment. The Family Court reforms do not propose the setting up of a separate child protection court and I agree that a separate court is not the answer.

However I think there is merit in establishing a child protection division of the Family Court, responsible for handling child offenders and the children who are in need of care or protection and who the State has asked the Family Court to oversee through the making of orders in review of plans. I think it would focus resources and ensure better management applies. Dilution of these cases amongst all others would be less risky. Some cases will not need to come to the Family Court because they can be resolved with less intense intervention. But what I think we are learning is that it will simply not be good enough to leave things to chance. In relation to children at risk, I favour formulation of case management plans and a protocol which sees a clear timeframe, accountability and an audit at the end of the plan to ensure that we have actually achieved what we needed to to protect a child and to give that child the opportunity they deserve. Ideally this would be case managed by one Judge throughout.

¹⁶ Independent Experts Forum Recommendations to the Minister of Social Development, 9 – 10 November 2009 (<http://www.beehive.govt.nz/release/experts-focus-child-abuse>).

¹⁷ Expert Advisory Group on Solutions to Child Poverty “Solutions to Child Poverty: Issues and Options Paper” (Office of the Children’s Commissioner, 28 August 2012).

It will be important in all of this, no matter which part of the work that I have set out above, that we ensure that children are afforded the dignity of participation in their own destiny. This is something that the Care of Children Act insisted on after the Law Commission's report in 2003 said that children's input in Family Court processes was not as good as it should have been.¹⁸ I would never want us to be simply an on-line service in which we move through speedily from problem to conclusion without properly addressing the dignity of people, the right they have to participate and to be heard and in particular for our very vulnerable children to feel that they matter. To stop and listen, and to take account of children's views is in my view, the true mark of a civilised society.

Power to compel agencies

The final aspect that I believe is necessary to force change, rather than merely waiting for it to happen, is to create mechanisms so that other agencies can be held to account. In his report, Mr Smith recommended a compulsory conference that a judge could refer matters to where all important players including those Government departments that needed to be consulted, would be required to attend and where they would be accountable for the actions which were needed.¹⁹ If we learn lessons from the Mel Smith report, we know that some agencies, and health and education spring to mind, need to own the risk and the answers in just the same way as other agencies do such as the Ministry of Social Development and Police. This echoes a similar recommendation from the Independent Experts on Forum from 2009:²⁰

Amendments to the Children Young Persons and their Families Act, to require multi-disciplinary decision-making in child protection investigations; information sharing with health and education services to support such decision-making processes; and the attendance of health professionals and government agencies at a family group conference, when requested to do so by a family group

¹⁸ Law Commission Report.

¹⁹ *Mel Smith Report to Paula Bennett, Minister for Social Development and Employment: Following an Inquiry into the Serious Abuse of a Nine Year Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand* (31 March 2011) at 86.

²⁰ Independent Experts Forum Recommendations to the Minister of Social Development, 9 – 10 November 2009 (<http://www.beehive.govt.nz/release/experts-focus-child-abuse>).

conference coordinator. At present, attendance is uneven and not compulsory. The result may be an inadequate conference outcome.²¹

In the past, it has often been judges or Counsel for the Child who have attempted to step in and fill the gap where poor or delayed social work has threatened to compromise outcomes for children. Now that we are more aware of the issues involved with this particular group of at risk young people, we need to acknowledge that other agencies who have not traditionally been involved with the court process, must own the risk and be accountable to reaching outcomes. The respective Ministries of Health and Education have significant parts to play if we are to establish truly multi-disciplinary approaches to these issues. In addition, the Ministry of Social Development, and its service arm, Child, Youth and Family, need to be held to account to meet deadlines and ensure that, in line with the Children, Young Persons, and their Families Act, decisions are “made and implemented within a time-frame appropriate to the child or young person’s sense of time.”²²

In the Family Court setting and in particular, our child offenders and care and protection work, endeavouring to put in place rehabilitative plans when children have reached ten or older may be singularly ineffective. We may feel good about the effort we are making but in reality we may be achieving very little. Unless we commit to a coordinated approach that begins before a child is born (if there are concerns) and is supported by processes that will ensure any issues are picked up on and responded to immediately, we will not be able to significantly change the present path many young people are on.

Conclusion

The UN Convention on the Rights of the Child has provided a useful platform for this exploration into how we can value New Zealand children from the start. It is so important to reaffirm that fact that children do have inherent rights that must be protected and upheld. This applies to all children and in the Family Court, this applies irrespective of whether the proceedings are public or private law. I have focused on public law cases in the Family Court because I wonder whether the recent reforms announced by the Government go far enough in protecting children. Effective early intervention must be a priority of all who work in this area and I hope that coordinated information sharing

²¹ Independent Experts Forum Recommendations to the Minister of Social Development, 9 – 10 November 2009 (<http://www.beehive.govt.nz/release/experts-focus-child-abuse>).

²² Children, Young Persons and Their Families Act 1989, s 5(f).

protocols, a specialist division of the Family Court, and stronger powers to compel agencies to meet outcomes will go a long way to making a real difference.

At the same time, it is important to remember that all children are inherently vulnerable and children who are exposed to parental conflict are also at risk. While these are wholly different issues to the kind of abuse, neglect and drug and alcohol concerns that are seen in the public law side of Family Court work, children who are subjected to ongoing parental warfare must also be protected and given a voice in proceedings. While today I have focused on children in need of care and protection, I want to end on a note of warning with regard to the proposed reforms for the Family Court. New Zealand has international obligations to ensure that in all actions concerning children — all children — the best interests of the child shall be a primary consideration. Ensuring that children are both heard and represented adequately is critical, because so often they can frame the real issues of concern more helpfully than the parents.

[ENDS]