Stop harmful changes to the Family Court

Domestic violence increasingly trivialised

Over the last 15 years our justice system has increasingly trivialised domestic violence, viewing it as "couple conflict", depicting women as just as violent as men, and ignoring the pattern of violence of the male perpetrator. Our Criminal Courts, Family Violence Courts and the Family Court have moved away from the analysis underpinning the Domestic Violence Act 1995, which recognised the dynamics of male power and control in domestic violence situations. The repercussions of this accelerating shift are many and serious. We have seen judges granting bail to men who have then gone on to kill their ex-partners. The Police are arresting fewer perpetrators, fewer perpetrators who are arrested are being convicted, fewer Temporary Protection Orders are being made final, fewer men are being referred to stopping violence programmes and some women are being forced to attend couple counselling with their abusers.

Father's Rights agenda adopted

Over 50 percent of applications to the Family Court under the Care of Children Act involve violence; however, the Family Court has never seriously addressed the lack of knowledge amongst Family Court professionals (judges, lawyers, psychologists and counsellors) about the complexities and dynamics of domestic violence. Incrementally, over recent years the Family Courts have adopted many beliefs from the Father's Rights agenda, including a false belief that once the couple has separated the violence between the spouses is historical and of little relevance. The violence is seen as only a product of "relationship dynamics" and that once they are separated the abuse will stop. Research, however, shows that women are most at risk for serious injury and even death within the first 18 months post separation, especially when she leaves the relationship with the children.

The Courts often characterise the father as a "good parent" despite his being abusive ("a lousy partner"). This especially happens if the violence *began* around the time of separation. If it did, it will usually be characterised as "separation engendered violence" and therefore trivialised. It will not be seen as *real* violence or as demonstrating a propensity for violence on the part of the perpetrator or as part of an already existing pattern of coercive control. It will not be seen as particularly relevant to parenting order outcomes. An example of this is the High Court decision in the Surrey v Surrey case, where the husband raped his wife twice post separation, but was not seen as a possible on-going danger to her because he was in a new relationship and had said he had "moved on". An Appeal Court decision overturned this finding, but the Courts seem to be ignoring the implications of this Appeal Court decision.

"Shared parenting" prioritised

In addition to trivialising violence, the Family Court has unofficially embraced the doctrine that "shared parenting" (defined as when the parents each have responsibility of the children 50 percent of the time) is the best outcome for all children of separated parents, regardless of their particular circumstances. This belief contradicts New Zealand research which has found that the two most important factors for children's well-being post separation are maintaining their relationship to their primary care giver and minimising their exposure to inter-parental conflict (New Zealand Universities Law Review, Vol 24, No 1, June, 2010, *Julia Tolmie, Vivienne Elizabeth and Nicola Gavey).*

In the Family Court, mothers who have concerns about the safety or neglect of their children run a significant risk of being labelled as "litigious", "the alienating parent", "the hostile parent" or as "an obstructer". This new shared parenting culture runs so deep that no credence is given to the possibility that the mother may simply want what is best for her child, or that battling to find a place of safety for her child and herself can increase women's fear and desperation and make them appear less credible. New Zealand literature has pointed to a judicial approach in which on-going contact with fathers trumps safety of the child, when the father is an abuser.

The Family Court Proceedings Reform Bill

It is in the above context that we need to view the Government's Bill to reform the Family Court. The stated aims of the Bill are to reduce the costs of the Family Court and speed up its processes. The Bill does this by introducing a variety of measures that limit access to the Family Court and simplify the Court processes. Family Dispute Resolution (FDR) Providers will be established to create a formal (privatised) approach to out-of-Court dispute resolution, principally for care of children and guardianship proceedings. Counselling sessions will be slashed from six hours to one. Parties will work with an approved FDR provider such as a mediator, to reach agreements. This will be compulsory. The use of Court professionals (psychologists and lawyers) will be restricted and lawyers for children will only be appointed where safety issues are identified. There are, however, no processes identified in the Bill to identify domestic violence or other problems such as poor or neglectful parenting practices, or mental health or drug and alcohol problems.

Costs prohibitive

The Family Court will be subsidised for those few who meet the legal aid threshold, but will cost approximately $897 per half day for the rest. The costs of these processes will be prohibitive for many women. It will also mean that if a mother wants to progress the safety of her children, and the matter is not considered to meet the criteria for access to the Family Court, she will have to pay to keep her child safe. Furthermore, parents cannot file proceedings until they have been through mediation, so those on legal aid will have no access to legal advice until after the FDR stage.

The removal of the right to legal representation from FDR and the prehearing processes is a breach of human rights. Many people will not be able to complete Court documents or represent themselves without legal assistance for a variety of reasons, including stress, intimidation, language barriers, health, and confidence issues. Access to lawyers will be denied for most disputes over children, even where there is domestic violence, sexual abuse, and drug/alcohol issues. Wealthy men, of course, will consult lawyers at every step in the process.

Mediation for batterers?

The Bill provides a separate pathway where abuse is identified, but this pathway is only available where there is "proof" of physical abuse. With the Police estimating that only 18 percent of domestic violence is reported (with much less than this actually resulting in a conviction) many mothers in coercive and violent relationships are going to end up in mediation. For the past two decades we have realised that mediation is inappropriate for women in abusive relationships, yet the Bill forces women to use mediation. In his 1993 Review of the Family Court, Judge Boshier argued that mediation should not be utilised within the context of domestic violence because of the inherent power disparities between the parties. Restricting mother's access to the Court and forcing them into mediation will put women at risk and could force mothers to accept decisions that are not safe and/or in the children' s interests.

Children's safety

The Bill holds the interests of the child as paramount and lists five items of importance regarding paramountcy, including safety of the child. However, it does not state that the safety and enhancement of resilience in children who have been exposed to and/or may be the targets of violence is the most important aspect of children's well-being. One of the five aspects is the child's right to be brought up by both parents. Specifically, the principle also states that both parents are to be involved in decision-making about the child. If the parents cannot agree, then it's off to mediation or counselling, or, rarely, a Court hearing.

Interestingly, Australia introduced shared parenting legislation in 2006. However, it was found that there was not enough judicial attention to the violence of the perpetrator and to the safety of the child. The Australian Parliament amended their law in 2011, strengthening the focus on child safety

and domestic violence. The Australians realised that too many children were being exposed to violence; the last straw was an incident involving a five year-old girl who was thrown off a Melbourne bridge by her father, whose previous violence had been minimised and ignored by the Court.

Ignoring our history

Perhaps most worrying is the Bill's intention to delete clauses in the Care of Children Act known as the "Bristol Clauses". In New Plymouth in 1995, Christine Bristol was trying to escape from the on-going violence of her husband. Christine had three Protection Orders against Alan Bristol, who the police had just charged with sexual assault. Despite being known as a violent spouse, he was thought of as an excellent parent. Indeed the Family Court had awarded him sole custody of the three girls. In a case that horrified the nation, Mr Bristol murdered their three young children, and then killed himself. Christine demanded a Ministerial Inquiry into why the Family Court had awarded a violent parent custody of his children. Research shows that children living in a domestic violence context are often directly abused themselves, in addition to being psychologically abused by their knowledge and witnessing of their mother's abuse.

In response to the Bristol murders, the Government introduced law requiring judges to undertake careful risk-assessments before allowing abusive parents day-to-day care of their children. These measures have been constantly undermined since their introduction and today are often ignored by the Courts. The Bill will abolish these clauses and leave children at risk. Christine Bristol has spoken out against the Bill, emphasising that the law must prioritise children's safety over violent parents' access to their children. Given that New Zealand has the highest rates of child homicides in the OECD; it is amazing that one cost-saving measure in the Bill is to remove the rebuttable presumption against unsafe contact arrangements with violent parents, generally fathers. Rather than reinforce the focus on the safety of children (as required by the UN Convention on the Rights of the Child, to which New Zealand is a signatory) this Bill will further allow fathers' rights to triumph over children's welfare. The Courts will save money by amending these measures, but at what cost, and to whom?

Thanks very much to Ruth Busch for her considerable assistance with this article.

For a detailed analysis of the Bill please see a submission by the Coalition for the Safety of Women and Children on the Auckland Women's Centre's website. The Centre is involved in the group "Silent Injustice: Women's Experiences of the Family Court". If you would like to know more about this group please email Leonie akcentre@womenz.org.nz