



Children's voices

optimising the opportunities for inclusion

Jill Goldson examines methods used to ensure children's participation during parental separation and divorce

Research and practice evidence suggests children whose parents separate or divorce are more likely to experience better long-term wellbeing if family relationships remain as stable as possible, regardless of what the final structure of the family winds up being. I suggest that children's involvement in discussions at the time of separation, if managed and facilitated, may help everyone involved in the process.

No one would deny that parental separation and divorce is painful for children. Such an experience during childhood is cited as one of the key variables contributing to a compromising level of vulnerability in the lives of young adults (Wallerstein and Kelly, 1980). However, research convincingly argues that it may not be the divorce or separation that causes future problems for children. It may stem from the way parents deal with it in their interactions with their children. More recently, extensive studies of children of divorced or separated parents also revealed that ongoing and unresolved conflict between parents is highly relevant in later maladjustment for young people (Pryor and Rodgers, 2001; Robinson, 2003; Hetherington, 1999; Amato, 1993; Carr, 2002).

Separation and divorce in New Zealand is common: 10,000 children experienced the breakdown of their parents' marriage in 1995 and a further number experienced the breakdown of their parents' de facto relationship (Statistics New Zealand, 1995). With such numbers, it seems urgent that evidence from research is used to enhance support services and interventions offered to families with children during the process of separation.

There are as many types of divorces as there are marriages and, although society's responses may lag behind social change, overall there is a shift away from the concept of divorce as a form of deviant behaviour that generates pathological outcomes for children (Smart, 2003). For practitioners of counselling and social work, a common task is helping families stuck in the distress of family reorganisation. Often the family's distress is manifested in the behavioural and emotional problems of its children and young people. It would seem timely that we, as practitioners, review our interpretation of such symptomatic behaviour. Research-based understanding of the genesis of this behaviour may well lead to more effective intervention.

The main defining feature of a nuclear family may no longer be co-residence (Morgan, 1996). Rather than seen as disintegrating, the family may simply be viewed as having suddenly scattered across more than one location. It will still have kin and, potentially, step-kin. The inherent challenge to practitioners is to help the family accept the change while retaining the essential relationships between parents and children.

The concept of family is currently being transformed and redefined. Family law and social practice, and those involved with them, have a professional obligation to move with the current changes and adapt accordingly. Likewise, policy must also reflect the shift from the centrality of marriage and spousal relationships towards the centrality of parenthood and parent-child relationships. Particularly in family law, the welfare perspective is of a child for whom there is concern but a preference that he or she is not seen or heard during the process. Increasingly, in other domains children are being placed at the centre of issues affecting them and, rightly, are being allowed to play a part in decisions about their own lives in the present (James and Prout, 2002).

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This perception of the centrality of the child resonates in New Zealand through the Children, Young Persons and Their Families Act, 1989. There is provision, under the Act, for the child or young person to take part in decision-making through a family group conference. This provision is consistent with the philosophy of Article 12 of the United Nations Convention on the Rights of the Child (UNCROC), which was ratified by New Zealand in 1993. However, this

does not impose legal obligations on signatories. In ratifying, New Zealand has assumed an international obligation to ensure that its laws, policies and practices comply with UNCROC. It is not a legally binding obligation but more a statement of intent. The Convention would need to be incorporated into domestic law for it to be legally enforceable and this has not been done. These rights do entitle children to information, adult support and an appropriate context to form and express views on matters that affect them. A recommendation was made that 'all aspects of government policy, administrative practice and legislation having an impact on children' be reviewed to take account of UNCROC. It seems incongruous, then, that in the area of family law in New Zealand, these principles are, arguably, barely adhered to.

Under the Guardianship Act, 1968 (section 23), the welfare of the child is paramount but it would seem that, within the context of family law, the rights of children to contribute to the processes that concern them are only minimally recognised (Tapp and Henaghan, 2000). This lack of recognition seems to be highlighted in our dispute resolution processes. Although children's voices are elicited via specialist reports written by psychologists, and also via representation from counsel for the child, disputes have usually reached the stage of irresolvable conflict between the parties. Hostility and anxiety compound a polarised situation in which the children are entrapped. There will always be situations of dispute that are not able to be resolved out of court. However, it is possible that even some of the more intractable situations, had they been encountered early enough and in a way that was family-inclusive, might have reached conciliation without the court's involvement.

Research

As a Family Court counsellor since 1986, I have frequently questioned the lack of provision for children's involvement in counselling provided under sections 9 and 10 of the Children, Young Persons and Their Families Act. On numerous occasions parents have requested that I see their children but, from a policy point of view, the right to do this remains vague and ambiguous and fraught with misgivings about whether this is fair to the child.

I have embarked on a small-scale research project involving the children in 12 cases of parental separation in the early weeks of disputes being heard through the Family Court.

First, I see the parents several times, within the counselling context of the Family Proceedings Act, 1980. Then, with the respective consent of parents and children, I talk to the children and subsequently to the family as a whole. This project is consistent with the recently published *Law Commission Report into Dispute Resolution in the Family Court* (March 2003) that includes recommendations about children's access to counselling.

In no way do I suggest that the process of dispute resolution through the New Zealand Family Court is not effective. In fact, the vast majority of cases that pass through counselling and mediation do not proceed to court. What is arguable, however, is the adequacy of the sense of justice produced by such intervention. Along with justice, there needs to be an ethic of care factored into dispute resolution. This ethic, which is an integral part of justice, can be facilitated by family dialogue, given the right

circumstances. If the post-separation period is seen, primarily, as a time for dividing children and assets between parents, however well intentioned the parents are, there is a very real risk of the children being seen inadvertently as chattels in a bargaining process. If the children feel like chattels there may be an attendant distress caused by divided loyalties and an untenable sense of being in a double-bind situation in relation to their parents. In such a situation, the child needs an agent to act on their behalf.

The results of my work-in-progress are consistent with those of other researchers in the field. Children state very clearly that they want to know what is happening (Mitchell, 1983; Smith,

Taylor and Gollop, 2000). Out of 106 children interviewed by Smith, Taylor and Gollop, half did not know why their parents had separated and 67 per cent were not asked about

their views. The argument that children are better off not knowing too much ignores their rights and needs to mature as part of a social and cultural process. Children are more likely to learn to cope with a situation if they are given the opportunity and helped to do so. Focusing on what they can contribute to the process and allowing them to have a voice, rather than presuming immaturity and incompetence, may contribute to their ability to cope. Children I interviewed have stressed their motivation to be involved in the counselling process, but they do not want to be asked to make major decisions. Obviously it is important here to discern between children's rights and children's responsibilities. Following the initial disequilibrium commonly experienced by all members of the family when a parental

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relationship breaks down, children, too, need the opportunity to participate in negotiations about new domestic arrangements. To deny this opportunity is to slow down the adjustment process for the child after the separation has taken place. For a child experiencing an event of such significance as separation, feeling a degree of involvement and control gives them the power to deal with its disruptive effect. Participation in mediated discussion with their family may result in a sense of being an effective agent in their own life, cancelling out the worst excesses of uncertainty and neglect in the process (Pryor and Rodgers, 2001).

The issues raised by the children I have interviewed to date are not necessarily matters that are the subject of dispute between the adults. The children interviewed have made frequent comments about the level of parental conflict, their anxiety about the parent who has vacated the family home, worries about pets and concerns about arrangements for Christmas and birthdays and summer holidays. By hearing these concerns, and helping the children convey them to parents in a negotiated context, the child-centred details remain visible and significant. Smart and Neale (2002) argue that the question “what matters” must precede the question “what works”.

The assumption that working with the parents on their own will benefit the children in a “trickle down” effect assumes an equanimity that parents frequently do not possess at such a time. Inevitably any distress they feel can compromise the ability of the best-intentioned parent to hear their children. Frequently, children experience the parents’ distress, leading them to misbehave. This is often the crisis point of intervention for social work or counselling services. Parents have reported in our sessions

their difficulty in maintaining discipline and boundaries during times of relationship stress. This factor often leads to further conflict between the parents and it is this ongoing conflict during a transition of this nature that has such negative outcomes for children.

Conclusion

I contend that including a child in discussions about family reorganisation:

- helps the child to respond as positively as possible to the situation
- can help reduce the likelihood of negative behaviours developing later on
- can be an effective and democratic way of enhancing and consolidating mediated solutions.

It is important to note that both my own and larger research studies suggest that children prefer to discuss problems within the context of their families, if they are supported to do so. They are emphatic in their response that they do not want to tell all the family’s secrets and problems to a stranger who does not know their family. Children are not looking merely for the opportunity to air their distress. Although this may be moderately reassuring in some instances, it can leave children with a sense that they have betrayed the parents they love but gained no sense of real relief from their anxiety. Primarily, they are looking for some form of resolution.

For distressed parents the fact that their children are coping can only relieve them of some of their own distress, giving them a greater capacity to provide positive parenting. This, in return, further reassures the children, making them less inclined to act out their distress with difficult behaviour. Such is the reciprocity of systemic family dynamics.

Given the assent of all family members, and predicated on reasonable levels of adult conciliation, I strongly suggest that including children in facilitated discussions should be a significant part of any intervention. □



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