

**PERFECTING FAMILY COURTS,**  
**AND WHAT'S EVEN BETTER**

**REPORT AND RECOMMENDATIONS, BY AN  
INTERNATIONAL PANEL OF FAMILY COURT JUDGES, FOR  
MINIMIZING HARM TO CHILDREN WHOSE PARENTS  
SEPARATE**

**Two Wishes Foundation Law and Justice Advisory Board**

**WORLD CONGRESS ON FAMILY LAW AND CHILDREN'S  
RIGHTS**

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# **PERFECTING FAMILY COURTS,** **AND WHAT'S EVEN BETTER**

## **Report and Recommendations, by an International Panel of Family Court Judges, for Minimizing Harm to Children Whose Parents Separate**

by

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The views expressed in the Report and Recommendations do not necessarily reflect the views of the institutions with which the authors are associated, nor of the Two Wishes Foundation.

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## PREFACE

*Assume there is a new society. In that society, they recognize that two people will want to create a formal relationship--- marriage. Assume further that as a result of that formalized relationship, they may have children. That society would understand that some of those marriages would come to an end and when they do, a process would be needed by which those formalized relationships as spouses would end while their relationship as parents would be preserved.*

*So, that society brings together its scholars, great thinkers, philosophers, mental health experts, legal experts, theologians, educators, etc., to address this issue. They are locked into a room and asked not to depart until they have developed a divorce process that allows for a healthy transition for the children and a productive relationship between the parents going forward in meeting the needs of their children.*

*How many of us believe they would settle on the adversarial process we employ as the best means to protect the interests of the children going forward and for the parents to work together productively in the future?*

*Judge Bruce Cohen*

*F A M I L Y is the acronym for Father And Mother, I Love You*

*Judge Roshan Dalvi*

## EXECUTIVE SUMMARY

The TWO WISHES LAW AND JUSTICE ADVISORY BOARD, whose members are eight judges, some retired and some who are serving, from Family Courts on five continents, has studied and reviewed the ways in which countries and their court systems approach situations in which parents separate, the effects on children, and how to prevent, or at least minimize, harm.

While there are wide differences in culture, legal systems, substantive family law, and the services available to families, it became clear in discussions, over the last two years and more, that there are themes and concerns which are common to all.

There is a consensus that there is a need for a paradigm shift in the way societies and families regard parental separation, and how to reach arrangements for the children without exposing them to needless harm.

Family transformation and parental separation are, in the main, **not** matters which require intervention by courts. They are relationship issues, which need to be resolved in ways which take into account the needs and vulnerability of children and prevent the serious mental and emotional harm that can result from confrontation and litigation.

This means that professional help for separating parents needs to be made accessible, in terms of location and cost, for all, at the earliest possible stage when separation is being considered.

Until this change in the paradigm comes about (and it may take several years) many matters involving children will be dealt with by family courts.

But confrontational court proceedings between parents may endanger children, and that some court processes are so flawed as to cause serious emotional harm.

The Advisory Board has identified a number of areas in which improvements are needed, and achievable, and so has developed this REPORT AND RECOMMENDATIONS FOR MINIMIZING HARM TO CHILDREN WHOSE PARENTS SEPARATE.

The report consists of our consensus on the issues which families face when parents separate, and how they can be better handled. Members of the Advisory Board have contributed essays on some these issues.

These are the matters which are, in our view, most important:

- **PARENTS WHO ARE SEPARATING SHOULD BE ENCOURAGED TO OBTAIN HELP IN MAKING ARRANGEMENTS, WITHOUT RECOURSE TO THE FAMILY COURT**, ensuring that they take full account of the effect of their separation on each child, so as to protect the children and promote their healthy development. This help should be accessible, financially and locally, for everyone.

Where cases reach the family court, because it has not been possible to reach agreement, then all processes in the court must take into account the need to prevent unnecessary harm to the child.

The traditional adversarial processes and procedures in civil cases are inappropriate for cases involving children, and we have identified some of the ways in which family courts can avoid, or at least minimize, the harm to children:

- **FAMILY COURTS SHOULD BE SPECIALIST COURTS.** Cases involving children require special sensitivity, when emotions run high. So the personnel who staff family courts and the processes in the court need to take account of the special characteristics of the work.
- **JUDGES WHO HEAR FAMILY CASES SHOULD RECEIVE TRAINING** and ongoing learning schemes in the social, mental health, emotional and economic effects on the child of parental separation, as well as the legal aspects, so as to minimize harm. So should lawyers and court staff. The family should be allocated to a single judge, who will deal with all claims and applications relating to that family.
- **PARENTS WHO COME TO COURT SHOULD BE GIVEN INFORMATION AND GUIDANCE** on how to reach agreement without adversarial litigation, and to take account of the need for the child to develop healthy relationships all those who love them.

- **MATTERS INVOLVING CHILDREN SHOULD BE HANDLED SWIFTLY.** This requires immediate assessment for urgency, and, if necessary, referral to a judge and/or to social services according to the needs of the child involved (triage); an initial hearing within a short time of filing; and strict case management.
- **THE COURT SHOULD BE MULTIDISCIPLINARY,** in the sense that the judge and the parties should be assisted, as necessary, by members of the social work and mental health professions.
- **CARE NEEDS TO BE TAKEN IN APPOINTING EXPERTS TO ASSIST THE COURT,** as only professionals with appropriate knowledge and experience, appointed by the court in consultation with the parents, are likely to give impartial assessments and recommendations.
- **A CHILD WHO IS THE SUBJECT OF PROCEEDINGS SHOULD BE GIVEN AN OPPORTUNITY TO EXPRESS HIM- OR HERSELF\_**about issues which may affect that child's upbringing, in a way which is appropriate to the child.
- **ENSURING ENFORCEMENT\_**Without prompt and effective methods of ensuring compliance with the court's orders and judgments, the court is deprived of credibility, and the time spent in reaching conclusions is wasted.
- **COURTS SHOULD BE ACCOUNTABLE** for the quality and effectiveness of their activities.

**WE ALSO SUGGEST METHODS OF BRINGING ABOUT CHANGES IN ESTABLISHED SYSTEMS.**

## INTRODUCTION

Two Wishes is an international foundation that aims to transform how the world views and deals with parental separation and family breakdown.

**“I used to think that every child got three wishes. But my very first wish – to grow up in a happy family – did not come true.**

**My second wish was to spend as much time as possible with each of my parents and everyone who loved and cared for me. That didn’t come true either.**

**My third wish, I’m determined, will come true: to make sure that what happened to me – a childhood lost in systems meant to help me – will never happen to any other child.”**

**<https://www.twowishes.org/>**

The Two Wishes Foundation exists to ensure that children receive the love and support of their parents and family throughout their lives - even if their parents break up. The aim is to raise awareness of the need for a fresh approach to family separation and to develop innovative policies and practices that provide compassionate, earlier support for all families.

For healthy development children do best by maintaining connections with all who care for them and a whole family which is involved in his/her upbringing. This is accepted by almost all professionals and academics, and enshrined in the UN Convention on the Rights of the Child<sup>1</sup> (Preamble<sup>2</sup> and Articles 3, 5, 7, 8, 9, 16, 18 and others).

An important part of the work of the Two Wishes Foundation is reviewing existing systems and, where they do not contribute to the wellbeing of children whose parents separate and divorce, and especially when they detract from the child's healthy development, to propose better systems.

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<sup>1</sup> The CRC <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>2</sup> "Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding," from the preamble to the CRC

Senior judges and other professionals around the world have recognized that confrontational court proceedings between parents may endanger children, and that some court processes are so flawed as to cause serious emotional harm; such harm constitutes a worldwide public mental health crisis. For example, the following from the *Summary of 2016 London Conference – International Centre for Family Law Policy and Practice*<sup>3</sup>

"In-court practices and procedures:  
...we reiterate the need as critical constituents of family justice systems for there to be specialist judges, continuity of decision-taker, the provision of support services (including specialist reports) and speedier outcomes".

For what we believe to be the first time ever, a group of judges, retired and serving, from eight very different jurisdictions, have come together over the last three years to discuss and make recommendations for improving the ways in which societies and legal systems deal with parental separation. THE TWO WISHES LAW AND JUSTICE ADVISORY BOARD consists of judges who served or are serving, in Family Courts on five continents, all of whom have given of their valuable time voluntarily. Together, the members have amassed experience over many decades of work in family law and family courts and have appeared in or adjudicated in cases involving tens of thousands of children. The legal systems in which they operate are representative of those which apply to the majority of the world's children, including Oriental Law, Civil Law, Common Law, Tribal Law, Roman-Dutch Law, Jewish Law, Ottoman Law, Sharia Law, in differing combinations. The members are from Belgium, Japan, Argentina, India, South Africa, Arizona USA, Portugal and Israel. A judge from Scotland also took part in early discussions.

Participation in national and international conferences of relevant organizations, personal contacts with colleagues in and outside the legal professions, and sharing academic and professional literature, have contributed to the work of the Advisory Board. A questionnaire, asking for information about best practices and suggestions for improvements, on

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[https://www.google.com/search?q=Summary+of+2016+London+Conference+%E2%80%93+International+Centre+for+Family+Law+Policy+and+Practice&oq=Summary+of+2016+London+Conference+%E2%80%93+International+Centre+for+Family+Law+Policy+and+Practice&gs\\_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRrg7ogEIMTg3NGowajeoAgiwAgHxBcdjOzx\\_oWDB&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Summary+of+2016+London+Conference+%E2%80%93+International+Centre+for+Family+Law+Policy+and+Practice&oq=Summary+of+2016+London+Conference+%E2%80%93+International+Centre+for+Family+Law+Policy+and+Practice&gs_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRrg7ogEIMTg3NGowajeoAgiwAgHxBcdjOzx_oWDB&sourceid=chrome&ie=UTF-8)

several aspects of the working paper, was sent to judges from over thirty jurisdictions, and the responses received also helped in understanding the present situation.

We have learned about the features of social and legal ideologies which sometimes run counter to the needs of children. We have also found out about laws, procedures and attitudes which prevent harm to children and enhance their prospects of happy and fruitful lives despite parental separation. We have benefited from the valuable assistance of Dr David Curl and Dr Nick Child.

One of the reasons we have identified for inadequate handling of court cases involving children is the assumption that cases involving children are the same as any other litigation.

In ordinary civil litigation, and also in criminal cases, the parties are strangers to each other, until some event (an incident or collision, a criminal act, a negligent act or omission by a professional, a contract which has been breached, a failure to pay taxes – the list is almost endless), brought them together, and they become adversaries; the court is asked to establish what happened, usually relating to a single incident or issue, in the past; the only persons affected by the decision are the direct parties; and the end of the litigation is usually the end of any interactions between the parties.

But cases in which the future of a child is at stake the situation is radically different:

- The parties, including the child, were, and often still are, living together in a family unit, which was, at the start, voluntary and loving, and they will, regardless of the result of the litigation, remain members of the same family;
- the decision to be made may be informed by things that happened in the past, but looks mainly to the future and tries to determine what will be the trajectory of the child's life, perhaps for many years;
- the decision may affect many family members who are not involved in the litigation; the processes which the family is going through are always highly charged emotionally, and involve radical changes in the places where family members live, work, and go to school;

- the separation has profound economic effects on all concerned.

So any legal system which treats family cases involving children as being the same as any other cases will automatically fail to take into account the special nature of family proceedings and is liable to cause continuing harm to children. The mere designation of a court as being Family Court, and assigning judges to deal with family cases, without thoroughly reviewing and taking account of the different characteristics of family disputes, is at high risk to cause psychological harm to children and economic harm to the family. What is more, public resources are squandered on litigation practices which are inappropriate and wasteful.

We are convinced that family separation is primarily a health and relationship issue, and that in order to prioritize the long-term wellbeing of children and their families, our systems need to ensure that parents can avoid, or at least reduce, conflict.

The Law and Justice Advisory Board is an essential component in helping Two Wishes to develop and promote a suite of educational programs for children and adolescents, in schools and other frameworks, and for parents to avoid family breakup, and, when families are in difficulties, to ensure earlier, health-focused interventions, including counselling, mediation, collaborative divorce etc. We expect that such programs and assistance will bring about a situation where most families would not have to apply to the courts. Thus, our hope is that the family court will ultimately, ideally, transition into a forum for restorative work with the family, and that adversarial proceedings will become increasingly rare.

But developing such initiatives and having them accepted may take considerable time, so, in the meantime, the members of the Advisory Board have made use of our broad, collective knowledge to bring together the best recommendations for local, or universal, improvements to current family law and family court systems around the world and improve the Family Court experience for parents but especially their children. This document acknowledges positive and negative aspects of the Family Courts represented by the Board member countries and those who responded to our survey. It also identifies suggestions towards creating more therapeutic, problem-solving Family Courts into the future.

Our objective is to help create and promote a better way that gives all children the brightest possible futures. We are convinced that this requires that states and courts should encourage parents to take responsibility for answering all the needs of their children, especially their emotional and psychological needs, without having recourse to judicial proceedings; but if they have not managed to do so, the court needs, alongside its traditional role of making decisions when parties disagree, to have a strong therapeutic approach. This implies a reconsideration of the role of the Family Court, so that it includes

- alongside the adjudicative role, a therapeutic approach including social work support for the child and the parents, which would require all stakeholders involved in the Family Court to coach and support parents to take responsibility for the trauma that their separation is inflicting on their children and educating them to understand that an adversarial approach will exacerbate the hurt that their children are experiencing.
- a judicial approach which takes account of the short- and long-term ramifications of the proceedings themselves, and not only the process of arriving at a final judgment.

The Advisory Board has identified a number of areas in which improvements are needed and achievable and so has developed this REPORT AND RECOMMENDATIONS FOR MINIMIZING HARM TO CHILDREN WHOSE PARENTS SEPARATE

In this document, we describe these areas and suggest directions for changes. Some of the proposals are based on existing arrangements of which we are aware, in various jurisdictions.

However, we have not discussed the substantive law in each country or state relating to family relationships, or specific issues, such as domestic abuse, property division, child and spousal support, surrogacy, alienation, and the like. These are dependent on matters of local culture and ideology, and therefore beyond the scope of our task, which is to look at systems and processes.

We do not presume to dictate how these improvements should be instituted in a specific jurisdiction, and in what order. Changes need to take account of cultural and other differences. However, we suggest that our report and recommendations should form the basis for discussions, at all levels, with a view to preparing a plan for adaptation of Family Courts, so as to make them better suited to the needs of children.

In some places, it will be sufficient for a chief judge or a senior court administrator to issue instructions or procedural rules. Many of the proposals require training, which can be carried out at different levels – a single court, or an entire county or state, and levels in between. Some of the changes will require amended, or even new legislation.

We suggest that a plan for improvements should include designating a specific senior person to oversee changes, and setting a target date for achievement of each part of the plan.

The Report is, therefore, about the processes which best take account of the needs of children, and how to adopt them into the systems in different countries and states.

**PART ONE** of the Report is about helping parents who are separating to access evidence-based non-court assistance. We believe that parents who are separating should have ready access to child-oriented counselling, conciliation and mediation professionals, to ensure that their separation process will take full account of the effect on each child. Enabling and empowering parents to reach agreements on arrangements which will protect their children and ensure their healthy development, without recourse to the family court, will reduce stress and the harms caused by confrontational behaviours.

For those cases in which parents are unable to reach agreement, or where application to the court is unavoidable, **PART TWO** of the Report describes our vision as to the roles of family courts, and draws on examples from court systems, from around the globe, which are best adapted to the needs of children and prevention of harm. The Advisory Board has identified many of the categories of processes which optimize

the handling of cases involving children, by taking account of human behaviours and vulnerability in times of transition and stress, and a child's perception of time. These vital components of the family court system include diversion, specialization of judges and training, judicial continuity, triage, swift handling by the court, multidisciplinary processes, selection and appointment of appropriate experts, child involvement, enforcement of decisions, collection of data about processes and outcomes, and others.

The Report includes specific recommendations for encouraging parents to refrain from litigation. But where the parents are unable to do so, we have identified the essential components of a more perfect court system. These include proposals for dealing, as speedily and humanely as possible, with separation where children are involved and recommendations as to how to introduce changes in existing systems.

We end with a section on how to bring about change.

**PART ONE:**  
**HELPING PARENTS TO DECIDE ON ARRANGEMENTS FOR**  
**THEIR CHILDREN, WITHOUT THE FAMILY COURT**

***Upstream, not downstream<sup>4</sup>***

***We spend untold effort, time and resources, to rescue the person who falls into the river from the unfenced bridge, and on resuscitation and rehabilitation, when it would be safer, easier and cheaper to build a parapet on the bridge to stop him falling in.***

In a report by the Family Solutions Group in England and Wales, ‘*What About Me*’,<sup>5</sup> Sir Andrew McFarlane, President of the Family Division of the High Court of England and Wales, said:

"This report brings together the various lines of thinking of recent years aimed at finding a better way to achieve good co-parenting between separated parents. It is an important and impressive document.

It should be a matter of concern for society in general to achieve better co-parenting between separating couples. It is thought that about 40% of all separating parents bring issues about their children’s care to the Family Court for determination, rather than exercising parental responsibility and sorting problems out themselves. This figure is both startling and worrying. Where there are no issues of domestic abuse or child protection, parents ought to be able, or encouraged, to make arrangements for their own child, rather than come to a court of law and a judge to resolve the issues".

And in a radio interview on the BBC on 24 July 2022 he said that thousands of divorce cases were rightly heard in court because of safety concerns for the adults and children involved. But too many were ending up in court because couples saw their issue as a legal issue, rather than a relationship issue.

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<sup>4</sup> With gratitude to Dr Nick Child

<sup>5</sup> Published 12 November 2020.

He said:

"...the law provides a structure [...] to resolve the dispute" but "in the end, it is not a legal issue, it's a relationship problem that they have",

and added:

"We are seen at the moment as the first port of call, but we should be the last resort for them where there aren't issues of domestic abuse or protection or safeguarding.

My feeling is that about 20% of the families who come to court to have a dispute about their children resolved, would be better served by at least, first of all trying to sort it out themselves in other ways."<sup>6</sup>

Society has a compelling interest in reducing to a minimum the use of the services of the court system, which are highly expensive in terms of resources and almost always overwhelmed given staffing shortages.

The prevention of unnecessary use of expensive medical emergency services is brought about by ensuring that the public is reasonably well informed, by education in schools and youth movements, and by TV, newspapers, and other media, about the difference between ailments and injuries that can be dealt with at home and those which require immediate expert medical attention. This includes teaching people about first aid, and about which medications are appropriately available at a pharmacy store, which cases can be handled by a primary care physician – a general practitioner or paediatrician in the community. In addition, the public should be informed and trained in life-saving emergency techniques, such as CPR, the Heimlich manoeuvre, etc. The result is that most of those who come to the emergency room are only those in fact in need of services which can only be provided there, and those who are not in need of emergency intervention can almost always be sent away by the very initial stage of triage.

In the area of family breakdown, there are at present very few comparable educational programmes. There is, in most countries, no family life education equivalent to health education – specifically, teaching adolescents about the responsibilities they take on when they decide to become parents,<sup>7</sup> about finding a compatible partner with whom to set up

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<sup>6</sup>< <https://www.bbc.com/news/uk-62272688>>.

<sup>7</sup> On parental responsibilities, see: Philip Marcus, 'Parental responsibilities: Reformulating the paradigm for parent–child relationships Part 1: What is wrong with the ways in which we deal with

a family characterized by commitment to the long term welfare of each other and their children; teaching the public about what happens to a child, psychologically and socially, when parents separate, let alone when children are exposed to disputes and fighting between the parents. There is no training in psychological and social first aid; for example, most couples have no understanding of how to explain to their children that their lives are about to change, and to help them cope with family breakdown.

When parents separate, they often focus on their own pain—blame, anger, fear—while overlooking the grief and loss their children experience. Influenced by media portrayals, many believe court is the first step.

**But this is a harmful misconception.**

The real starting point should be addressing children’s emotional needs. Parents must take responsibility for preserving their child’s relationship with both parents, and should focus on cooperation—not conflict—as the foundation for moving forward.

In most legal systems, courts exist to deal with legal disputes, but in a majority of situations when couples separate, there are usually no legal issues involved, and should not come to court.

In the regrettable absence of awareness of the non-legal nature of many, if not most, family breakup situations, the court receives a multitude of claims and applications which represent relationship difficulties, and which have no legal issue to be resolved. It should be added that the filing of documents in court inevitably places the parties in an adversarial frame of mind, thereby undermining the likelihood of reaching agreements relating to the needs of their children.

That is why efforts need to be made to ensure that couples who are separating should be aware that there is a variety of non-legal services, including couple counselling, consultation with child development specialists, conciliation and mediation services, collaborative practice, and the like, as well as help from church and social organizations who can move them, in a non-confrontational way, toward agreement about the arrangements for the children post-separation.

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the children of separated parents and how to put them right’ (2017) 14(2-3) *Journal of Child Custody* 83 <<https://doi.org/10.1080/15379418.2017.1369920>>; Philip Marcus, ‘Parental responsibilities: Reformulating the paradigm for parent–child relationships Part 2: Who has responsibilities to children and what are these responsibilities?’ (2017) 14(2-3) *Journal of Child Custody* 106 <<https://doi.org/10.1080/15379418.2017.1370407>>.

They must also be given by qualified professionals, who are trained to recognise situations in which their services are inappropriate, are aware of the legal framework for families in the course of separating, and subject to rules of ethics and supervision.

Over the past twenty (even thirty?) years, laws promoting alternative dispute resolution (ADR) methods have multiplied around the world.

These ADR methods are designed to enable all parents to avoid ending up before a family court. These services should be readily accessible, in terms of location (perhaps in community centres, local authority offices, religious institutions), and affordability so that rich and poor alike, not just those who can afford legal representation, are made aware of the possibility of avoiding court (with subsidies for those who cannot afford the full fees)<sup>8</sup>.

Another way to do this is to provide legal aid – free consultation with a lawyer – for those who cannot afford it, without incentivizing the use of the court. Otherwise poor parents think that they have no alternative to applying to the court.

In addition to mediation and conciliation, other ADR mechanisms have been introduced into national legal systems.

A longstanding example of the pre-court diversion approach is the setting up in Australia, several decades ago, of Family Relationship Centres<sup>9</sup>. Attendance at an FRC is required as a condition of starting proceedings in Family Court.

One of the recent developments is collaborative law, also known as collaborative practice. This is a process through which couples who have decided to separate or end their marriage work together with a team of collaboratively trained professionals, including lawyers, divorce coaches, child development specialists and financial professionals, in order to achieve a settlement that meets the needs of both parties and their children without the need for litigation. The process allows parties to

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<sup>8</sup> In England and Wales a voucher scheme, providing £500 towards the cost of mediation, is in force <https://www.gov.uk/guidance/family-mediation-voucher-scheme>. The reported success rate is 69% "This means that 4,961 families either did not go on to court or went only for a consent order" Family Mediation Voucher Scheme Analysis , 2023 <https://assets.publishing.service.gov.uk/media/6419cd288fa8f547c7ffd692/family-mediation-voucher-scheme-analysis.pdf>

<sup>9</sup> Patrick Parkinson, *The Idea of Family Relationship Centres in Australia* (2013) Family Court Review Vol 51(2), 195-213

obtain a fair settlement while minimizing the time, cost, uncertainty, and acrimony that can accompany a litigious divorce or separation. Couples initiate this voluntary process by signing a contract (a "participation agreement") binding each other to the process and disqualifying their respective lawyer's right to represent either one in any future family-related litigation<sup>10</sup>.

This process has been introduced in the law in Belgium, in Germany and in Switzerland. In France, the lawyers are practicing it without the need for legislation.

Where the arrangements for children are under discussion in the collaborative process, the parents may each ask a mental health professional or child development expert to be part of the process, but lawyers and divorce coaches may suggest that one such expert be jointly instructed, thereby saving costs, the need for repeated meeting for the child with several assessors, and the risk of bias. While lawyers are an integral part of the process, they and their clients have a strong incentive to reach agreements; if they fail to do so, each client will have to find a new lawyer, with all the time and expense that this will cause.

In Canada and in the Valais canton in Switzerland, parents must attend an information session on the effects of separation on children before initiating any legal proceedings.

In certain judicial districts in France, parents are generally required to attend an information session on family mediation before filing a lawsuit involving their children.

In Spain, effective from 3 April 2025, Organic Law 1/2025 introduces a requirement for parties to attempt ADR before filing civil or commercial lawsuits. This initiative aims to alleviate court congestion and promote amicable dispute resolution. These reforms reflect Spain's commitment to

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<sup>10</sup> Wikipedia (accessed 5 May 2025). See also Andrew Schepard *The Uniform Collaborative Law Act: Behind and beyond ABA approval* Family Court Review Volume 63, Issue 2 (April 2025) Pages 305-323, and Uniform Collaborative Law Rules And Uniform Collaborative Law Act [https://irp.cdn-website.com/b7ff9c6a/files/uploaded/UCLR\\_and\\_UCLA\\_Final\\_Act.pdf](https://irp.cdn-website.com/b7ff9c6a/files/uploaded/UCLR_and_UCLA_Final_Act.pdf)

fostering a culture of consensual dispute resolution and aligning with international best practices those conclusions and then rule on the parental arrangement accordingly.

If Family Courts were to require proof of attempts at utilizing non-contentious or therapeutic interventions before approaching court, this would assist parents to assume the responsibility to protect their children from further harm caused by their separation. Therapeutic interventions would have to be easily accessible services run by professionals and trained volunteers, committed to sensitizing and equipping parents to prioritize their children's need to continue being cared for and connected to both parents throughout and after the separation. Pre court diversion is the primary goal of Two Wishes who ideally envisage a future where separating parents are not involved in the court legal system at all.

In addition, courts can incentivize pre-court resolution by other financial methods. For example, substantial court fees for filing claims (with reductions or exemptions for needy applicants who show both financial hardship and a plausible claim) may deter some potential claims if the cost of mediation is reasonable.

**Our consensus is that it is the responsibility of parents who separate to ensure that the children are protected from unnecessary harm. One of the ways to achieve this is to get help in order to minimize conflict. It follows that the state should make the necessary services available and accessible.**

**PART TWO:**  
**HOW TO MAKE COURTS BETTER**

Family Court systems in some places operate reasonably well, and others urgently need improvement. But a better result for children can usually be achieved by avoiding legal proceedings. While advocating for the incorporation of proven child protective features into family courts throughout the world, subject to local cultural differences, we believe that such courts need to be better integrated into a more holistic system that treats family separation primarily as a health and relationship issue and puts greater emphasis and resources into earlier interventions and education.

**HOLDING A MIRROR UP TO THE COURT PROCESS TO REDUCE  
PARENTAL CONFLICT**

**JUDGE BRUCE R. COHEN, ARIZONA, USA**

When encountering parental conflict, courts have focused on the behavior of the parents and its resulting impact on children. Far less time has been dedicated to addressing how the court process exacerbates conflict between parents.

Many jurisdictions around the world utilize the “adversarial process” for litigating disputes between individuals or entities. It is designed to promote a thorough analysis of the evidence and applicable law, with the underlying premise that from the competing examination, the truth will emerge. It is a reliable and accepted form of addressing legal disputes.

But is there wisdom in employing an adversarial process to custody litigation for parents who will have to work jointly or at least parallel to one another in their future raising of the children? Likely, no. It cannot be expected that parents will work cooperatively in the future after being subjected to an adversarial process to resolve their disputes.

In lieu of abandoning the adversarial process for these unique cases, for which there is no appetite, there are some nuanced improvements that can be readily

implemented to mitigate the negative impacts of the adversarial process for parents who will be compelled to work together into the future.

### The 180-Degree Shift

The nature of the adversarial process focuses on past events. Yet the goal in custody litigation is to structure the future. Evidence about who did what or what has occurred will always be relevant. However, determining the actual facts is not the last step in the process in determining custody. That requires there to be a projection from the past into a plan for the future.

This crucial step can be facilitated by a shift in the focus of the litigation---from “How did we get here?” to “Where do we go from here?” Expressed differently, it is about moving from “being right” to “getting it right.” When this principle is expressed to the parties by judicial officers early in the custody litigation process, it helps facilitate the end goals and has the potential for reducing the negative impact associated with the adversarial process on the parents’ ability to work cooperatively. It does not replace the adversarial process; it merely reduces the negative impacts of that process.

### The Anti-Vilification Approach

It is not uncommon for court proceedings involving custody issues to include some level of vilification from the court to the litigants. In response to parents who are engaged in conflict, many judges have been heard to say “your disdain for the other parent is greater than your love for your children,” or something to that effect. This approach mistakenly assumes that through this form of shaming, a parent will improve their future behaviors. In most circumstances, it is far more likely to increase defensiveness, cause emotional distress or lead a party to withdraw from the process or be far less receptive to proposed changes. There is a better approach, and it requires nothing more than a nuanced change in what is communicated by the court from an environment of blame to an assignment of responsibility.

Blame often carries a negative connotation and implies fault or wrongdoing. When someone is blamed, it suggests that they are being held accountable for a failure or mistake, often with an emotional aspect of assigning guilt or criticism. The focus is typically on the past actions and the consequences of those actions. Conversely, assignment of responsibility focuses on the recognition of duty or obligation. Assigning responsibility involves identifying who is accountable for a task or outcome, without necessarily implying fault or criticism. At its core, blame is about attributing fault, while assignment of responsibility is about clarifying roles and expectations.

Simply summarized, the court should emphasize an approach that is about “taking responsibility rather than finding responsibility.”

### Change Behaviors, Not Feelings

When parents are in conflict, systemic judicial resources often become stressed. These parents are far more likely to be engaged in serial custody litigation with only limited remediation of their conflict. Courts around the world have attempted to address the profound negative impact that high conflict parenting cases have on everyone involved, and most importantly, the children, by employing a therapeutic approach. The belief is that if a parent can change how they feel about the other parent, the underlying behaviors will improve. And while there is merit to this belief, its potential for success is impacted by the receptiveness and willingness of the parent to seek personal change, including as to how they feel. If a parent is not receptive to the change or believes there is significant factual support for that parent’s view about the other parent, the imposed therapeutic approach will likely fail.

Individuals have the right to feel as they chose to feel. It is not the role of the court or the custody process to mandate how they should feel. Rather, the focus is on how parents are expected to behave going forward.

Based upon this underlying premise, an intervention has been created for parents at risk of becoming high conflict that is behaviorally based rather than therapeutic in its approach. It is called the Families In Transition Program, or “FIT” for short. It is a 90-minute, computer-based, interactive program through the National Center for State Courts. 42. The program is divided into four separate modules. The first is validation. Consistent with the suggestion above, this shifts the focus away from blame or vilification. In fact, it does the opposite: it supports a parent’s right to feel as he or she may choose. This increases their receptiveness to the program and its teachings as defensiveness is mitigated.

The second module goes in depth into the negative impact exposure to parental conflict has on children and does so in a highly effective manner. The third module alters the perspective from focusing on the past to creating a new vision for the future. The fourth and final module provides practical suggestions as to how the new vision can be implemented.

The unique features of the program include that it is scalable and available on demand. It will be available at minimal expense to the litigating parents or courts who mandate its completion. Most importantly, it has been subjected to

two separate studies that have found the program to be highly effective in reducing parental conflict.

The program was created through a partnership between the Maricopa County Superior Court (Phoenix, Arizona, US) and the National Center For State Courts. Additionally, Arizona State University joined in the endeavor by overseeing the scientifically-based pilot study as to the effectiveness of the program on parental conflict.

The 2023 Pilot Study compared the FIT Program to the existing gold standard program in the Maricopa County Superior Court called the “Parental Conflict Resolution Program,” or “PCR” for short. The PCR program is a four-hour in-person small group session. Parents in conflict are required to attend separate sessions and time is devoted to both educating parents and allowing for facilitated group discussion among the attendees.

During the pilot, parents who were identified to be at risk of becoming or had become “high conflict” were ordered to participate in a conflict resolution program. Half were randomly assigned to the PCR Program and the other half were assigned to the FIT Program. Each referred couple then participated in a three-stage survey—one immediately before the intervention; one immediately following the intervention; and the last at least thirty days after the intervention. There were approximately 270 individuals involved in the study that spanned nine months.

The results of the study showed to a statistically significant degree that when compared with the PCR Program, FIT helped reduce the reported conflict between the parties but with no significant reduction in the self-reported emotional regulation of each parent. Consistent with the behavior modification approach of FIT, parents had not changed how they felt (nor were they asked to) but they did change how they behaved.

A second study was conducted in early 2025. This follow-up focused not on surveys of the parents, but on the resulting impact the interventions had on post-intervention litigation between the parents who were part of the 2023 study. The findings were profound: Cases for parents who participated in the FIT Program (as opposed to the PCR Program) during the 2023 pilot program had a statistically significant reduction in post-intervention initiation of additional litigation; and had a statistically significant reduction in post-intervention initiation of additional parenting-related litigation; and had a statistically significant increase in settlements reached for issues that were initiated before the court, post-intervention.

These very promising studies have shown that the FIT behavioral approach directly impacts parent's reported conflict, has decreased post-intervention litigation initiation, whether related to custody or on any other issue between the parents, and increased settlement rates for cases that were brought back to court.

#### Summary

The negative impact of exposure to parental conflict on children is universally understood. The underlying issue of resolving parental conflict is complex and has been perplexing. Despite the dedication of significant resources to mitigate that impact, courts remain challenged by these cases. True progress and its resulting benefits to children are not easily achieved and are not amenable to a single-focused approach.

That said, one element of the long-term solution comes from how the courts address this long-standing problem. This can be aided by shifting the focus from "how we got here" to "where we go from here," replacing blame and vilification (i.e., "who is responsible") with "taking responsibility," and altering behaviors rather than feelings.

## SPECIALIST JUDGES AND TRAINING FOR JUDGES, LAWYERS AND COURT STAFF

***You have a great family doctor, and a wonderful orthopedist.  
But would you want either of them to perform brain surgery  
on your child?***

As we pointed out in the Introduction, family cases involving children are very different from ordinary cases litigated in courts.

Family court work, especially in cases involving children, is multidisciplinary. In order that the court can deal with the needs of family members, those involved need, alongside knowledge of the law, some familiarity with those disciplines and professional areas which intersect with the court's work.

These include psychology and child development, psychiatry and social work, alternative dispute resolution, psychology and therapies. In the absence of knowledge of these extra-legal areas, judges may not appreciate the needs of the parties, as opposed to their claims and allegations. They may fail to identify their own perhaps inaccurate ideas, about human behaviour and relationships, and they are more susceptible to persuasion by the inappropriate use of diagnostic labels, unscrupulous lawyers and so-called experts, with the possibility of harmful results for the families who seek the court's help. For an example of these issues, see Donald T. Saposnek, Dan Berstein *The uses and abuses of psychodiagnostic terms in family court cases: Beyond labels to the humanity beneath*.<sup>11</sup>

Another important factor, of which many are unaware, is the important roles that grandparents can play in the development of a child, and especially when the parents are in the process of separation or already live apart. Although in some situations a grandparent may align with one of the parents and, for example, play a major part in alienating behaviours, in the vast majority of cases the grandparents represent a kind and welcoming place where the child is not exposed to the stresses of parental separation and litigation. Indeed, grandparents who are happily married

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<sup>11</sup> Family Court Review Volume 63, Issue 2 April 2025 Pages 265-285

may restore a child's faith in the possibility of harmonious couple relationships.<sup>12</sup>

Those who preside over cases involving children should also be aware of the possibility of abuse of the court's powers and processes by litigants.

"A desire to gain an unfair advantage in the litigation or to control a former partner, or motives of anger or vengeance, or mental health issues, or a combination of these factors, may result in one or both parties abusing the Family Court process, thus, unnecessarily increasing the costs and stress of the process for the parties, their children, and society. Litigation abuse can be defined as a pattern of misuse of the Family Court process that could reasonably be expected to cause distress or harm to the other party or their children that is greater than would occur with the proper use of the family justice process."<sup>13</sup>

In addition, the procedures and timetables for family court work also need to be different, so as to take into account the need for speedy interventions (for example, where there are allegations of neglect or abuse, including psychological maltreatment leading to the absence of contact between a child and a parent) on the one hand, and the need for reconciliation work and the development of new parenting skills, so as to cope better with the needs of the child, on the other hand.

These are only some of the specific topics and issues about which a judge handling a case involving children needs to be aware.

Indeed, in our discussions with colleagues and lawyers, parents and people who, as children, were involved in court proceedings, and also expert witnesses, from dozens of places around the world, about the need to change family courts, the absence or dearth of training for judges was by far the most common defect described in current systems.

We recommend that judicial officers should be appointed to deal with family cases, only after they have received appropriate training in these areas, and should also be given periodical in-service training and updates as to developments in these fields.

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<sup>12</sup> See Yoa Sorek *Grandparental and overall social support as resilience factors in coping with parental conflict among children of divorce* Children and Youth Services Review 118 (2020) 105443

<sup>13</sup> Nicholas Bala, Ella Benedetti, Sydney Franzmann *Exploring litigation abuse in Ontario: An analysis of costs decisions* Family Court Review: Volume 62, Issue 4 Pages: 936-961 October 2024

Court administrators should also be trained in these areas; and courts should encourage specialization for lawyers who appear in such cases, or at least training of lawyers in these important linked disciplines.

We have identified three categories of judges for whom training needs to be supplied:

- Specialist judges in specialist courts. It can be assumed that such judges will be selected to serve as permanent members of a specialist family court on the basis of proven experience and knowledge in the field of family law, and have reasonable knowledge of the fields of social science and mental health. See, for example, section 2 (c) of the Israeli Family Courts Law 1995:

"A person is qualified to be appointed as a judge of the Family Court if he has professional knowledge and experience in family matters".

Such judges may be assumed to have knowledge in many fields, but in light of changing laws and practices, need to be regularly updated.

- General judges who rotate in and out of family courts. In many states, despite the existence of family courts with specific jurisdiction in matters involving children and families, newly appointed or elected judges are expected to rotate through various departments in the courts of first instance, without specific experience or knowledge in the relevant areas of practice. A judge may, therefore, be assigned to hear traffic case, small claims, family cases, criminal cases etc., each for a year or two, and then sent to another division. As a result of lack of experience, the judge is liable to be unaware of the special sensitivity of cases involving children and the need to be informed about the extra-legal fields referred to above. He may also have great difficulty with the emotionally charged atmosphere of the family court, and the deep-seated fears and antipathy exhibited by couples in a state of family strife. All these factors will lead to inefficient, and sometimes damaging, conduct of family cases.

This is highly unsatisfactory.

So, judges in this category should be required to undergo specific training before starting to deal with matters involving children.

- Judges of general jurisdiction, especially in districts with relatively small populations but large territory. These judges will hear cases of all kinds, including family cases, as part of their general docket. However, they may be in post for many years.

Judges in this category, too, should be required to undergo specific training before starting to deal with matters involving children, and in addition regular in-service training.

It will be necessary to build a program for judges in each category, indicating the essential content for each. There will be regional and other considerations about format (frontal/webinar/internet, etc.), and about the duration and frequency of sessions. But it is essential, in our view, that supervising judges be persuaded that without some training judges are liable to do more harm than good and that judges be persuaded, by providing suitable incentives if necessary, that participation is not optional.

## **SPECIALIZATION AND TRAINING OF FAMILY COURT JUDGES**

### **JUDGE ROSHAN DALVI, INDIA**

‘Core Competence’ is a salutary business management principle. Specialization pervades all areas of law.

Lord Harry Woolf prescribed ‘Specialist Judges’ in all areas of judging for Court and Case Management in what has been famous as the Lord Woolf Report, 1996 in the U.K.<sup>14</sup>.

Family Courts merit a very distinctive aptitude and attitude of the Judges who preside over them in this niche field of law. Yet, they have universally been given step-motherly treatment. Judges who have neither any interest in Family Law, nor are attuned to the special psychological or emotional needs of the Court are,

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<sup>14</sup> The Right Honourable the Lord Woolf (1996). Access to Justice Final Report. <http://webarchive.nationalarchives.gov.uk/20060213205513/http://www.dca.gov.uk/civil/final/contents.htm>

at times, appointed or deputed to the Family Court. There are also specific appointments to the Family Court of persons conversant with the law and practice and who manifest exceptional qualities required of that special position.

In all jurisdictions internationally there have been examples of “good” and “bad” Family Court Judges. With only a difference of degree, all Family Courts in all countries face a dire situation of arrears and appeals.

Aside from the consideration of maintenance, alimony, division of properties and orders for their protection between the disputing parties, children, often of tender years, are the recipients of the orders and directions of Family Court Judges. They need and deserve to be treated with respect and loving care in their best interest and welfare.

Children are little people who need big rights.

This may go against the grain of the personality of one of the parties, often the custodial parent, who may try to indoctrinate them and alienate them from the non-custodial parent and her/his family. These matters are a class apart and demand special knowledge, sensitivity and empathy, which I may define by the portmanteau ‘sentipathy’<sup>15</sup> which persons trained only in law and judging may be incapable of handling without external support of professionals like counsellors, psychologists and, sometimes, even psychiatrists.

Hence it becomes imperative that the Judges to be appointed and Judges appointed to the family courts are seen to have the interest and inclination, if not the special knowledge, demanded of this Court for the treatment of the disputing parties, especially their children.

That done, this interest and inclination must transform into the needed attitude towards all stakeholders and the capability of handling varied situations that call for emotional, aside from, intelligent take on the cases before them.

That would be achieved by specialized training and education of all the Family Court Judges. There are Judicial Academies and Institutions that cater to this requirement in many countries. Special workshops, seminars, webinars, colloquia, inter-actions amongst Judges would prepare and chisel them for the task. This would be adult education by client-centered learning. Various presentations followed by activities such as quiz, questionnaires, group discussions, individual and dual participations, role plays, case studies and stories, illustrations of experiences, debates, discussions of precedents and cases of other jurisdictions could form the curriculum which may vary in different

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<sup>15</sup> A combination of sensitivity and empathy

countries. Breaking barriers between colleagues and superiors is the first of such activities in any area of law. Supervision of higher Courts by Judges of the same genre would also go a long way in bringing out the best the Family Court Judge can offer. It would, therefore, be desirable to have Judges of Trial Court (court of the first instance) and the Appeal Court converge without any inhibition. In jurisdictions where the academies do not exist, the Judges of several countries may be trained by a single academy in a neighboring country. This has been done in the National Judicial Academy in India for training Judges from Bangladesh, Nepal, Bhutan, Sri Lanka, Maldives, Myanmar, Cambodia, Peru, and Kenya (proposed). Even the State Judicial Academies in various States of India pitch in to offer training when the participant Judges come from other countries as they would do for their own Judges and Judges regionally.<sup>16</sup>

The period of training is also material to account for. A detailed course of six weeks was designed by Warwick University, Coventry, U.K. from 1996 to 1999 tailored for Indian Judges in the subject of “Gender and Law”<sup>17</sup>. Weekend courses in Family Law or in special aspects of Family Law, especially Child Custody, which may ideally be joint custody and good parenting may also serve the purpose. Having just one session amongst other subjects in a course designed for all Judges would not serve this purpose. It depends upon the time factor and the financial implications of the country whether it wants its Judge to be an acorn or an oak. But the acorn may someday become an oak. So, the desire to begin the work culture of understanding the intricacies of family Law and meeting them is the first step.

The trainers and trainees must include and involve all stakeholders and functionaries. Experienced Judges who have shown special merit in this field, practicing lawyers, experienced counselors, mediators, psychologists, NGOs working in this sector become fine trainers. They may conduct ‘Training of trainers’ who, in turn, may become future ambassadors of Family law. The trainees may be not only Judges, but counselors, mediators, court staff, lawyers and the litigants themselves. Mumbai Family Court had conducted a 3-part half day program for custodial parents, non-custodial parents and both of them in shared parenting / joint parenting.

Give your children the wings to fly, the roots to come back and the reason to stay.

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<sup>16</sup> The author has trained Judges, including Family Court Judges, in several workshops in the National and State Judicial Academies in India

<sup>17</sup> The author was trained in the Pilot Project in 1996.

The content of the training is even more important. It must encompass all aspects such as child rights, equitable parenting, parental alienation, vulnerability of children, child abuse and child sexual abuse, sensitivity in orders and directions (and judgments when applicable), novel approaches, best practices, soft skills, negotiation and mediation and business principles as applicable to Family Court work. Special day celebrations like Women's Day, Children's Day, Court Establishment Day involving the litigants have been found to give some impetus to the right way of working. A Judge may be trained to write a letter to the Child, especially an alienated, traumatized one, explaining in simple, clear language of the child what she/he has decided and why it is best for the child<sup>18</sup>.

It is our duty to prepare our children for the road, and not to prepare the road for our children.

A worthy tool for all stakeholders is a short practical Handbook (which I may call booklet) to be kept in hard copy or updated online. A booklet on parental alienation has been prepared by an NGO and distributed to over hundred schools in Maharashtra State in India to sensitize parents of infants admitted to schools before marriage breakdown. It could well be given to all litigants who have children at the very inception when the application/petition is filed and served.

Lawyers, more especially those who have a large practice, but not the conducive attitude towards the best interests of the parties and the children, may also be brought within the net of continuous professional education. The beauty of brevity, clarity and precision in drafting pleadings and affidavits may be the best impartible training. The relevant chronology may be coupled with a summary/synopsis of the facts of the case with a "word count limit" that may be used in Courts with or without the lengthy pleadings.

F A M I L Y is the acronym for Father And Mother, I Love You

**JUDICIAL CONTINUITY:  
ONE FAMILY – ONE FILE – ONE JUDGE**

One of the ways to make cases involving children proceed swiftly and efficiently is to allocate one judge to deal with all proceedings involving the child and his/her family.

In many jurisdictions, applications involving families are allocated to different court or judge according to subject matter: for example, applications for exclusion orders with allegations of abuse to one court, matters of property to a different court, child support to a third court, issues of division of time spent with parents to a different court, matters of child abuse and neglect to a separate court.

In other countries, family proceedings can be initiated at any of several levels. For example, in England and Wales, the Family Court has three parts, with differing categories of judges. If a judicial officer at any level feels that a case is more suitable for a different level, the parties are referred to a judge at another level, who has had no prior involvement with the case.

This leads to a waste of court time for the parties and of judicial time for the court, and lack of continuity in management of the cases. Each application is brought before a new judge, who is unfamiliar with the parties and their lawyers and needs to read afresh all the material in the file and understand all that has happened before the case reaches him. The parties or their counsel to explain the stage reached before the hearing can proceed.

When a claim or application is made to a family court, it should be allocated to a specific judicial officer, who will from that time on deal with all future applications and claims in family matters (which are very broadly defined) made by the original applicant or a member of his family. In child protection cases, it is in the child's best interests that the same judge will deal with all judicial decisions and supervise the placement and therapeutic work with the child and the family – One Child: One Judge.

The Family Courts Law of 1995 in Israel fixed the One Family – One Judge concept as one of its guiding principles. Thus, the court can relate comprehensively to all the proceedings involving members of the family.

The judge is enabled to identify all the relationships within the family, and over a period of time to observe the signs of mental health or personality issues. He can balance all the interests and needs which have to be considered, and can deal with matters in order of urgency and importance, without waiting for the decision by another judicial officer. For example, a judge who is dealing only with the division of property may be unaware of the psychological harm to a child if the family home is sold, while the judge dealing with the division of time spent by a child with each parent may have to wait for the judgment on property division, since this may impinge on the decision of a parent to stay in the present home or to relocate out of town or out of state.

Having all issues relating to a child, including allegations of abuse or neglect in child protection applications, before the same judge who is handling issues of residence and contact pending between the parents, enables the court to avoid findings by two judges or courts, which may contradict each other, as to the existence, and if found, the effects, of maltreatment.

The judge is able to track the reactions to orders and prevent manipulations.

When the Family Court was established in Belgium by the law of July 30, 2013, in 2013, it was decided to consolidate all legal matters concerning a family under the authority of a single judge, based on the principle of "one family, one file, one judge." This idea is aimed to:

- Prevent parties from having to repeatedly explain the background of a case that may have already been litigated multiple times;
- Promote procedural efficiency by avoiding the need for a parent to initiate multiple legal proceedings, sometimes simultaneously, in the hope of finding a judge who will rule in their favor;
- Ensure consistency between successive decisions;
- Enable the judge to become thoroughly familiar with the parents, sometimes also the children, and the overall family dynamics, thus allowing them to make the best possible decisions for the family.

Each family addressing the Family Court will have a single case file opened, which will be assigned to the same judge for all future requests related to that family. The term "family" refers to the same married couple, legal cohabitants, or partners, along with their common children.

The principle of a single judge does not only apply to the same jurisdiction but, in principle, to the same individual judge. This permanent assignment has several advantages, the main one being to prevent "judge gambling."

It is important to note that ensuring the litigants' right to an impartial judge does not necessarily mean, according to European case law, that the judge must be restricted to a single, well-defined function.

According to the European Court of Human Rights, a judge holding multiple roles is not, in itself, contrary to the principle outlined in Article 6 of the Convention for the Protection of Human Rights.<sup>19</sup>

"The European Court of Human Rights should therefore not, from the outset, challenge the principle of "one judge – one family" since the judge's objective impartiality remains intact."

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<sup>19</sup> Morel v. France Application 34130/96 Given 6 June 2000.  
[https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-58598%22\]}](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-58598%22]})

## **INFORMATION AND GUIDANCE FOR PARENTS ENTERING THE FAMILY COURT: DIVERSION AWAY FROM LITIGATION**

In this report we have emphasized the need to prevent, as far as possible, adversarial proceedings between parents of a child, since these very often exacerbate the harm caused to the child when parents separate. We have pointed to the need to help parents to understand that the child, and not their mutual differences and recriminations, should be at the very center of their thoughts and actions, and that this requires them to seek ways of coming to arrangements for the children after separation, using conciliation, consultation, mediation and other methods of arriving at suitable arrangements, without going to court.

However, in the absence of a societal consensus that this is the way parents ought to act, and in cases where out-of-court methods have not been successful, the parents or one of them may apply to the court.

For the purpose of this Report, we reviewed existing mechanisms for referring litigants in the family court to non-adversarial processes aimed at reaching agreement on arrangements for their children.

In some places there is a statutory framework mandating attendance by parents at meetings for the purpose of emphasizing the needs of the children and explaining the advantages of non-adversarial resolution, at the initial stage of proceedings, alongside judicial commitment to a non-adversarial approach.

In addition, the judge, at the first appearance of parents before the court, should also have the experience and skills necessary to try to convince the parents to try alternatives to acrimony and litigation.

The purpose of this process is to avoid, as far as possible, the need for fact-finding hearings, including the giving of evidence by one parent against the other and cross-examination of witnesses, which inevitably lead to escalation of conflict, and stress and harm to children as a consequence.

### **DIVERSION IN COURTS AROUND THE WORLD<sup>20</sup>**

Since the beginning of time, regardless of the legal system in place (Napoleonic Code or common law), judicial proceedings have been adversarial, pitting the parties against each other (for/against). As a result, parents have long believed that upon entering a courthouse—after

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<sup>20</sup> Judge Marie-France Carlier, Magistrate Gabriela McKellar, Judge Daisuke Ikuta and Judge Philip Marcus contributed to this section.

receiving a summons to attend a hearing along with a copy of an already “accusatory” initiating petition—they would have to defend themselves and thus “arm” themselves appropriately to face this “attack,” assuming that the best lawyer was necessarily one who was aggressive and ready to destroy the image of the other parent.

And it is true that the courts are there primarily to decide on disputes issues of fact or apply the law

Many family court judges, often supported by lawyers, aware of the harmful effects of conflict on children and on the psychological health of parents, have taken innovative initiatives within their jurisdictions to give family justice an image other than that of adversity, and to put an end to long, conflict-ridden, and destructive proceedings that often result in the breakdown of relationships with their children.

It was in Germany, in 1992, that Judge Jürgen Rudolf became the pioneer of a new practice named after his jurisdiction: Cochem. This forward-thinking judge was the first to understand that the win-lose philosophy was not suited to family disputes. With the support of the bar association of Cochem, as well as experts and mediators, he implemented a structured cooperation: an interdisciplinary and swift management of disputes aimed at making parents more accountable and helping them find an amicable solution focused on the well-being of the children.

In Belgium, the Chamber for Amicable Settlement or Conciliation was established 11 years ago by the law of July 30, 2013, which created the Family and Youth Court<sup>21</sup>.

This practice called the “the model of parental consensus” was implemented in the Dinant jurisdiction in Belgium in 2012, and in Ghent in 2022, and is now rapidly developing in the cantons of Valais, Vaud, and Fribourg in Switzerland, and has also been implemented in the courts of Aras, Grenoble and Privas in France

The expansion of this model shows that all the professionals working with families are realizing that only interdisciplinary collaboration between them is the best way of ensuring that the family’s needs are met and that the parents are guided toward a peaceful solution.

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<sup>21</sup> " Le tribunal de la famille et de la jeunesse " sous la direction d'Alain-Charles Van Gysel et Emmanuelle Diskeuve, 2ème édition , Editions Larcier 2015, p.78

Interdisciplinarity exists at 2 levels: during the hearing and in the reunions of the interdisciplinary commission.

This practice involves setting up an interdisciplinary Commission, which meets regularly to enable the professionals to get to know each other, to become more familiar with the methods available in their district and to be able to propose these methods to the family, to create new methods, to expose them to new expertise, and to invite specialists to remain informed of how to handle complex files involving domestic violence, for instance.

The first hearing of the parents in court is the most important hearing : it is the one where the judge, with the support of the lawyers, has to convince the parents to get on to the right track out of the court if possible, and to come back to the court only for approval of an agreement.

For instance, in Belgium, judges are sending a lot of parents to mediation and also to the Chamber for Amicable Settlement or, also called the Conciliation Chamber, the said law of July 30, 2013.

The Chamber offers several advantages: it is free of charge, confidential, and long in duration (each hearing lasts about an hour). This allows the presiding judge to quickly understand the issues and help the parents find the best amicable solution.

In Japan, in divorce cases, court mediation is mandatory before the Family Court can hear the case. The mediation committee is constitute by two mediators citizen and a judge. Family courts also have “family court investigators” as full-time staff members, trained as psychological professionals to get involved in the mediation cases when needed. Of course the government pays a lot of costs to maintain this, it has significant merits especially for the poor.

In post-apartheid South Africa, the legislation is driving a child sensitive practice in all legal matters that involve children. The highest law of the land is the Constitution which states at Section 28(2) that:

A child’s best interests are of paramount importance in every matter concerning the child.

The Children’s Act 38 of 2005 at S.6(4) states:

In any matter concerning a child—

(a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and

(b) a delay in any action or decision to be taken must be avoided as far as possible.

This Act provides for parenting plans, mediation, family group conferencing, and culturally sensitive lay forums, all aimed at resolving disputes without litigation. Where parents approach the courts, magistrates can refer them to mediation, to the Office of the Family Advocate, designated state employed social workers, or in some courts, pro bono mediators, all of which carry no monetary charge. The court's role is primarily to solve the child's problem. It is not adjudicative, and matters seldom proceed to full hearings. The Act also guarantees the child's right to participate in decisions affecting them. The magistrate can appoint a lawyer for the child, order a social worker to investigate the issues affecting the child, or by interviewing the child themselves. Almost eighty percent of parents opt to go without legal representation and this in itself lessens the adversarial atmosphere, as the magistrate is free to keep the proceedings focused on problem solving. There is even a section in the Act that compels that the proceedings take place in a child friendly environment.

One of the challenges in South African Family Law is that there are too many forums where separating parents can litigate, which do not have the same laws as the Children's Act. There are the Divorce Court, the High Court, the Domestic Violence Court and the Maintenance Court. However there is an invitation to mediate on issuing of summons and an increasing tendency by judges and magistrates to compel an attempt to mediate before allowing a matter to proceed to trial, even in these courts. Every divorce involving children is referred to the Family Advocate for investigation, or the magistrate can refer the case for investigation in respect of ensuring that a settlement agreement is in the best interests of the children involved.

In India, family mediation is legally recognized and promoted by the Indian state. Under the Family Courts Acts of 1984, family courts are required to make efforts to reach a settlement, before initiating trial proceedings, thus institutionalizing mediation as primary recourse.

In Israel as of July 2016, prior to filing a lawsuit regarding a domestic dispute, an application must be made to the court for Dispute Resolution. This is referred to Family Court Supporting Services (FCSS),<sup>22</sup> and the parties are required to attend Informational, Assessment and Planning sessions, including the possibility of mediation. Only afterwards, if no resolution is achieved, is the case referred for a hearing before a judge.

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<sup>22</sup> In Israel, the Family Courts have an in-house Social Services Support Unit, staffed by senior social workers, who are available to the court and litigants. See Philip Marcus, 'Children's Dispute Resolution: The Israeli Experience' in Katherine Lynch and Anne Scully-Hill (eds), *International Perspectives on Disputes About Children and Child Protection* (The Chinese University of Hong Kong 2015) 167-183

## **TRIAGE IN THE FAMILY COURT**

There are strong similarities between a situation in which an application or claim is made to a court by a family member against a parent, partner, child, or other relative, and the situation where a person appears in the emergency room of a hospital. In both situations, there is a need to assess whether the matter needs urgent attention, what is the level of urgency, who is the most appropriate person to give assistance, and which procedures should be used; all these against the background of limited resources, of time and manpower.

The family court secretariat may be staffed by officials who may have no specialized knowledge about families in crisis; they may receive little or no orientation in the intense psychological and emotional feelings which characterize family cases but are usually absent in other areas of law.

In order both to prevent avoidable harm to the parties and their children, and also to prevent waste of important resources, early identification of urgent cases, and diversion of appropriate cases to dispute resolution agencies, are essential. Some cases may not need judicial intervention at all, or only require that the matter be referred by a judge for counselling. Urgency and the need for non-adversarial interventions are not mutually exclusive: an urgent application may be best resolved by referral by the court to qualified professionals for assessment, guidance and conciliation.

This will often require multidisciplinary work, involving court administrators, mental health and social work professionals, and judicial officers, so as to set up criteria for allocation of cases.

### **TRIAGE IN FAMILY COURTS <sup>23</sup>**

#### **JUDGE PHILIP MARCUS, ISRAEL**

When a claim involving children is presented to the family court there should be an immediate assessment of the urgency of the issue – that is, how soon the case needs to be brought before a judge or referred for psychosocial assessment and treatment. This is a function of the level of urgency and which procedures are

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<sup>23</sup> Adapted from *Triage in Family Courts: When it is Needed and How To Do It* Id-Dritt: the Law Journal of the Malta Law Students Association Għaqda Studenti tal-Liġi at the University of Malta, Vol XXXIII, 2023, 100-116

needed; all these against the background of limited resources, of time and manpower.

Inappropriate handling of cases involving children at the initial stages causes serious and long-lasting harm. Errors are capable of leading to irreparable psychological, emotional, and social damage to children and members of the families of the litigant; faulty handling of the case at its outset can cause economic costs and unnecessary pressure on scarce resources of manpower, necessitated by the need to try to put right what went wrong. There may be a lack of relevant information, or inaccurate information; the litigant, or a lawyer, may be unable, through lack of knowledge, to give all the relevant facts, or may wilfully conceal or withhold important information. Unintended errors may arise also from lack of appropriate training or lack of support staff. So triage is needed.<sup>24</sup>

Each day, the secretariat of the Family Court receives many applications and claims, from lawyers and litigants in person, by hand, and by mail. Some are presented as being urgent – and every applicant would like his matter to be dealt with as soon as possible. However, resources, and especially judicial manpower and time, are limited. So, there is a need for each application to be read and reviewed, by a suitably trained person, in order to assess the urgency of the relief requested.

Thus, when a claim is filed relating to division of a child's time between separated parents, or a civil suit is filed claiming compensation for an act of violence, it may become apparent, on inspection of the claim and/or a conversation with the lawyer and litigant, that the child is not in contact with one of the parents, or that abusive behaviour is continuing. This situation requires immediate attention, judicial and therapeutic; without this kind of further investigation, the case might be fixed for an initial hearing in the general list, some months in the future.

In some cases, the law recognizes that certain types of matters require immediate or swift action by the court and gives strict time limits. For example, where an application is filed, alleging violence, for an order barring a family member from entering a home, the application is in Israel brought before a judge on the day of filing, and if an ex parte order is made, the court is required to hold a hearing in the presence of both parties within seven days.<sup>25</sup> The judge has to decide, on the basis of the applicant's submissions only, whether or not to

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<sup>24</sup> Triage: the assignment of degrees of urgency to wounds or illnesses to decide the order of treatment of a large number of patients or casualties <<https://www.merriam-webster.com/dictionary/triage>>.

<sup>25</sup> Prevention of Family Violence Law, 1991, section 4.

make an order which may prevent the respondent, who has yet to be heard, and may know nothing about the filing of the application, from entering his home.

When a claim is made that a parent has abused a child, including by interference with contact between the child and the other parent, the matter needs immediate attention, in order to assess the validity and seriousness of the allegation, and to take steps to prevent deterioration and start remedying the situation. For this reason, the President of the Supreme Court in Israel issued a Practice Direction, whereby in such a case a Judge shall fix a hearing within 14 days of filing, at which the parents must appear.<sup>26</sup>

Article 11 of the Hague Convention on the Civil Aspects of International Child Abduction requires that:

“...the judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children”.

If there is no decision within six weeks of filing, explanations are required.

When a claim is filed by one party in court and is accompanied by an application for immediate action by the court, for example for an order preventing or permitting some action, it should be referred immediately to a judicial officer who can determine if it is indeed urgent. The court has to make an immediate assessment of the urgency of the relief sought, and to balance the severity of the action required and the possibility that the respondent has an explanation or response which makes the relief sought unnecessary. There is a danger that the action requested will adversely affect other interests, especially of persons who are not parties to the case.

The court will therefore need further information, as a matter of great urgency, and may require outside agencies to provide the background to the case.

However, there are cases in which the person filing the document does not request urgent handling of the case, but the subject matter calls for immediate action. A short conversation with the applicant or the lawyer may elicit information which raises the urgency of the case to a very high level.

The central task of the trieur – the first person in the judicial system to receive a new matter – is to elicit as much relevant information as possible, as swiftly as possible, and to rank cases in order of priority. This requires appropriate qualifications as well as a high level of training and experience for the trieur,

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<sup>26</sup> Practice Direction 2-20, Handling by Family Courts of Urgent Proceedings when there is a Concern for the Safeguarding of Children and Ensuring Contact Between Parents and their Children, published 8 October 2020, para. 5. See in more detail pp 46-7 below

who has to know what questions to ask and how to assess the responses. The trier should be able to call in a social worker or mental health professional to review the situation and speak to the litigant,<sup>27</sup> to help with assessment of urgency and referral to the appropriate persons for processing.

Each jurisdiction or each court might make its own list of issues and criteria, and give them appropriate weight according to local conditions, available resources, cultural issues etc. But clearly there is urgency where there are allegations of maltreatment, including physical, emotional, or psychological abuse, neglect, violence, or threats, or of child-parent contact issues, including complete absence of contact, or intermittent or unsatisfactory contact, allegations of interference with contact, abduction or relocation, or threats do do so.

Urgency should be fixed in categories such as: Immediate (court order required this day, ex parte, to prevent injury/deterioration/abduction); Next day (with expedited service on other party); Within 7 days; Within 14 days; Not urgent.

## **SWIFT HANDLING BY THE COURT**

### ***Fast, but not furious***

Triage is intended to enable the family court to handle cases in a way which is consistent with the needs of a child.

The professional literature, as well as life experience, show that the longer a child is exposed to tension and stress, the more likely it is that he will suffer ongoing, and even lifetime, psychological harm.<sup>28</sup> A child's perception of time is very different from that of an adult. The report of the National Audit Office for England and Wales, in May 2025 includes the following

“Delays in resolving cases can lead to increased risk of harm to children and higher costs for the taxpayer. Delays can mean children must wait longer for permanent care and living or contact arrangements, and may have the disruption of multiple short-term placements. Children may also experience anxiety, a lack of stability and disrupted friendships and education. If a case takes longer, it is more likely that the family’s situation changes, requiring updated evidence or assessments, which creates further delays. Delays and more hearings mean higher court costs and increased spending on legal aid.”<sup>29</sup>

The legislature recognizes this: for example, Section 1(2) of the Children Act 1989 (England and Wales) provides that

"In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child."

This provision has, it appears, had no part in judicial or administrative management of cases. In *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568 the Court of Appeal said this:

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<sup>28</sup> VJ Felitti, RF Anda, D Nordenberg, et al, ‘*Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: the Adverse Childhood Experiences (ACE) Study*’ (1998) 14(4) *Am J Prev Med* 245 1998;14(4):245-258 <doi:10. 1016/S0749-3797(98)00017-8>.

<sup>29</sup> *Improving family court services for children* Ministry of Justice Report by the Comptroller and Auditor General

"12. Unhappily, reported decisions in this area tend to take the form of a post mortem examination of a lost parental relationship. Re A (above): 12 years of proceedings, 82 court orders, 7 judges, 10 CAF/CASS officers, no contact.

Re D (Intractable Contact Dispute: Publicity) [2004] EWHC 727 (Fam); [2004] 1 FLR 1226 (Munby J): 5 years of proceedings, 43 hearings, 16 judges, no contact.

Re A (Children) (Parental Alienation) [2019] EWFC B56 (HHJ Wildblood QC): 8 years of proceedings, 36 hearings, 10 professionals, no contact despite an attempted change of residence."

We would add Re T (A Child) (s 9(6) Children Act 1989 orders: Exceptional Circumstances: Parental Alienation)<sup>30</sup>: ten years, 70 hearings, 26 judges, and London Borough of Enfield v E (Unconscionable Delay)<sup>31</sup>: two years, nine different judges over seventeen hearings involving thirty-three different advocates.

However, all credit must be given to the Pathfinder model, now being rolled out in a number of areas in England and Wales. The President of the Family Division, Sir Andrew McFarlane, writes this in his View from the President's Chambers of April 2025<sup>32</sup>:

"Rather than being litigant led, with the court only gaining some independent account of the issues and of the child's wishes and feelings some many months into the proceedings, no hearing is held in a Pathfinder court until CAF/CASS or Cafcass Cymru have filed a full 'Child Impact Report'. This means that at the first hearing the court has a good deal of information, including, importantly, the voice of the child so that that hearing is very much focused on 'what are we going to do about this to make things better for your child', rather than on 'what is your dispute about?'

With the support of the MOJ, HMCTS, Cafcass Cymru and CAF/CASS, the Pathfinder model is now live in North Wales, SE Wales, Dorset and Birmingham. All four areas report that their backlog of pre-Pathfinder cases has almost evaporated. The Pathfinder Pilot Management Information published in February 2025 shows that in North Wales, the average number of weeks from

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<sup>30</sup> [2024] EWHC 59 (Fam)

<sup>31</sup> [2024] EWFC 183

<sup>32</sup> <https://www.judiciary.uk/guidance-and-resources/a-view-from-the-presidents-chambers-april-2025/>

application to final order has reduced from 29 weeks in 2022 to 18 weeks in 2024. The number of open cases has reduced from 478 to 202 over that period. In Dorset the average number of weeks from application to final order reduced from 38 weeks to 27 weeks during the same period. The number of open cases has fallen from 511 to 246."

This is remarkable progress indeed.

The need for expeditious handling of cases involving children was recognized by the European Court of Human Rights, in a case involving contact between a mother and her children, which said this:

"In cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence, in view of the risk that the passage of time may result in a de facto determination of the matter".<sup>33</sup>

Therefore, in any court system, resources, and especially judicial officers, should be given to the family court in order to enable appropriate handling of cases involving children.

It is unacceptable that in an urgent case (as determined at triage, or by any other criteria), the time taken before the parties first meet a court professional – a judge, social worker, mediator or other, should exceed a matter of days.

For example, in Israel a Practice Direction requires that where an application is filed by a parent containing an allegation of risk of harm to a child's safety or to interference with contact between a child and a parent, the first hearing must take place before a judge, in the presence of the parents, within 14 days of filing of the application.<sup>34</sup> At that hearing the court may make orders for:

- immediate resumption of child-parent contact, with all necessary safeguards, including supervision, as may be necessary to prevent harm to the child, and/or
- investigation by a social worker of the background to the family disputes, and/or

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<sup>33</sup> *Pisica v Moldova (Application No 23641/17)* 29 October 2019, at para 66.

<sup>34</sup> Practice Direction 2-20, as amended. see note 25 above

- immediate therapy for the child, and psycho-educational interventions with them, and/or
- appointment of a lawyer or guardian ad litem for the child, and/or
- a trial of the issues.

It is unacceptable that even a disputed case should take many months or longer until orders (at least temporary orders about contact, child support and the like) are given, whether by agreement or adjudication. Indeed, in some places, the law or regulations provide that cases of certain types should be concluded within a specific time from filing. However, while such limits may be helpful in setting targets, the judge should be enabled to use his discretion, especially when the court is playing a supervisory role in a therapeutic process.

For example, in some cases the matter is best referred for assessment and therapeutic intervention by a qualified professional. This may take time – sometimes weeks or months. In such a case, the judge should give clear orders to the expert and the parties as to the timetable, and should also require periodical reports from the expert and specify the final date by which a report is to be filed. The order should oblige the parties promptly to comply with the requirements of the court appointed professional. This is aimed at preventing abuse of the referral by a parent, who may wish to sabotage the assessment and intervention.

In all cases the judicial officer has to be able to determine the timetable. A judge should refuse applications to defer the trial, or any other stage, unless this is inevitable. Even where the deferral is agreed by the parties and their lawyers, the court has the final say, taking into account the needs of the child.

In order to ensure compliance, the court should have the power to impose sanctions for unacceptable delays, including imposition of costs to be paid to the treasury for wasting court time.

## MULTIDISCIPLINARY FAMILY COURTS

***An operating theater needs surgeons, doctors who are specialists in the organs or medical conditions involved, anesthetists, nurses, technicians, etc. A judge cannot handle family matters involving children without the support of other professionals***

A court dealing with family matters is not simply an institution for deciding between parties to a dispute; in fact, in many situations, the parties come to the court for resolution, rather than adjudication, of issues between them. However, traditionally courts will only act if the problem placed before them is framed in terms of a request to decide which of the parties is right and which is wrong, who wins and who loses.

On the other hand, the therapeutic professions seek to help those who come to them to resolve their problems. They are traditionally based on work between an individual or a family and the therapist, to enable the clients or patients to reach equilibrium in some issue that troubles them.

We approach this on two levels – organizationally, and relating to individual cases.

On the macro level, it is very useful for members of the various professions, involved in cases where families need help, to sit together on a regular basis, in order that they can learn together, and from each other, about current developments in each field. This enables a coordinated approach to assessing the efficacy of the systems and identifying the areas in which improvement is needed.

In Belgium, this involves setting up an interdisciplinary Commission, as mentioned above.

In England and Wales, the Family Justice Council

“...will, as a critical friend to the Family Justice Board, provide it with expert advice, from an inter-disciplinary perspective, on the operation and reform of the family justice system in England and Wales”.<sup>35</sup>

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<sup>35</sup> <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/family-justice-council/about-fjc/terms-reference/>

On the level of the individual family, when members of the family are unable to resolve some issue that troubles them, there may be matters of law and/or fact which are unclear, but in all cases the relationships between them need attention. For this reason, a family court needs to supply services of both kinds, legal/judicial and psychosocial. The approach needs to be multidisciplinary, placing experienced professionals at the disposal of the parties so that the matters brought before the court can be handled in a way which is most appropriate in the circumstances, taking into account the needs of all who may be affected by the problems. Such professionals should be attached to the court, either as an integral part of the court or contracted to handle speedily referrals made by the court.

The accessibility of social workers and other professionals, to those who approach the court and judicial officers, is required to enable triage, in the sense of allocation of the family members to the services they need in accordance with the issues presented.<sup>36</sup>

In addition, these social workers should be empowered to administer early assessment, using specific intake tools, and, for example, to initiate and conduct a Family Group Conference.<sup>37</sup> They can also intervene immediately where this is necessary to prevent further deterioration of a situation which has become, or threatens to become, a source of harm to a family member.

All of the above require collaboration between judges and mental health professionals. Working together should not only limit juridogenic harm; it may also limit iatrogenic harm by mental health professionals, so that those trying to help the children will not work at cross purposes.

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<sup>36</sup> For example, in Israel Family Court Social Services Support Units are an integral part of the Family Courts and Religious Courts dealing with family matters (Sec. 5, Family Courts Law 1995), with social workers in offices in or very near to the courthouses, .

<sup>37</sup> See, for example, Oranga Tamariki Act 1989, Children's and Young People's Well-being Act 1989 New Zealand, sec. 20 – 38.

## INTERACTION BETWEEN PSYCHOLOGY AND LAW IN FAMILY LAW PROCEEDINGS

JUDGE JOSÉ BARROS, PORTUGAL

Dealing with issues such as child abuse, domestic violence, parental conflict and parent-child problems requires a strong involvement and interdependence of both psychology and law as traditionally family dynamics such as those demand specific scientific knowledge that is usually outside of the judge's expertise.

In fact, in the last 30-40 years, through research in attachment, trauma, family systems and personality disorders, psychology has shown us that sense and sensibility, although always relevant to court decisions, are simply not enough in handling cases, as we – judges – become increasingly aware, for example, that 52% of inmates in U.S. prisons have suffered 4 or more childhood adverse experiences (especially physical, sexual and emotional abuse as well as exposure to domestic violence). These make them much more likely to experience complex PTSD, and also to suffer from personality disorders (namely, borderline, narcissistic and antisocial), something that would be outside of our common knowledge were it not for science research becoming more accessible nowadays through the Internet<sup>38</sup>.

In the same line of thought, we also now know – or, at least have consistent data that shows us - that being victim of physical abuse and exposed to domestic violence during childhood is an important (if not the most relevant) predictor of someone engaging in family violence as an adult<sup>39</sup> and that about 80% of male domestic violence offenders referred by the court to domestic violence programmes suffer from diagnosable psychopathology, mainly personality disorders (specifically, borderline, narcissistic, antisocial, sadistic) while that percentage goes up nearly to 100% in the most severe domestic violence cases<sup>40</sup>. That is also in line with the path from childhood trauma to complex PTSD to personality disorders that we see when handling youth delinquency cases and read forensic evaluations with those life trajectories in children in real life situations.

Nothing that has been said so far justifies, of course, any bad behaviour from responsible adults or even from adolescents in youth delinquency cases, but certainly explains it in a way that demands from us, professionals, to be aware of

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<sup>38</sup> <https://compassionprisonproject.org/childhood-trauma-statistics/>

<sup>39</sup> Beth M. Costa, Christine E. Kaestle, Arlene Walker, Ashlee Curtis, Andrew Day, John W. Toumbourou and Peter Miller - *Longitudinal predictors of domestic violence perpetration and victimization: A systematic review*, published in *Aggression and Violent Behavior* – Vol. 24, September – October 2015, pp. 261-272, available in the Internet in: <https://www.sciencedirect.com/science/article/abs/pii/S1359178915000828>

<sup>40</sup> Dutton, Donald – *Patriarchy and Wife Assault – The Ecological Fallacy, Violence and Victims* 9(2), pp. 176-177, available in the Internet in: [https://www.researchgate.net/publication/15503361\\_Patriarchy\\_and\\_Wife\\_Assault\\_The\\_Ecological\\_Fallacy](https://www.researchgate.net/publication/15503361_Patriarchy_and_Wife_Assault_The_Ecological_Fallacy)

the needs of intervention that actually work in helping those children, parents and families.

By now, we hope to have explained how dealing with those issues demands specific scientific knowledge that is usually outside of the judge's expertise.

Having said that, the presence or absence of domestic violence, child abuse or parental alienation are matters of fact that the court has to decide upon, after careful consideration of evidence (police, school and hospital reports, witness statements, etc..) and all the facts involved, not leaving that decision to any other entity. Facts in any due process can only be established through evidence that has been subjected to intense scrutiny from all the parties involved.

However, through the use of different assessment tools (for example, using screening tools such as E-HITS in intimate partner violence cases or the parental acceptance – rejection questionnaire in parent- child estrangement issues or the more common MMPI-2 in assessing parents' personalities) psychology can assist the court in determining some of those facts and, more importantly, helping understand them.

Usually the use of psychology in family courts is more linked with the assessment provided by forensic evaluations and less so by the work done by clinical psychology, as the latter tends to demand a relationship of trust between the psychologist and the patient (parent or child) that is, of course, conflicting with the need of impartiality in court proceedings.

Under the understanding that the forensic psychology should only offer assessment, not treatment, and therefore be neutral, while clinical psychology should be more concerned with establishing a bond in order for treatment to be successful, the divide between forensic and clinical psychology entails a further obstacle in the cooperation needed between psychology and law; forensic evaluations tend, at best, to offer a snapshot of the family dynamics (which, of course, can change during the time of the case<sup>41</sup>), while a more longitudinal approach that is more usual in clinical psychology would be able to provide a broader view that would be more helpful to the court's work.

Indeed, forensic evaluators usually meet parents and children for a short period of time, and even when having access to the evidence in the case (for example, police, hospital or school reports, decisions that have already been made, etc.)

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<sup>41</sup> The shortcomings of forensic evaluations have been a matter of strong discussion in the United States following the so called Blue Ribbon Commission decision to suspend forensic evaluations in The State of New York due to the perception that they lacked scientific or legal value in the aftermath of cases in which children had been killed following evaluations that had allegedly been important to place them with the parent who, sadly, killed those children. See: <https://ocfs.ny.gov/programs/cwcs/assets/docs/Blue-Ribbon-Commission-Report-2022.pdf> . This is not the place to address such a heavy topic, but we will say that, regardless of the need to change the system when it comes to forensic evaluations, leaving the courts without any type of independent psychological assessment of the family system and both parents and child might also be dangerous. We think the solution we offer in this presentation might be worth thinking about in that discussion.

they do not get to watch parent meetings with the judge, nor attend supervised visits or, in any way, see the parents or the child's behaviours outside the limited scope of the forensic evaluation settings.

Meanwhile, it's important to note that, in several countries, courts do have access to technical advice from in-house assessment teams, that being the case, for example, in Portugal, where Family Courts should be helped by so called multidisciplinary teams (article 20 of Law 141/2015) to assist them in "fact finding", to "accompany children when heard by the court" and to "supervise the enforcement of parenting arrangements".

Sadly, although those teams are called "multidisciplinary", in Portugal, they only include social workers, who, of course, are not able to provide adequate technical advice in the realm of psychology, which then leaves the court being able to resort only to forensic evaluations (with the above mentioned problems) or reports written by therapists who have been paid to do so by one of the parents.

Therefore, we favour that all family courts are provided with psychologists – which can be appointed by the APA or other psychology national boards - working in those in-house (in-court) assessment teams.

That would help in solving the above-mentioned problems with forensic evaluations because:

- 1) those psychologists would work in the case longitudinally, meaning, for its whole duration, which would enable them an overview of the whole family history and dynamics (including, of course, former cases involving the same parents and child);
- 2) they would have access to better and more accurate information (being able to attend parent meetings with the judge and have much easier access to the case files);
- 3) those professionals would specialize in the types of issues that are more common in family law proceedings (namely, child development and trauma, attachment issues, domestic violence, parental conflict and parent-child relationship problems);
- 4) they would remain neutral regarding the parents and the child as their position would remain as an assistant to the court in the same way social workers help the court;
- 5) those professionals could, and should, interact with forensic evaluators or with the parents' or child's therapists, in order to both help diagnose the issues at hand, and also help set the goals that the court should ask individual therapy to seek, while assuring the mutual cooperation of all therapists involved;

6) with time, judges would have more knowledge of the psychological aspects of the issues (domestic violence, parental conflict, realistic estrangement, parental alienation, child development, childhood trauma, etc.) which occur in many cases, especially high-conflict ones; this would enable a better response from Family Courts in those cases;

Those professionals should also act under the supervision of their professional boards and follow guidelines set up by those boards in conjunction with university researchers, which then would enable that work to be done uniformly across each country in a way that would both set up higher standards for the professional assistance provided to the Courts and would also guide those professionals providing that help to the court (in similar ways to what is expected from social workers working with CPS or CAFCASS and child protection agencies in each country that also have those protocols in place).

There are still issues that the inclusion of psychologists in those assessment teams do not solve immediately, mainly knowing where the limits of their intervention may lie.

Our understanding in line with that of the APA or other psychology boards is that the neutral position of psychologists working for the court demands that they do not engage in therapeutic interventions with the family in the case.

But, if those professionals should conduct forensic evaluations themselves, which would require, of course, specialization in that area, or, for example, report on supervised visitation, is another issue. The question is: if they were not allowed to do that work and therefore substitute traditional forensic evaluators (other than in psychiatric assessments or other types of assessments, such as drug and alcohol use), then, what information would they then rely upon to be able to give their advice to court?

We believe, that while not participating in any type of clinical interventions with the families in order to remain neutral, those professionals should be allowed to conduct forensic evaluations (and therefore have the needed specific knowledge to do that) and be present in supervised visitation sessions as well as report on them if they were asked to do so by the court. And that sort of work would be more useful to the court (than the traditional forensic evaluations) because of the reasons mentioned above.

If the court felt they were needed, any other forensic evaluations (second opinion) could then be asked by the litigants and done by other (neutral) forensic evaluators.

Finally, it's important to know that, in most countries, forensic evaluations are only asked for when the court deems them necessary or even indispensable to solve the case, which, of course, might be true for child protection, youth

delinquency and high-conflict cases, but, certainly, not for all or even the majority of cases handled by the Family Court. Therefore, judicial discretion should be used in deciding upon whether that sort of assessment is needed, either by those psychologists working in-house in those teams or by other forensic evaluators.

Either way, finding the way for psychology to best help Family Courts is really a question that should be discussed in the next years and we hope to have given our contribution to that discussion.

## CHILD INVOLVEMENT

### ***Listen to me! A voice, but not a choice***

While it is now accepted that a child should be involved in decision making, where such decisions might affect the child, the level and degree of involvement needs to be carefully considered, and adapted to the needs of the specific child. The needs of a pre-schooler are very different from those of an adolescent; the level of maturity and ability to weigh alternatives is not necessarily a function of chronological age; and each child in a family has his or her own special personality and sensitivities.

When a court is faced with an issue involving a child, there needs to be an arrangement which assesses and provides for the child's involvement in such a way as to avoid unnecessary harm while promoting the child's understanding of the issues. This will usually require the involvement of professionals who can conduct the assessment and advise the court whether the child should

- give evidence in the case, and if so, how;
- have a conversation with the judicial officer, and if so, at what stage, and who should be present;
- have a lawyer appointed to represent the child, or to independently advocate for the child's needs and interests;
- be informed of the court's decision, how and by whom.

This requires that the court have access to such professionals, and also that the judicial officer be properly informed and trained in order to enable a correct decision.

One of the welcome innovations of the Pathfinder pilot in England and Wales is the opportunity given to the child to be seen and heard as part of the preparation of the Child Impact Statement, which is submitted to the court within 6-8 weeks of the initiation of proceedings.

The court should convey to the child that the primary responsibility for making decisions is that of the parents, and if they are unable to agree, the court will decide, after taking into account all the material before it, including the views of the child.

It must, however, be emphasized that in no case should the child be given the impression that his or her views will be decisive.

The publication in England and Wales of the Toolkit for Judges Writing to Children<sup>42</sup> is to be welcomed, as a way of overcoming what the President of the Family Division, in his View from the President's Chambers of April 2025, describes as:

"an understandable judicial reluctance in this regard partly because of the realization that the letter will be important and there is a fear of saying the 'wrong thing'. In addition, judges may be worried that it will take a good deal of time to get the letter 'right', coupled with the well-known inertia that comes from staring at a blank page, without a template or previous experience to guide the writer".

## **CHILDREN'S PARTICIPATION IN JUDICIAL PROCEEDINGS**

### **JUDGE MAURICIO LUIS MIZRAHI, ARGENTINA**

#### **THE IMPORTANCE OF THE CHILD'S RIGHT TO BE HEARD AND THE SEARCH FOR AUTHENTIC SPEECH**

The right of the child to freely express his or her opinion in proceedings that affect him or her is of fundamental importance. As has been pointed out, the main concern of the adult in these cases should be to talk with the children, rather than to talk about them without their intervention. To achieve this, it is essential to listen to them in an active and genuine way.<sup>43</sup>

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The Committee on the Rights of the Child, the body responsible for the implementation of the Convention on the Rights of the Child, has rejected the

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<sup>42</sup> <https://www.judiciary.uk/wp-content/uploads/2025/02/Writing-to-Children-A-Judges-Toolkit-V1.7-1.pdf>

<sup>43</sup> DOLTO, Françoise, *"The Cause of Children"*, p. 176 and 236, Paidós publishing house, Buenos Aires, 1982.

idea that the reception of the child's opinion has a merely symbolic character. This would be the case if the child is heard, but his opinions are not taken into account. In this regard, the Committee has emphasized that "the opinions of the child must be taken seriously into consideration" (General Comment No. 12, paras. 28 and 132). In addition, it has pointed out that the terms "speak", "participate" and "be taken into account" constitute a functional sequence of the right to participation.<sup>44</sup>

The authenticity of the child's opinions is a crucial aspect. Experience in courts shows that, especially in highly judicialized families, the child's speech can be distorted. In these cases, his or her expressions are not authentic or his or her own, but rather the reproduction of the speech of an adult on whom he or she depends. Thus, what the child verbalizes does not represent a genuine opinion, but rather makes him or her a mere spokesperson for his or her parent, with whom he or she maintains a symbiotic bond. In such situations, children mechanically repeat an alien speech that does not belong to them. This phenomenon is characteristic of cases of parental alienation and of family dysfunctions that are frequent in contexts of high conflict.

In conclusion, it is essential that courts are able to discern when a child's speech is genuine, authentic, true and spontaneous, and when it is induced or manipulated. To do so, it is essential to have the help of an interdisciplinary approach that allows the authenticity of the child's voice to be identified and guaranteed in judicial proceedings.<sup>45</sup>

## LACK OF AUTHENTIC CHILD SPEECH IN CASES OF PARENTAL ALIENATION

In the context of families with serious conflicts, when listening to the child, a fundamental strategy that the judge can adopt is to verify the presence of indicators or primary behavioral manifestations that allow determining whether we are dealing with a case of parental alienation. This task is essential, since the lack of adequate tools for its detection can lead to serious errors when making judicial decisions.

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<sup>44</sup> See recommendations of the Committee on the Rights of the Child on the day of general debate on the right of the child to be heard, 29/9/00.

<sup>45</sup> Spanish: VILLALTA, Carla - MARTÍNEZ, María J. - GRINBERG, Julieta - DE LA TORRE, Natalia - VIGO, Fiorella - BURGUÉS, Marisol B.- VÁZQUEZ ACATTO, Mariana, *"The child's right to be heard in family justice. Practices, assessments and meanings"* (part I), "Family Law Journal", No. 73, p. 275, LOnline , AR/DOC/4078/2016, La Ley publishing house, Buenos Aires.

In cases of parental alienation, the child is seduced, captured and emotionally colonized. As a result, his conscience is transformed, turning him into a spokesperson for the excluding parent. In this way, he ceases to be a subject of law and becomes an object instrumentalized by the alienating parent. In this process, the development of his individuation is interrupted and the basis of his personality is undermined, to the point of being programmed to attack the excluded parent or the one who is intended to be excluded. In this context, the child establishes a relationship of exaggerated and pathological structural dependence with the manipulative parent, which causes severe damage to his psychic structure and identity.

Among the main signs that could indicate the existence of parental alienation are dichotomous thinking - when the child considers one parent to be absolutely good and the other to be totally bad - the rejection of one of the parents based on weak, frivolous or irrational justifications, and slander or contempt towards the excluded parent's extended family, among other signs.

#### SITUATIONS IN WHICH COURTS DO NOT ACCEPT THE CHILD'S POSITION

Recognizing the maturity of a child or adolescent in his or her arguments does not necessarily imply that the court's decision must be in accordance with his or her request, since his or her requirements could go against his or her best interests. In other words, even if the judge notes that the child has the capacity to form his or her own judgment, he or she may deviate from his or her position if he or she considers that granting the request is not in his or her best interests.

It is important to remember that the final decision rests with the judge and not with the child. The child cannot be granted full rights that allow him to decide for himself the outcome of a dispute, since this would nullify the special protection he requires and would prematurely place him in a position worthy of an adult.

#### QUESTIONING THE LACK OF LIMITS IN CHILDREN'S HEARING

The child's appearance before the court to be heard must be within clear limits. This need has been noted by the Committee on the Rights of the Child itself, which in General Comment No. 12 stressed that "the child should not be interviewed more frequently than necessary, particularly when investigating harmful events. The process of hearing a child is difficult and may have traumatic effects on the child" (paragraph 24).

In this regard, it has been determined that the duty to hear the child can be considered duly fulfilled when he or she has already been heard at a certain

stage of the proceedings. This implies that, in principle, there is no judicial obligation to repeat the hearing at each stage of the trial if adequate hearing has already been guaranteed.

However, the level of conflict in the case is a determining factor. It is essential to avoid subjecting the child to excessive exposure and the stress that this entails. Listening to the child must not become a form of harassment. It is therefore the responsibility of the courts to protect the child from abusive summons and unnecessary intrusions.<sup>46</sup> As has been pointed out, the hearing must not be interpreted as a “revolving door” of repeated interviews that violate the child’s dignity.<sup>47</sup>

### DISTINCTIONS REGARDING AGE AND MATURITY

Children and adolescents must be listened to regardless of their age. However, their involvement in the processes will have different levels depending on their stage of development and degree of maturity.

In this sense, it is essential to distinguish between young children with a low level of maturity and those who have achieved mastery of oral language. Within this latter group, a distinction must be made between those who are capable of forming their own opinion and those who have not yet achieved this. It is important to note that one should not assume that a child or adolescent is sufficiently mature just because he or she can express himself or herself autonomously on matters outside his or her family environment - such as sports, recreational activities or studies - while lacking an opinion on matters that deeply affect his or her parent-child ties.

This point deserves special emphasis, as it can cause confusion in the judiciary. A common mistake is to assume the child's maturity for any issue solely because he or she has reached adolescence. It is essential that the courts accurately assess the child's actual degree of maturity in each case, avoiding generalizations that could affect the correct interpretation of his or her decision-making capacity.

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<sup>46</sup> Spanish: VILLALTA, Carla - MARTÍNEZ, María J. - GRINBERG, Julieta - DE LA TORRE, Natalia - VIGO, Fiorella - BURGUÉS, Marisol B.- VÁZQUEZ ACATTO, Mariana, “*The child’s right to be heard in family justice. Practices, assessments and meanings*” (part I) , “Family Law Journal”, No. 73, p. 275, LLonline , AR/DOC/4078/2016, La Ley publishing house, Buenos Aires.

<sup>47</sup> See SUPREME COURT OF THE NATION (Argentina), 8/29/2023, “G., GE s/sexual abuse aggravated by cohabitation and kinship”, c. 19837/14, and LLonline, AR/JUR/109120/2023, with notable commentary by Bonhote , *A new Supreme Court standard against the institutional re-victimization of girls, boys and adolescents*, LL, 9/25/2023, p. 6, and LLonline , AR/DOC/2274/2023 (Buenos Aires).

## THE JUDICIARY'S DUTY TO INFORM THE CHILD ABOUT THE DECISIONS TAKEN IN MATTERS THAT AFFECT HIM/HER

Respect for the child as a subject of rights requires that he or she be informed of the outcome of the trial, that is, the content of the sentence handed down by the court or, where appropriate, the alternatives that were evaluated during the judicial intervention. There is no certainty that the minors involved in the litigation will be correctly informed of what the judge actually decided—or of the agreements reached—when this communication is left to the parents or their lawyers.

From a psychoanalytic perspective, the judge has a duty to explain to the child the reasons for his decision, especially given the risk of misinterpretations that distort the scope of the judgment or approved agreements. Communicating the decision becomes even more important when the judgment establishes a course of action different from that expressed by the child.

For example, the duty we are referring to becomes particularly relevant in situations where the court orders a therapeutic reconnection process between the child and one of his/her parents, even though the former has expressed his/her refusal to discuss it at the corresponding hearing. Likewise, correct information becomes crucial when a ban is issued for the child to leave the country, contrary to his/her desire to move abroad, among other cases.

## **EXPERT EVIDENCE**

In family cases, especially those involving children, the court may need the assistance of an expert, either to give an opinion as to matters of mental health relating to the parties and the children or to conduct a professional intervention so as to relieve stress and repair some situation which adversely affects the child. This may be a matter of urgency, especially where a child is not in contact with one of the parents.

It is undesirable for the parties and the children to be seen by more than one expert in a specific field, so the court needs to have control over the appointment of the expert, including defining the role of the expert; choosing the expert; requiring the parties compliance; fixing how much, and by whom the fee is payable; and time limits for the expert's actions.

In choosing the expert the court should take account of the knowledge, skill, education, training, experience, and appropriateness of the person concerned relating to the specific issue to be handled; academic degrees and membership of a professional organization are not necessarily predictors of the suitability of a person for the task being set.

The expert should be permitted to directly apply to the court for directions and to report on compliance or non-compliance by those involved.

### **JUDGE PHILIP MARCUS, ISRAEL**

In family cases, especially those involving children, the court may need the assistance of an expert, in order to determine the arrangements which will best serve the interests of the child.

"In many cases, judges are obligated under the law to include some assessment of parental mental health when determining the best interests of the child. It is important that they still focus on behaviors rather than generalizations and prognostications based on someone's known or suspected psychiatric diagnosis".<sup>48</sup>

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<sup>48</sup> Saposnek and Bernstein, n.10 above

There should, however, be no assumption that a party to litigation is entitled to file the opinion or report of an expert on any issue, or to require that an order should be given appointing an expert.

The appointment of an expert will be appropriate only after the court has reviewed the submissions presented by the parties and has made every effort to bring the parents to agreed arrangements for the child, and has identified the specific issues on which the decision of the court may be needed.

At this stage the court is empowered to consider the appointment of an expert. The expert may, for example, be needed:

- to give an opinion as to matters of mental health, including the possibility of mental illness, personality traits and disorders, developmental delays or disorders, substance abuse issues, including addictions, relating to the parents and the children; also the effects of such matters on the parent-child relationship and fulfilment of parental responsibilities;
- to assess relationships and interactions in the family – between each child and each parent, between the mother and the father, and with other relatives and significant adults, including the possibility of triangulation of the child;
- to give recommendations as to the arrangements for residence and contact between the child and the parents, extended family, etc;
- to assess issues of the child's safety, where there have been allegations of abuse, neglect, or psychological maltreatment (for example, alienating behaviours); this may include recommendations for supervision of face-to-face contact, or contact by electronic means;
- to make recommendations on specific issues, such as the child's place of residence (city, county, state, country), where a parent wishes to remove the child from one place to another; or as to school where a child shall be educated;
- to conduct a therapeutic intervention, so as to relieve stress and repair some situation which adversely affects the child. This may be a matter of urgency, especially where a child is not in contact with one of the parents.

In some of these cases, a psychiatrist may be indicated; in some, a psychologist with specific training and orientation; in some, a clinical social worker may be appropriate; in others, an expert in child development, neuropsychology or neurology.

In choosing the expert the court should take account of

- the issue(s) about which the opinion is needed, and which field(s) of expertise are appropriate;

- the knowledge, skill, education, training, and experience required;
- the appropriateness of the individual under consideration relating to the specific family (including, for example, language and cultural skills).

Academic degrees and membership of a professional organization are not necessarily predictors of the suitability of a person for the task being set. There are many areas of expertise in which there is no official requirement for registration, and there are fields in which there is not even an academic program for qualification. There are fields, even in medicine, in which research in progress, including novel ideas and approaches in which the specific area is not designated as a specialty field. But preference should, as far as possible, be given to an expert who has clinical experience in dealing with parental disagreements and the effects of parental separation on children, including attachment and other child development issues, and a forensic, and, where necessary, trauma informed, approach; attachment of diagnostic labels to persons, or their acts or omissions, is usually unhelpful.

It is undesirable for the parties and the children to be seen by more than one expert in a specific field. So the court needs to have control over the appointment of the expert, including consulting with the parties and their legal advisers (including, where appropriate, the child's representative, guardian ad litem, attorney, etc) as to the identity of the expert and the wording of the instruction to be given, and requiring the parties compliance; fixing how much, and by whom the fee is payable; and time limits for the expert's actions.

Thus, instead of each party selecting and appointing his own expert, with all that this implies in terms of impartiality and bias, and the experts disagreeing (and each party appointing additional experts to review and criticize the other party's expert), and subjecting the children to repeated testing and interviews, in Israel only one expert gives his opinion. The parties are not permitted to file an expert opinion in Family Court without the leave of the court.<sup>49</sup>

It must be emphasized that the role of the expert does not include establishing the veracity of allegations. This is the exclusive prerogative of the court. However, the expert must be made aware of all such allegations, and the purported effect of the conduct alleged on the child; if they are found to be justified, or to be without foundation, this will, of course, affect the expert's recommendations. In some cases, the allegations themselves may constitute an attempt by one parent to sway the court or the expert in a particular direction. So it is preferable for the expert to describe the effects of the raising of the allegations, not only the conduct

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<sup>49</sup> Sec. 8 (c), Family Courts Law 1995; Rule 25, Family Courts Procedure Rules, 2020

alleged, on relationships in the family. And it may be appropriate to frame the opinion in such a way that the recommendations are X if the allegations are found to be justified, and Y if found to be without foundation.

Cases involving children are dynamic, and every day that the issues are undecided adds stress to the child, from the uncertainty as well as the continuing friction between the parents. Alongside this, the work of the expert sometimes helps the parents to see the needs of the child, and each of the parents to appreciate the abilities of the other, and this may lead to agreement.

So a wise judge will set a specific date for filing of the opinion, but will also set a review date well before the final date for the parties and the evaluator to report on progress. This will encourage agreements, even partial, which will be in the best interests of the child. In order to ensure compliance, the court should have the power to impose sanctions for unacceptable delays, including imposition of costs to be paid to the treasury for waste of court time.

The expert should be permitted to directly apply to the court for directions and to report on compliance or non-compliance by those involved.

It is essential to emphasize that the expert's role is that of a witness, not a substitute decisor. So if a party disputes the opinion, that party may submit a list of questions to the expert; if the answers are unsatisfactory to that party, the court may be asked to summon the expert for cross-examination.

Due process for the children involved is preferred over unbridled insistence on traditional standards of procedure and evidence. And there are substantial savings of court time and of costs to the parties.

An expert may, after giving the opinion, be asked to act as a therapist. There are those who say that this is inappropriate, alleging that the mere possibility that the expert may be appointed as a therapist and thereby earn income, is likely to influence the expert to make out that there is a need for therapy when in fact this is not the case. While this possibility exists, it would be wrong to rule out the disadvantages of appointing a new therapist, who would have to learn all about the family, establish therapeutic relationships from afresh (which would inevitably take considerable time), and might think that the approach to therapy should be different from that proposed by the court appointed expert – all this when time is of the essence. In any case, the therapy will be in accordance with instructions from the court and in most cases is intended to carry out the recommendations given in the expert's opinion; and who is more qualified to carry out the recommendations than the person who gave them?

All of the above suggestions require that judges handling cases of such sensitivity should have a suitable level of understanding of the accepted schools of thought in child development and mental health, and the methods used by experts in preparing opinions. In addition, the framing of the order appointing the expert requires special care, in order to avoid misunderstandings about the role of the expert, timelines, etc. This requires training for judicial officers, given by the appropriate professionals.

Lawyers handling these cases also need familiarity with the relevant concepts and methods, so that where questions requesting clarifications from the expert or cross-examination are needed, these will be restricted to matters relevant to the issues under review.

## **ENFORCEMENT – CLEAR ORDERS AND APPROPRIATE SANCTIONS FOR BREACH**

It is of the utmost importance that all concerned are made aware of the harm that may be done to a child by breach of court orders. This requires precision in drawing up such orders, and also the need to consider attaching a penal notice, describing the sanctions which the court may impose for non-compliance, to such orders. The court should also explain that applications arising from allegations of breach will be dealt with immediately.

The court needs to be equipped with processes which enable the imposition of penalties for non-compliance, which are sufficiently severe and immediate as to make disobedience unpalatable for the person who is required to comply. If an agency outside the court is empowered to enforce decisions, that agency must be subject to the close supervision of the court.

In order to be effective, such remedies must be immediate, in the sense that an allegation of non-compliance is brought to the attention of the court (or other agency empowered to enforce the order) immediately, and adjudicated, with the imposition and effectuation of sanctions where ordered, in a matter of days. It is unacceptable that a disputed case in which disobedience is alleged should take many months or longer until resolution, when the breach may be continuing, and the child is deprived of treatment ordered by the court, or of contact with a parent, until resolution.

This is of particular importance in cases involving children, whose perception of time is different from that of adults.

However, the sanctions in family cases involving children should not be penal and retributive in nature; rather they should be directed to ensure compliance. The focus should be on the needs of the child, so that the contemnor shall cease his acts or omissions which adversely affect the child. The mechanism of contempt of court is particularly appropriate, in that it imposes sanctions which may be adjusted or removed if the contravening person purges the contempt, by showing remorse and undertaking future compliance.

For this reason, there should be a mechanism for bringing the person sanctioned back to court at suitable intervals in order to encourage purging of contempt, and also for the sanctioned person to initiate a hearing at which the contempt can be purged.

The court may order a fine for contempt of court, or other financial measures specific to the order which has been disobeyed, such as orders for the payment of compensation for non-compliance with an order for child-parent contact, or payment of legal costs of additional proceedings to the other party and/or to the State treasury. These payments may be on a rising scale – for example, 100 pounds/euros/dollars for the first breach, 200 for the second breach, 400 for the next breach, and so forth. However, in the case of an impecunious contemnor, financial sanctions may harm the child.

The traditional sanction is, of course, imprisonment. The prospect of imprisonment for a short time, even a few days, may be so frightening as to induce compliance. This is especially the case where there is a breach of an order for child-parent contact by a parent with whom the child lives most of the time, and while that parent is in prison the child will be with the other parent. A term of imprisonment may be suspended so as to see whether the order will be obeyed.

There are, however, other ways in which to bring about compliance.

In Israel, for example, in the event of non-compliance, a court can impose sanctions on the parent who is in breach of the order of the court. Non-compliance may be failure to bring the child to the place designated for contact or to the therapist for treatment, at the time set out in the court decision, failure to pay the therapist, or the breach of any other part of the court's order. These sanctions may include:

- Fines, under the Contempt of Court Ordinance, to be payable to the court treasury, for each time the order is breached. These fines can be on a rising scale, such that a relatively small fine is imposed for the first breach, but so that the amount is doubled or tripled for each subsequent breach.
- Payment of compensation to the other parent for wasted time in waiting for the child, and/or to the therapist for the time wasted.
- Reduction of child support.

- Imprisonment for contempt of court; the length of imprisonment may be on a rising scale starting with two or three days and increasing with every breach. In a case where it is appropriate, the child may be placed with the previously rejected parent while the alienator is in prison; in any case, the child will not be under the influence of that parent.
- Moving the child to live with the alienated parent, with or without banning contact with the alienator.
- Referring the case for investigation by the child protection authorities and declaring that the child is in need of protection.
- Where the parent involves the child in proceedings, by bringing him to testify in court or make an affidavit to be used in evidence: dismissal of the parent's claims and ordering payment of court costs for abuse of the process of the court.
- Ordering non-compliant parent to pay the other parent's legal fees and court costs, and/or to pay the costs of wasted court time to the court treasury.
- Requesting that police open an investigation on the basis of the criminal offence of breaching a court order.

Experience shows that in many cases the threat of sanctions is sufficient to persuade the alienating parent to comply with the orders of the court, even if he or she does not appreciate the gravity of the alienating behavior.

## **ACCOUNTABILITY: FOLLOW UP, QUALITY CONTROL, RECORD KEEPING.**

Courts are set up by states and countries to provide judicial services to the public. They are funded by governments, and, like any government service, they have a responsibility to show that they are acting properly, according to the roles given to them by statute, like any other government entity. This enables the government and the public to find out if services are given in a satisfactory way, to identify problems and defects, to plan for the future, and to give budgets for continuing and improving services. Accountability ensures proper handling of services given and avoidance of waste and duplication with their associated waste of resources.

How can a court know if its decisions in relation to children are helping the child? How does the court know if the decisions are being complied with?

The answers to these questions are of great importance for child and for the judiciary alike. If a decision, which by its very nature, seeks to provide a better future for the child, is not helping the child, then the court should know about this, both in order to review and reframe the decision and also to enable it to learn why the decision did not succeed. If the decision is being disobeyed, the court needs to know why, and ensure compliance.

The standard answer is that the parties, or one of them, may apply to the court. However, in many cases the parties are unable to afford the costs of filing in court, or are unwilling to subject themselves to further court proceedings; but if the interests of the children are not being best served, and indeed may be harmed, there should be methods of ensuring that decisions involving are reviewed. One alternative is to require the parents to report to the court, within a fixed time, say six months, after the giving of the decision, on the arrangements for the children, by making a simple declaration to the court, to be brought before the judge who gave the decision; that judge can then decide if there is a need to hold a hearing, or whether the child should be given an opportunity to express his thoughts on the topic. Another way is to order a social worker or other professional to report. The emphasis should be on simplicity, so as not to place an unnecessary burden on the parents, and in most cases there will be no need for further court action.

While bearing in mind the need for judicial autonomy, that is, the ability of a judge to conduct the proceedings and make decisions without inappropriate outside interference, judicial conduct must be subject to review. Three methods are used:

- the ability of a party to appeal a decision to a higher court, on the grounds that the decision was not in accordance with the law or the evidence;
- the possibility of requesting recusal of the judge, usually because of a clear indication of bias;
- a complaint to a review or disciplinary tribunal, on the grounds of misconduct by the judge.

These are not restricted to family courts. However, in light of the heightened emotions which are common to family proceedings, complaints about judges are widespread. Many of these may be justified, but there is a possibility that the recusal or complaints processes may be used to influence the judge. So judges need to be trained to distinguish between justified applications and those which constitute lawfare – abuse of the court process – which may require the other parties to spend time and money on responding to such applications, at the expense of the real issues in the case.

Courts need also to publish their decisions, in order that the legal profession, academics and the general public will know how cases which come to court are decided. This is an educational role of the court system.

Alongside this, Family Courts have an additional responsibility – to avoid unnecessary and intrusive exposure in public of matters which are intimate and personal, and, as far as possible, to prevent harm to children which may arise from publicity which identifies them. In some places the public and the press are allowed to be present in courtrooms, even in cases involving children, and are reported, with names and pictures of the children and parents, in the press and other media; at the other extreme, in some places the hearings are held in private, the parties are banned from referring to the case outside the court, and the results of cases are not reported, even to the legal profession. A balance should be struck between privacy and publicity, the best interests of the child being of great importance.

These aims, of data collection and analysis on the one hand, and preserving confidentiality on the other, need not contradict each other. A court system should collect data as to the numbers and types of cases being dealt with, the time taken for processing them, with enough detail as to enable identification of trends and correct problems, and to publish reports cases involving families and children while omitting information which might lead to identification.

In 2021 the President of the Family Division published a report *Confidence and Confidentiality: Transparency in the Family Courts*<sup>50</sup> which highlighted the importance of improving data collection and gathering high quality data in the family justice system to enhance greater transparency and openness in the conduct of family proceedings. The report also emphasised the importance of gaining a deeper understanding of decisions made in family courts, identifying patterns and issues within them, and ultimately achieving improved outcomes. In a report, published in July 2024, *Data in the Family justice system: what is available and to whom*<sup>51</sup>, The National Centre for Social Research concluded that the data are collected by a number of different organizations with little coordination, the data are largely unavailable to stakeholders (court staff and legal practitioners, decision makers, users of the family court system and the wider public), there is a notable absence of data or statistics on the support provided to families before they enter court proceedings, and information on what happens to families after court decisions are made is very limited.

This situation is far from ideal, and is, we hope, being addressed.

## **ACCOUNTABILITY FOR FAMILY LAW AND COURTS**

### **DR NICK CHILD, SCOTLAND**

How do we find out and feedback how far a service or intervention actually helps separating families and their children as we like to think they do? The family law system must now adopt the way all other helping services for children and families do it. Making family law accountable and evidence-based entails some radical upgrading.

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<sup>50</sup> <https://www.judiciary.uk/wp-content/uploads/2021/10/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final.pdf>

<sup>51</sup> <https://natcen.ac.uk/publications/mapping-out-data-increase-family-courts-transparency>

### Data collection, audit, research, evidence, outcomes and complaints.

In contrast to the legal system, other health-based or social services that seek to help families and children build in data recording, feedback and accountability. It is based on safe compassionate standards, including complaints systems for individual cases, and collecting anonymised data and other kinds of study to evidence how the help works or not. Data includes routine for all cases, e.g. client info, waiting time, appointments made and kept, with whom, problem rating (by client, clinician et al), diagnostic classification, treatment plans and efficacy, length of involvement, user and referrer satisfaction rating and outcome measures. Less routinely more evidence of service quality and outcome is found through audit – that's clinical not just financial audit – and more specific objective research. The minimal aim for all helping services is to show at least that no harm was done. Current evidence confirms that family law systems have some work to do on that.<sup>52</sup>

### Upgrading accountability in family law

These universal standards of anonymised data collection and feedback are challenging to set up afresh. But, in principle, they are easily added in to the family law system. Transparency like the collated anonymised evidence of health-based systems is plainly more comprehensive than the rightly sensitive court reporting publicly of a family's most private business.

However, competently dealing with individual ongoing or outcome case complaints is hard to envisage. Law users' complaints are inevitable for an adversarial legal approach. But complaining is not an option for the silently waiting children – however loudly paramountcy is called for. Objective and user feedback will also be very challenging: scientific and ethical standards will be rated more highly than the court's final judgement.

### Who can help?

Upgrading objective accountability is an imperative if hard task for a system that has no tradition of doing it. Raising awareness, concern, interest and funding to evidence what family courts can and should, and do and don't, offer the families and children they serve, is an essential new challenge for all family law systems to do. Those who are working to fill this gap in family legal systems can show the way.

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<sup>52</sup> Judge Bruce Cohen's thought experiment. "Never a wise way, says US judge." <https://twowishes.org/never-a-wise-way-says-us-judge/> 9 Apr 2024. Retrieved 16 Jun 25. See p. 4 above

The UK's Nuffield Family Justice Observatory<sup>53</sup> (NFJO) and the UK's Transparency Project<sup>54</sup> (TP) confirm and throw light on the general absence of evidence about separating families. The NFJO infographic flow-chart<sup>55</sup> shows (mostly missing) data that justice systems could collect themselves. Uncelebrated, the findings of the UK's Family Division's Transparency Implementation Group<sup>56</sup> and its bold mission to answer a list of questions, chart what is and is not to be found.

The NFJO have piloted more proactive family court teams e.g. the problem-solving Pathfinder approach.<sup>57</sup> The UK organisation, Foundations<sup>58</sup> aims to make a difference by making evidence central: 1. ... evidence of what works ... 2. ... evidence to drive decision-making ... and 3. ... demanding evidence about what works for family relationships. It is not a long-term solution to have outside bodies trying to fill in the gaps that any purportedly helping service must take responsibility for itself.

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<sup>53</sup> Jude Eyre, NFJO, Youtube video and transcript , 20 Feb 2024, for APPG on Family Separation.

<https://www.youtube.com/watch?v=jusXhdeZQIk> Retrieved: 16 Jun 25

<sup>54</sup> Transparency Project, 4 Aug 24, "Why we don't know what's going on in family courts"

<https://transparencyproject.org.uk/why-we-dont-know-whats-going-on-in-family-courts/> Retrieved 16 Jun 25

<sup>55</sup> National Family Justice Observatory, 1 Dec 22, "Guidance note: What do we know about children in the family justice system" and 20 July 22, "Children in the family justice system infographic"

<https://www.nuffieldfjo.org.uk/infographic/children-in-the-family-justice-system> Retrieved 16 Jun 25

<sup>56</sup> <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/family-jurisdiction/transparency-implementation-group/> Retrieved 16 Jun 25

<sup>57</sup> In conversation with HH Judge Chris Simmonds and HH Judge Gaynor Lloyd, 2 May 23,

<https://www.nuffieldfjo.org.uk/events/in-conversation-with-his-honour-judge-chris-simmonds-and-her-honour-judge-gaynor-lloyd> and [https://www.youtube.com/watch?v=PuDpDT\\_X6HQ](https://www.youtube.com/watch?v=PuDpDT_X6HQ) (see transcript) Retrieved 16 Jun 25

<sup>58</sup> Foundations: what works for children and families, About us: "We have a clear approach",

<https://foundations.org.uk/about-us/our-strategy/> and "Foundations strategy" 6 Sept 23,

<https://youtu.be/ot2YAD2JxhA> Both retrieved 16 Jun 25

## HOW TO BRING ABOUT CHANGE

***Listen, yeah everybody wants change  
Don't nobody wanna change though***

Rapper Nate Feuerstein (aka NF) Oh Lord 2016

Our review of family courts in many places around the world has enabled us to identify many good practices, which are worthy of emulation, and many inadequacies which need remedying. The question which arises is, inevitably, how to make changes in systems which have many interlocking parts, interests and agendas; court systems are inherently conservative, and some individuals may regard any suggestion as implying personal criticism.

Suggestions for changes in practices and legislation are often met with strong resistance. This may come from governments and finance ministries who assume that change is costly, when they are almost always trying to cut costs. Vested interests, and in the case of family matters, the lawyers who believe that their livelihood depends on adversarial litigation, will oppose change which threatens to reduce court battles. Judges and administrations, who have gotten used to working in a specific system, may be unable to see the defects in the existing ways of doing things. Academics whose careers have been built on teaching about current practices may feel uncertain about the perceived need to rethink the foundations on which their lessons are based.

Each place has its own culture regarding change, and we do not presume to have an infallible prescription for persuading those who have influence over court systems in a specific country, state or county that change is necessary. In any case, proposals for change need to be discussed with all who may be affected by the change, including, when possible, children.

Nevertheless, we are convinced that our recommendations, in each of the areas described in this document, are essential so that the world's children faced with family changes will receive suitable attention and that unnecessary harm can be avoided.

Adults, who as children were involved in family court proceedings, are often the best advocates for change. This is usually preferable to the complaints of parents who feel that they were abused or unfairly treated

by the courts, or their lawyers, who often resort to ad hominem attacks on specific judges, or at the least point to defects in the system, but rarely suggest how it could be improved.

In order to decide on the ways in which those involved may be persuaded or the need for improvements, it is helpful to identify the types of change needed and the level at which change is possible.

### Primary Legislation

Assuming a democratic system of government, with a parliament which passes legislation, how is it possible to convince those who make laws that statutory change is needed? In other words, how can ministers and parliamentarians be convinced that change is necessary?

In some places, the citizen has direct contact with ministers or members of parliament, state or national congressmen, senators, etc., for the constituency which they represent. These representatives can also be influenced by the local media – newspapers, radio, TV and social media. Mounting campaigns often requires professional help from lobbyists and public relations experts. Non-governmental organizations are often very effective.

A good example of a successful parliamentary campaign, led by NGOs, is the Republic of Ireland. The campaign for change attracted the attention of the Minister for Justice, Helen McEntee, who shepherded the Family Courts Act 2024, enacted in November last year. The new Law incorporates many of the changes recommended in this document.

Nearly thirty years earlier, following years of discontent of the legal profession as well as the public at the dispersal of family matters over several courts, the Israeli legislature, the Knesset, passed the Family Courts Law 1995.<sup>59</sup>

Some governments have standing bodies to advise on reform – for example, the Law Commission in the UK is an independent body of legal policy experts chaired by a Court of Appeal Judge. The task is to keep the

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<sup>59</sup> See P. Marcus, *The Israeli Family Court – Therapeutic jurisprudence and jurisprudential therapy from the start*, International Journal of Law and Psychiatry, Volume 63, March-April 2019, Pages 68-75

law of England and Wales under review and make recommendations for development and reform where needed.<sup>60</sup>

In the USA the Uniform Law Commission works to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical that brings clarity and stability to critical areas of state statutory law<sup>61</sup>.

Such bodies conduct periodical reviews of systems, and others will publish invitations to comment on proposed changes.

Sometimes an individual incident, which is attributed to some alleged defect in the legal system, will attract the attention of legislators or journalists. For example, Kayden's Law (the name given to a legislative amendment in the State of Pennsylvania) arose from the murder of a child, Kayden Mancuso, by her father during an unsupervised custody visit. It is said that Kayden's father had a documented history of mental health issues and violence, at that the family court system failed to adequately consider these risks during custody hearings<sup>62</sup>.

### Secondary legislation and rules of court

Not all of the changes needed will require primary legislation.

In many cases, an amendment to procedural rules will suffice, at least for a pilot of a new experimental scheme. This is the method by which the Pathfinder model<sup>63</sup> is being introduced in England and Wales (by adding Practice Direction 36Z under rule 36.2 of the Family Procedure Rules 2010).

Similarly, in Israel, a pilot scheme for obtaining the views of children by the Family Court Social Services unit in selected Family Courts was set up by amending the Civil Procedure Rules (Chapter XX (2) of the Civil Procedure Rules 1984. The pilot was successful, and the scheme was extended to the entire State of Israel, as now Chapter B, rules 49-59, of the Family Court Procedure Rules 2020).

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<sup>60</sup> <https://lawcom.gov.uk/about-us/>

<sup>61</sup> <https://www.uniformlaws.org/aboutulc/overview>

<sup>62</sup> Of course, we take no position on the necessity or appropriateness of Kayden's Law and its parallels in other states.

<sup>63</sup> <https://www.nuffieldfjoy.org.uk/story/the-private-law-pathfinder-transforming-domestic-abuse-victims-experiences-of-a-previously-brutal-system>

## Practice directions

In many places, the President of the Supreme Court or the Chief Judge in a specific jurisdiction can give Practice Directions under the inherent powers. We have mentioned the Israel Practice Direction 2-20, Handling by Family Courts of Urgent Proceedings when there is a Concern for the Safeguarding of Children and Ensuring Contact Between Parents and their Children, published 8 October 2020 (footnote 25 above).

## Local Initiatives

In the case of many of the changes mentioned, a judge may be able to introduce new practices in the individual court. For example, a single judge in Scotland brought about significant changes in the Family Court in Glasgow.<sup>64</sup>

## Pilot schemes

Time and again, pilot schemes, in specific locations, with frequent reviews by stakeholders and the possibility of making changes as the pilot proceeds, have proven their worth and led to systemic improvements.

## It takes time

Except in cases of the response to an extraordinary event, changing the ways in which society, including legislators and courts, bringing about change can take years, if not decades. For example, the National Parents Organization has been lobbying for the inclusion of a presumption of shared parenting into legislation in the states and territories in the USA since 2005. By 2025 they had achieved this objective in only 6 states with progress in a few others.<sup>65</sup>

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<sup>64</sup> Sheriff Graham Johnston, personal communication [PM], see also <https://www.scottishlegal.com/articles/twenty-five-years-of-the-family-court-in-glasgow>;

<sup>65</sup> 2025 Shared Parenting Report Card, National Parents Organization [https://static1.swarespace.com/static/5e28a95cdc8bed16729b93de/t/6808d7405666dod8957f974/1745409858378/NPO+Report+Card\\_2025.pdf](https://static1.swarespace.com/static/5e28a95cdc8bed16729b93de/t/6808d7405666dod8957f974/1745409858378/NPO+Report+Card_2025.pdf)

### Don't let the perfect get in the way of the good

It is for each person or organization wishing to bring about change in their system to select the methods best likely to successfully adapt to the needs of children. Not all the changes can be brought about simultaneously; some require funding which has to be found. In some places, partial adoption of the recommendations may be appropriate; aspiring to perfection must not be allowed to prevent progress towards the good enough. “*Le mieux est le mortel ennemi du bien*”<sup>66</sup> (‘The best is the mortal enemy of the good’).

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<sup>66</sup> Montesquieu, *Pensées*, 1726

## RECOMMENDATIONS

There is a need for a societal paradigm shift: family transformation and parental separation are, in the main, **not** matters which require intervention by courts. They are relationship issues, which need to be resolved in ways which take into account the needs and vulnerability of children and the serious mental and emotional harm that can result from confrontation and litigation.

We have identified many of the areas in which we have reached a consensus about how societies and courts can make improvements for the benefit of the world's children.

Our **First** recommendation is that parents who are separating should obtain help in ensuring that they take full account of the effect of their separation on each child, and make arrangements which will protect the children and ensure their healthy development, without recourse to the family court. This is what we call Diversion, away from family courts. Where cases reach the family court, whether because this primary diversion is not possible or has proven ineffective, then:

Until this shift comes about, and it may take several years, many matters involving children will be dealt with by family courts.

Our **Second** recommendation is that family courts should be specialist courts. Judges who hear family cases should receive training and ongoing learning schemes in the social, mental health, emotional and economic effects of parental separation, as well as the legal aspects. A single judge should deal with all the claims and applications in which the family is involved.

Our **Third** recommendation is that in every case, the parents should be required to receive information and guidance on how to reach agreement without adversarial litigation, and to take account of the need for the child to develop healthy relationships with extended families.

This is Diversion within the court.

Our **Fourth** recommendation is that each application needs to be assessed immediately for urgency, and if necessary, referred to a judge and/or to social services according to the needs of the child involved. This is Triage.

In this context, matters involving children should be handled swiftly.

So as to enable speedy and efficient handling of such cases, there is a need for case management and judicial continuity - the same judge should handle all applications and matters relating to a specific family.

Our **Fifth** recommendation is that the court should be multidisciplinary, in the sense that the judge should be assisted, as necessary, by members of the social work and mental health professions, and coordinate counselling and guidance for parents and children with all those involved in the child's education, health and upbringing.

Our **Sixth** recommendation relates to the care which needs to be taken in appointing experts to assist the court, as only professionals with appropriate knowledge and experience, appointed by the court in consultation with the parents, are likely to give impartial assessments and recommendations.

Our **Seventh** recommendation is that a child who is the subject of proceedings should be given an opportunity to express him/herself about issues which may affect that child's upbringing, but the methods whereby the child's voice is brought before the court must be carefully considered.

Our **Eighth** recommendation relates to Enforcement: Without effective methods of ensuring compliance with the court's orders and judgments, the court is deprived of credibility, and the time spent in reaching conclusions is wasted.

Our **Ninth** set of recommendations are about accountability, record keeping, quality control and follow-up of processes and decisions. These are essential in order to find out if services are given in a satisfactory way, to identify problems and defects, to plan for the future, and to give budgets for continuing and improving services. Accountability ensures proper handling of services given and avoidance of waste and duplication with their associated waste of resources.

Our **Tenth** recommendations suggest methods of bringing about changes in established systems.

## CONCLUSION

We hope this paper will be a catalyst to garner the interest of like-minded professionals to start advocating for change in their regions.

Our Report is a starting point with suggestions for solutions, which need to be adopted and adapted to local conditions.

We are aware that there are several issues that we have not yet been able to discuss – for example, the interplay between courts dealing with a single family, in which there may be child protection concerns (public law), issues within a given family (private law) and criminal courts dealing with allegations of offences committed within the family, going on simultaneously; access to justice and legal aid; and the need for research into the lived experience of parents and children who have been through the court process.

We invite readers from around the world to suggest other matters for our consideration.

We invite judges, serving and retired, to join us and contribute to our discussions.

We invite our colleagues to nominate a point person in each state or region to lead the process of making changes, by identifying key influential people with tasks and timelines to maximize the potential for real changes both in practice and in legislation.

**It is our sincere hope that this Report and Recommendations will help children around the globe to fulfil their Two Wishes.**

THE TWO WISHES LAW AND JUSTICE ADVISORY BOARD

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For more information and comments, please be in touch:

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