



**Murdoch University Centre for Social and Community
Research
Child Protection Forum in Family Court Matters
Murdoch Law School**

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*Protecting Abused Children in the Family Court:
Towards Best Practice*

By the Hon David K Malcolm AC CitWA
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Duxton Hotel
Perth, Western Australia



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Ladies and Gentlemen

It is a pleasure for me to open the “Protecting Abused Children in the Family Court: Towards Best Practice” seminar today. The aim of this seminar is to provide information to the professionals involved in family law on best practice on issues involving abused children. I would like to thank the conveners of this seminar, the Murdoch University Centre for Social and Community Research, the Child Protection Forum in Family Court Matters and the Murdoch Law School for this important contribution.

A best practice is a technique or methodology that, through experience and research, has proven to reliably lead to a desired result. A commitment to using the best practices is a commitment to using all the knowledge and technology at one's disposal to ensure success. And success in this area is vital.

Child abuse is all too common. The number of children reported abused or neglected in Australia has more than doubled from 49,721 in 1990-91 to 115,471 in 2000-01.¹ The problem of child abuse can affect not only the abused child, his or her family and neighbourhood but also the

¹ <http://www.med.monash.edu.au/foundation/project1.html>



whole community in far reaching and often unexpected ways.² Abused children have higher rates of delinquency and special health care needs than those who have not been abused. Abused children are more likely to experience problems with academic performance, suffer from mental health and relationship problems, experience drug and alcohol addiction and engage in criminal behaviour.³ Abused children also have higher rates of delinquency and special health care needs than those who have not been abused.⁴ Further, studies link abuse to higher rates of psychosis, depression, developmental delays, violence and social aggression.⁵ Today's children are also tomorrow's parents and their capacity to fulfil this role is greatly influenced by the parenting they receive. A community which ignores its obligations to children invites costly social consequences.⁶

The sad fact is that the Family Court now plays a significant role in resolving child protection cases. And resolving family law cases involving child abuse has never been straightforward. However, that a co-ordinated effort between the Courts and outside service providers is best practice has been demonstrated, for example, by the Magellan Project. The Magellan Project was piloted by the Family Court from June 1998 when 100 cases were included in the pilot from the Melbourne and Dandenong Victorian registries. The program individually case managed selected cases involving allegations of child abuse. After the completion of 63 cases Professor Brown from the Project reported that cases included in the pilot

² Calvert, G. *Preventing Child Abuse: A national strategy*. (1993) National Child Protection Council Booklet, Sydney, at vii

³ <http://www.med.monash.edu.au/foundation/project1.html>

⁴ <http://www.med.monash.edu.au/foundation/project1.html>

⁵ *Child Abuse - Prevention Programs need greater emphasis*. Report to the Chairman Subcommittee on Oversight of Government Management, Committee on Government Affairs, US Senate (August, 1992) at 13.

⁶ Calvert, G. *Preventing Child Abuse: A national strategy*. (1993) National Child Protection Council Booklet, Sydney, at 3.



had reduced the average number of Court hearings per case from 5 to 2, and that the average time to resolve such cases had been reduced from 19 months to an amazing 14 weeks. Cases resolved at a much earlier stage, 73% of them by consent, and coordination between the Court and outside service providers such as Legal Aid had markedly improved.

Consequently, in light of the Magellan Project, in July 2001 the Family Court of Western Australia in Perth commenced an innovative pilot project to extend the concept of Magellan Project to individually case manage matters involving allegations of spousal violence, child abuse or sexual abuse, and family violence where there were significant risk issues. The Columbus Pilot project was developed to assist, enable, and encourage separated parents to acknowledge the debilitating effects of continuing conflict, violence or abusive behaviour, and to encourage couples to resolve their differences without recourse to prolonged litigation in the Family Court. The Columbus Pilot project has acted as a catalyst for a number of changes as both the judicial officers and counselling service staff develop new skills and knowledge in this very difficult area of family litigation and dispute resolution.

Under the Columbus project, evaluated by Dr Paul Murphy of UWA and Professor Lisbeth Pike of Edith Cowan University, all matters involving allegations of domestic violence and family violence where there are risk issues in respect of the children were referred to the Director of Family Court Counselling for assessment of the presenting risk factors and other selection criteria. Matters not included in the Pilot continued to be monitored as the 'Control' Group.



Distinctive features of Columbus include that cases are individually managed (not just fast tracked) through a series of family conferences which are jointly chaired by a designated Registrar and a Family Court Counsellor until either a stable, safe contact regime is established or the matter is progressed through the general court system. Another distinctive feature is the inclusion of referrals to therapeutic services and education programmes as part of the conference process.

All of these changes not only appear to be producing better outcomes for parents and their children but are also encouraging a new model of practice in the Family Court of Western Australia.

Over the past 18 months there has been a gradual integration of various external support services and the Columbus process, with the result that a potential model of an integrated Family Court system is beginning to emerge. The concept of an integrated system is a key recommendation of the 2001 Report of the Family Law Pathways Advisory Group which has recently been endorsed by the Federal Government as providing a 'blueprint' for the evolution of the Family Court throughout Australia.

There are three major components in the Family Court system and each components' collaborative efforts are vital. These major players are: the Family Court of Western Australia; the Legal Aid Commission and their Alternative Dispute Resolution program; and various government and non-government support and education programs, and family law networks.

The first component of an integrated system is the Family Court of Western Australia. This Court was established in 1976 as an independent



State-based Family Court. It has its own legislative framework, the Family Court Act, that mirrors the Commonwealth Family Law Act.

The only court Registry is in Perth. There are 14 judicial officers – six Judges and eight Magistrates who are also appointed as Registrars. The judiciary are supported by 40 administrative staff and 11 Court Counsellors. The jurisdiction covers an area almost five times the size of France, and a population of approximately 2.0 million people. At least one judicial officer and one counsellor are ‘on circuit’ to one of six regional centres throughout the year.

The Court opens approximately 7,000 new files annually. About 2,500 applications and responses are filed annually for various Orders in respect of children’s issues (primarily contact and residency). Most of these litigants are also seen by the Family Court Counselling Service, many on the day of their first Court appearance.

In its advice to the Australian Federal Parliament in 1974 on the ramifications of establishing a separate Family Court in Australia, the Standing Committee on Constitutional and Legal Affairs conceived of the new system, with its integral counselling services, as a “helping court”. Acknowledging, that the adversarial framework is not conducive to co-operative post-separation parenting relationships, and thus not in the child’s best interests,⁷ a broader and more comprehensive approach to the administration of family law has been called for by the Family Court. Such an approach involves the collaboration of the “social sciences”, that is, sociologists, psychiatrists, social workers, psychologists, marriage and family counsellors, and the judges, magistrates, registrars, child separate

⁷ (Attorney General’s Department 2001; FLPAG 2001).



representatives, and legal practitioners. This collaborative approach and its inherent healing effects is conceptualised as “therapeutic jurisprudence” whereby the Family Court itself becomes part of the healing and personal growth process required to counter the disillusionment and bewilderment which are common outcomes. The Court’s commitment to a collaborative approach has been demonstrated by its dedication to the Columbus Project.

The second component of an integrated Family Court system is the Legal Aid Commission of Western Australia which plays a vital role in cases involving child abuse. The Legal Aid Commission is often responsible for contributing a Child Representative when child abuse has been indicated. The Child Representative is a lawyer who is appointed to represent and promote the best interests of a child in family law proceedings. The Child Representative can also be an important participant to the extent that they often act as the “broker” in arranging referrals to support services.

The Legal Aid Commission is also often responsible for funding the appointment of a Court Expert. Under Order 30A of the Family Law Rules, a Court Expert is to report on family dynamics as requested by the Court. Order 30A experts are commonly child psychiatrists, psychologists or social workers specialising in family and children's matters. Concerns regarding the quality and reliability of reports by Court Experts have been raised, for example, in submissions to the Family Law Council and I understand this area is to be addressed by Alison Hay this afternoon. Such concerns are disturbing because Court Experts are one of the few means by which Children are able to indirectly communicate with the Family Court.



Legal Aid has also been responsible for the development of a comprehensive Alternative Dispute Resolution (ADR) service. In an endeavour to assist people seeking Legal Aid to identify their needs at the earliest possible opportunity, and to assist them to resolve their family law disputes in a fair and durable way without resorting to litigation, Legal Aid introduced a greatly expanded ADR program in January 2002.

This program has been in operation for 12 months and appears to be achieving positive outcomes in a high proportion of matters. And I am pleased to inform you that The Alternative Dispute Resolution program has recently received a State West Achievement Award for excellence in the public sector.

The third component of the integrated Family Court system comprises government and non-government support and education programs, and family law networks.

The Department for Community Development is the statutory authority responsible for investigating and reporting on allegations of child abuse. Detailed protocols have been established to enable notifications of suspected child abuse to be expeditiously investigated and reported. However, once again concerns have been raised. For example, in June of this year the ABC's 7.30 Report described a disturbing story of a young boy, in New South Wales, who had been sexually abused and whose case appears to have fallen between the Family Court, the State child protection bodies and the police. There are also concerns raised, for example, by the Family Law Council, that even when notifications are made to the state child protection service investigations are not necessarily conducted. In cases where the child protection agency does not substantiate the child



abuse allegations for whatever reason, the Family Court is left to both investigate and determine intervention over the abuse through residency and contact proceedings.

Under the Columbus Project a new integral element of the Family Court system is the referral of parents to a variety of support services (such as the Indigenous Conflict Resolution Service), therapeutic services (such as personal counselling or behaviour modification groups), education programs (such as WA Anglicare’s “Mums and Dads Forever”) and supervised contact services provided by agencies such as Anglicare, Relationships Australia, and Mother Hen.

Despite our current best attempts to improve the management of child abuse cases in the Family Court, child abuse is still a major concern for the Family Court. But one thing does appear clear and that is a collaborative approach is vital to ensure that the most vulnerable and innocent are protected to the best of our ability. It is therefore very important that seminars such as this one are held to enable us to come together to discuss current and future developments and their benefits to the community. I would like to take this opportunity to convey my warmest wishes for a successful seminar.