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# THE FAMILY COURT, FAMILIES AND THE PUBLIC GAZE

Ursula Cheer, John Caldwell and Jim Tully
University of Canterbury

APRIL 2007
BLUE SKIES REPORT NO 16/07

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The Commission can be contacted at:
Public Trust Building
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PO Box 2839
Wellington

Telephone: 04 917 7040
Email: enquiries@nzfamilies.org.nz
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Giving New Zealand families a voice *Te reo o te whānau*

ISSN 1177-3952 (Print)
ISSN 1177-8261 (Online)
ISBN 978-0-478-29278-7 (Print)
ISBN 978-0-478-29284-8 (Online)

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## ACKNOWLEDGEMENTS

We would like to thank Amanda Cliff, Lorie Clarke, Katie Chapman
and Eleanor Taffs for their research assistance, Principal Family Court Judge Boshier,
Judges Clarkson (Auckland) and McMeeken (Christchurch), the judges of the Family Court
and Julie Scott.

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# 1. INTRODUCTION

On 1 July 2005, after 25 years of private legal proceedings, the Family Court in New Zealand was opened up to the media and hence to the public gaze. This was a substantial reversal of previous regulation of court reporting in the Family Court. The general approach to reporting court cases in New Zealand has always been one of open justice – the law recognises that the media performs an important public function in reporting the daily business of our courts and should generally have open access to do so. However, this had not been the case with the Family Court.

Previously, in the perceived interests of child and family privacy, the Guardianship Act 1968 placed restrictions on reporting details of custody, access, guardianship and wardship cases. However, social, cultural and constitutional changes led to a call for more transparency in the court based on allegations and perceptions which were eventually acknowledged to undermine the Family Court's integrity (NZLC, 2003:197). The shift in popular opinion was dramatic: Principal Family Court Judge Peter Boshier commented that he doubted "any Court has attracted as much publicity and been under such scrutiny as the Family Court has, in recent times" (Boshier, 2004a). Accordingly, the Care of Children Act 2004 legalised media coverage of and presence at Family Court proceedings concerning children from July 2005.

This research project was developed to investigate the effects of media reporting of Family Court proceedings following this hugely significant change in the law. It sought to exploit a unique opportunity to investigate whether the new openness made a difference to public awareness and understanding of the Family Court dispute resolution process and if so, what that difference was. It also hoped to be able to assess the extent to which the new openness of the court served the interests of families and children.

The research was designed to report on the sort of coverage Family Court hearings generated in the print and broadcast media in the first year after the opening up of the court, including how families and children were dealt with, the extent of coverage, what sort of family dispute stories attracted attention and how much control was exercised by judges. In 2005, Judge Boshier stated that he would expect coverage of the proceedings to be "…exactly that and not selective interviews with the parties or their friends and families as a substitute for coverage of what takes place in the courtroom".[1]

Chapter 1 looks at the outcomes of the project. Chapter 2, prepared by research assistant Eleanor Taffs discusses the background to the opening up of the Family Court. With reference to media and political discussion, there is an introduction to various interest groups that developed, some of the dissatisfactions with the court and some of the overseas influences. This chapter also introduces the legal and governmental responses. Chapter 3, prepared by John Caldwell, Senior Lecturer in Law, examines the new legal provisions and describes them in the context of relevant case law, together with an analysis of how they are likely to be applied. This analysis includes the results of a survey of Family Court judges which solicited their views and experiences of the new 'open' regime. Chapter 4, prepared by Associate Professor Ursula Cheer, outlines the general regulatory regimes that apply to the media in exercising their newly acquired reporting freedoms in order to determine what impact they might have. In chapter 5, Jim Tully, Head of the School of Political Science and Communication at the University of Canterbury, presents an analysis of a significant sample of stories on the Family Court published in the media in the first year of relaxation of reporting restrictions. This chapter also presents the results of a survey of members of the media as to why the stories were chosen as newsworthy and received the coverage they did. Chapter 6 summarises conclusions on the effects the new openness in the Family Court system has had on media and on the public.

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1 Principal Family Court Judge, Peter Boshier quoted in Family Court media statement, 17 February 2005. Retrieved from www.justice.govt.nz/family/home.asp

A significant finding in the project emerged early on: this was simply that in spite of the new open regime, the media did not appear, in the first year of the new freedoms, to be particularly interested in reporting on the Family Court. While this made collecting data in the various stages of the project much more straightforward than originally contemplated, it also meant that the focus of the inquiry changed somewhat over time. Nonetheless, as originally envisaged, it has still been possible to cast light on reporting about the Family Court in the media, whether the judiciary is supportive of that process, what difficulties are faced by the media in reporting or deciding to report, and whether public understanding of the Family Courts and family law has been enhanced.

# 2. GENESIS OF THE NEW OPENNESS

## 2.1 Background

In this chapter, research assistant Eleanor Taffs provides a brief general background discussion for the non-family law specialist on some factors that culminated in the provisions increasing the openness of the Family Court in the newly enacted Care of Children Act 2004. These include the activity of pressure groups, the advocacy of an open court by some politicians, increased media coverage and the social change since 1968 which rendered parts of the Guardianship Act anachronistic. Before the reform, the Family Court was closed, under statute, to the public. Only parties, witnesses and people who had the court's permission were allowed to attend.[2] This restriction included the media, who, however, were allowed to publish reports of guardianship proceedings with the consent of the court.[3] These reports were stripped of any identifying information, as were professional publications.

From the initial regard in which New Zealand's Family Court process was held, there was a marked shift to an apparent high level of popular dissatisfaction. Most complaints came from disaffected litigants and focused on gender bias (especially under the Domestic Violence Act 1995), unfair procedure, cost, delay and incompetence among court staff and the Child, Youth and Family Service (CYFS). The closed nature of the Family Court was seen as allowing these problems to flourish, and advocates for an open court, such as Nick Smith, referred to increased openness as the "disinfectant of sunlight" (NZ Parliament, 2003b).

## 2.2 Dissatisfaction with the Family Court

### 2.2.1 Gender bias

The popular form of the gender bias argument is that despite a modern expectation of shared-parenting *during* a relationship, the Family Court clings to the antediluvian view that the mother is the primary and best carer and consequently awards custody to the mother in the majority of cases, whether or not she is the best for the position (Quaintance, 2001). The New Zealand Law Commission (Law Commission or NZLC) has in fact acknowledged that gender bias can occur in the judicial process (NZLC, 2003, p. 197) when:

> …laws, processes and decisions advantage one gender over the other. It happens when conciliators and decision makers refer inappropriately to gender during court processes, and base their actions on stereotypes about the nature and role of men and women.

More specifically, before 2004, men's groups contended that the Family Court operated to disadvantage fathers after a separation, especially regarding custody of the children. The regulation of domestic violence was also seen by these groups as a particular feature of gender bias perpetrated by the Family Court. They argued that the Domestic Violence Act 1995 "isolat[es] children from loving fathers because the child is automatically included in the order" (McCann, 2002). The main concerns expressed were that applications for protection orders under the Domestic Violence Act could be issued *ex parte* (without notice) and might be supported by false allegations of both violence and molestation. Men's groups suggested that false allegations would drop dramatically in a fully open court (one which would allow the media to publish identifying information and permit attendance by the general public).

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2 Guardianship Act 1968, s.27
3 Ibid, s.27A.

There was little reliable statistical or academic information that would support or refute a gender bias in the Family Court (NZLC, 2003). However, the perception of bias was problematic in itself. Because public belief in the impartiality of the law is paramount to the proper functioning of the judicial system, it was accepted that apparent bias is potentially just as damaging as real bias (NZLC, 2003). Justice must be seen to be done. This was the view taken by the judges of the Family Court, who, through Principal Judge Peter Boshier, cited apparent bias as one of the main factors necessitating reform:

> The judges favour the court being more open. The judges are concerned that there is a perception that the court is secret, and I don't think that the court benefits from that perception. I think that public confidence is eroded when there is that perception.[4]

### 2.2.2 Delay and cost

Fathers' groups submitted that the delay in resolving custody arrangements had severe consequences, such as the breakdown of the parental relationship into a pattern in which the father is at a distance (McCann, 2002). They also argued that the cost of custody disputes could be prohibitive for fathers, deterring them from pursuing legal proceedings. A fully open court was seen to ameliorate problems attached to family proceedings, by exposing and hence encouraging the reduction of unnecessary delay and cost.[5]

### 2.2.3 Incompetence

General allegations of incompetence were levelled against CYFS and court staff from a number of sources, including the judiciary. In 2001, Judge Boshier[6] invited the media to report on a family proceeding to expose incompetence in CYFS ranks in failing to enforce a Family Court order, for which he threatened to hold the director of CYFS in contempt (see section 2.6.1). However, possible mistakes of those working in the Family Court were not usually exposed to such scrutiny due to the court being closed. Highlighting the practices of staff involved in a case risks identification of the children and adult parties also. On the other hand, a closed court made allegations of incompetence difficult to pursue. Therefore, improving the performance of child welfare agencies and court staff was presented as one compelling reason to open the Family Court to its fullest extent.[7]

## 2.3 Lobby groups

### 2.3.1 Fathers' groups

In New Zealand, as in other jurisdictions, there were numerous men's groups, each of which saw a closed court as impacting seriously on the interests of its members. Different groups had different aims: some groups were focused on providing advice about the family law system to fathers newly separated from their partners while others facilitated support group meetings throughout the country. Several were more active in seeking law reform and organised rallies, protests and petitions, lobbied the Government and generally sought to raise public awareness through the media.

Dissatisfaction with the Family Court, especially after the enactment of the Child Support Act 1991 (Quaintance, 2001), saw the establishment of men's groups throughout the country from the late 1980s onwards.[8] During 1999, a number of men's groups began to operate collectively to acquire more political force, focusing particularly on obtaining a media profile. In December 2001, a television documentary on social problems around the holiday season was aired which featured an interview with

4 Judge P. Boshier's evidence to the Justice and Electoral Committee. Corrected transcript (5 May 2004) held by Judge Boshier.
5 Interview with Muriel Newman, November 2005.
6 Before he became Principal Family Court Judge.
7 Dr Muriel Newman, for example, claimed that in Australia the standard delivered by such agencies increased markedly once the court became open, and that child abuse also declined because of the public shame involved: see note 5 above.
8 A list of 'male friendly New Zealand men's and fathers' support groups' is available at the Masculinist Evolution of New Zealand (MENZ) website www.menz.org.nz . Such groups include the Union of Fathers, the NZ Father and Child Society, Parents Against Negative Intervention by CYFS (PANIC), Families Apart Require Equality (FARE) and the Christchurch Father and Child Trust.

the Union of Fathers among others. The national and influential magazine *North & South* also published two major articles, the first being 'Court of Injustice' by Lauren Quaintance in June 2001.

The position of the fathers' movement in 2001 was summarised in 'Court of Injustice':

> [I]t's not just the occasional crusader expressing concern about the brand of justice delivered in the Family Court. The fledgling men's movement is comprised of about a dozen organisations across the country with names such as Caring Fathers, Men and their Children, Separated Fathers Support Trust and FARE (Fathers Apart Require Equality.) … Exact numbers of men involved is difficult to gauge but the Men's Centre North Shore has 370 subscribers to its monthly newsletter *Menz Issues* around the country and another 170 hits per week on its website from which the newsletter can be downloaded.
>
> …[T]he disparate movement is split over how to best achieve its goals: some have targeted 'menophobe' Family Court employees by pasting signs outside their homes, others have threatened the lives of judges or police and some favour a campaign of 'civil disobedience' including refusing to pay child support.
>
> Whether they can become a serious political force will largely depend on whether it evolves into a coherent national movement and if the sometimes intemperate men on its fringe who do themselves a disservice by downplaying the effects of domestic violence – or attacking the women's refuge movement – can be brought into line.

The second *North & South* article was in the September 2002 issue. In 'Family Matters', Deborah Coddington discussed the decline of the traditional nuclear family, in particular the increase in sole parent families and the effects of fatherlessness on children. Alleged secrecy of the Family Court was touched on in this context.

Protests about the Family Court were reportedly widespread from the end of 2000.[9] However, the major protests generally appear not to have been successful in terms of numbers. Among such protests was the Fathers' Day Parade to Aotea Square in Auckland on 3 September 2000. The parade was attended by ACT MP Muriel Newman and Labour MP Dover Samuels, but videos of the march on the MENZ website[10] showed that the number of protestors was relatively low, perhaps 50 in total. The march was mainly aimed at shared-parenting, about which Newman launched a citizens'-initiated referendum petition that day. A group of men from the Union of Fathers protested outside the Auckland Court House every Tuesday from December 2000 onwards with the petition at hand and received 7,800 signatures. However, Newman was unable to get the 250,000 signatures required for a nation-wide referendum. The NZ Child Support Reform Network organised the Men's Convoy of March 2004, which was aimed at raising awareness of child support laws that, the participants attested, unfairly disadvantaged fathers. A 'men's rights picnic' was held outside Parliament on Fathers' Day in 2004, but attendance was similarly low; only 20 people, including children, attended. Protests were also organised at a local level throughout the country, such as the protest outside the Henderson Family Court on 7 May 2004. These protestors brought cleaning equipment with them and cleaned the front of the courthouse. The less activist Union of Fathers[11] was involved in several protests outside the court in Tauranga and outside the house of a specific lawyer.

Constant lobbying complemented fathers' groups' protests in raising awareness of the need for reform. Family Court judges and politicians were the main targets. ACT Party Members of Parliament Muriel Newman and Rodney Hide were contacted and were interested in learning more about the shortfalls of the Family Court system. To facilitate this, they became 'McKenzie Friends' or 'unqualified litigation

9 www.menz.org.nz/information/dpostats.htm
10 www.menz.org.nz
11 www.uof.org.nz

support person[s]' (Family Law Section, 2003) – people who sit in court with one of the parties and offer advice and support about the proceedings.

Former Principal Family Court Judge Mahoney was lobbied numerous times and in August 2001 he invited the Auckland fathers' pressure groups to meet with him. The following recommendations were made regarding the openness of the Family Court:

> that the Family Court proceedings be open or that the reasons for fear of unfairness and inconsistency be removed
> that there be no media in the courts
> that reports be open and accountable.

According to the minutes of the discussion[12] "a general consensus prevailed". It is thus interesting to note that the presence of the media in court was positively discouraged by the pressure groups at this time.

### 2.3.2 Grandparents

Another group in society affected by the family law system is grandparents, primarily in two ways: either through disengagement from their grandchildren upon sole custody being given to their child's ex-partner; or the difficulty in winning custody of a grandchild over an incompetent parent.[13] The Grandparents Raising Grandchildren Trust (GRG) was vocal about the need to increase the openness of the Family Court to address these issues, and about the financial hardship that many grandparents faced in pursuing custody. GRG, a support group for grandparents with custody of their grandchildren, was formed in 1999 and had a membership of 2,000 by July 2003. Founding member Diane Vivian "spen[t] 30 to 60 hours a week writing newsletters [and] lobbying for reform" which led to media exposure through the *North & South* article, 'The Grandparent Trap' (Chamberlain, 2003). Lobbying has also been effective in "highlight[ing] … the limitations of the [Guardianship] Act in recognising the role of the broader family in the care and protection of children" (NZ Parliament, 2004b).

## 2.4 Political advocates

### 2.4.1 ACT and Muriel Newman

One vehement advocate of an open court was Dr Muriel Newman, the former Justice Spokesperson for ACT, who put forward three private members' Bills on family law reform. Newman became interested in Family Court affairs in 1996 when she was first elected to Parliament.[14] Confronted with New Zealand's poor record of child abuse, Newman concluded that abuse was more likely when children were 'disengaged' from either of their parents. Newman believed that this often occurred when one parent, usually the mother, was granted sole custody after a separation. She became aware of the 'shared-parenting' movement in Canada and the United States which promoted a presumption of joint responsibility over the children of a failed relationship. Newman sought to emulate this in her Shared Parenting Bill, which she submitted in 2000. Although defeated, the Bill stimulated interest and sympathy in Parliament about the issue.

After the Shared Parenting Bill was defeated, with the promise of a review of the Guardianship Act from Labour, Newman changed her focus to the openness of the Court. In 2001 her Family Court (Openness of Proceedings) Bill was drawn in Parliament, but also defeated. Her later Family Court (Openness of Proceedings) Amendment Bill of 2004 recommended allowing the media to publish reports of proceedings in the Family Courts and that hearings be open to the public as a matter of course, but would have allowed the court to be closed in exceptional circumstances. The Bill's failure,

12 See the minutes of the meeting as recorded by the Men's Centre North Shore Inc. Retrieved from http://menz.org.nz/News%20archive/minutesmahonymeet.htm
13 Interview with Muriel Newman, November 2005.
14 Ibid.

and that of its predecessors, was attributed again to Labour's promise to minor parties to address the issue in later legislation (Langwell, 2003).

In Parliament, Newman continued to emphasise the importance of an open court, based on her view of the Australian experience of a 'properly' open court, which she believed had resulted in decreased litigation and a reduction in false allegations (NZ Parliament, 2003a). Newman sat on the Justice and Electoral Committee which eventually reviewed the Care of Children Bill. Throughout the Bill's passage in Parliament, Newman put forward further amendments to the Bill to introduce shared-parenting and opening courts to general admission by the public. These were defeated by a Labour, New Zealand First, United Future and Green Party majority of 81 MPs against 33 MPs in National, ACT and the Māori Party, and were thus not adopted into the final Act. Newman also submitted a petition to the Select Committee[15] with 607 signatures that "the House of Representatives support a change to allow for openness of Family Court proceedings" (NZ Parliament, 2004a). However, the Labour and Green Party majority on the Select Committee declined to bring the matter to the attention of the House.

### 2.4.2 National and Nick Smith

In a prominent and unusual case, National MP Nick Smith was convicted in 2004 of contempt of court and of breaching the Guardianship Act[16] for making public comment about then current Family Court proceedings. The case revolved around a custody dispute being dealt with in the Family Court, whereby parents were seeking the return of their son whom they had given into the care of a relative during a time of difficulty. The caregiver had been given interim custody when the parents approached Nick Smith as their MP to express their concern with the process leading to the full hearing of the custody order. Dr Smith carried out his own fact-finding expedition and after further contact with the distressed parents, alerted National Radio to a possible story, telephoned the caregiver on the other side of the dispute twice and was interviewed on radio with the mother. He was also interviewed for a proposed TV3 documentary, as were the parents. Dr Smith issued two media releases and paid for the parents' representation at the custody hearing. Aspects of this behaviour were in breach of s.27A of the Guardianship Act 1968[17] and were also found to be in contempt of court.

Although Dr Smith's behaviour would clearly have been contemptuous in any court in that he was found to be directly attempting to influence the proceedings, in April 2004, *The Listener* published an article entitled 'Nick Smith: Poster boy for court reform?' (Clifton, 2004) which suggested Smith's conviction had "brought fresh scrutiny to the secrecy surrounding the Family Court". The amount of media coverage this case attracted for Family Court reform was considerable and may have influenced the extent to which the court was ultimately opened up. Nonetheless, Dr Smith did not believe the changes went far enough.[18]

## 2.5 The impact of the law in other jurisdictions

### 2.5.1 Australia

In January 1976, the Family Law Act 1975 came into effect in Australia, introducing significant changes to the substance and administration of family law. Among the changes was the establishment of a specialised Family Court (Nicholson and Harrison, 2000). One of the authors of the Act and the main driving force behind its liberal reforms, Lionel Murphy, "envisaged the Court as an informal, private and unthreatening atmosphere for the resolution of family disputes" (Nicholson and Harrison, 2000, p. 756). However, this vision proved to be untenable due to the amount of controversy centred on the closed nature of the court. A Parliamentary Joint Select Committee was established in 1978 to

15 2002/57 petition of Muriel Newman and 606 others.
16 *Solicitor-General v Smith* [2004] 2 NZLR 540.
17 Which provides: "No person shall publish any report of proceedings under this Act … except with the leave of the Court which heard the proceedings… Nothing in this section shall limit …[T]he power of any Court to punish for any contempt of Court." No prosecution on the section was before the court.
18 In the Care of Children Bill's second reading in the House, Smith stated that the provisions in the Bill did not provide the open accountability that the people of New Zealand needed from the Family Court.

review this and other aspects of the court's operation. Its report (Australia Parliament, 1980) contained 70 recommendations, one of which was in favour of a more open court. This advice was incorporated in the Australian Family Law (Amendment) Act 1983 which was implemented the following year. Since then there have been a number of law changes,[19] but the requirement that family proceedings be held in a court accessible to the public and press has not been affected. This concession to public accountability and judicial transparency is tempered by the strict enforcement of the rule against publication of identifying information regarding parties and their children.[20]

In *Delivering Justice for All: A vision for New Zealand courts and tribunals*, the Law Commission (NZLC, 2004) dedicated a significant portion of the section on open justice issues to the Australian jurisdiction.[21] The two countries are closely linked by a cultural and legal origin and maintain close judicial ties. Furthermore, as Dame Sian Elias has stated:

> It is of huge comfort in a small jurisdiction like ours to be able to compare common problems with a larger neighbour with whom we share so much… I know the considerable debt our Family Court owes to the pioneering work and form of the Australian Family Court. Although in many areas of the Court system the New Zealand and Australian Courts have close links, the ties between the two Family Courts have been particularly enriching.[22]

Many critics of the New Zealand Family Court have suggested that the Australian system be used as a template for reform. The extent to which the Australian Family Court is open to the public, not only through media reporting as in New Zealand, but through actual attendance, was the desired result of fathers' rights groups and lobbyists. As such, many of the media articles on the New Zealand Family Court prior to the Care of Children Act compared the two jurisdictions.

Many fathers' rights groups are still unhappy with the degree of openness in New Zealand and continue to point to Australia as an exemplar of open justice. However, the Law Commission pointed out that the level of criticism in Australia about its Family Court did not reduce following the abolition of camera proceedings (NZLC, 2004). The fathers' rights movement in Australia in fact gained momentum in recent years, with allegations of gender bias undiminished (Kaye and Tolmie, 1998). In an example of protest far and above what we have experienced in New Zealand, a Family Court judge was actually murdered (Burrows, 2005).

Another argument by pressure groups was that an open court would reduce the amount of family litigation, as has occurred in Australia. The reduction that Australia has enjoyed was attributed by some to the reluctance of the parties to air their private affairs in a public environment.[23] However, the Law Commission also questioned whether public access to the Australian Family Court "contributed in any meaningful way to the openness of its proceedings". It observed that the court is rarely attended by members of the public, except those with an interest in the case, or whose own case is due to be called (NZLC, 2004).

There is no doubt that the Australian jurisdiction has had the most influence on New Zealand in the process of closed Family Court reform. Our strong links and similar systems make Australia the most obvious country to look to for indication of how a method would be received in New Zealand. However, the reform enacted with the Care of Children Act 2004 was not identical to Australia's. While the Australian model was considered, the Government tailored the New Zealand reforms to the specific needs of our jurisdiction as it perceived them (NZLC, 2004).

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19 See especially the Australian Law and Justice Legislation (Amendment) Act 1988 and Family Law (Reform) Act 1995.
20 Australian Family Law Act, s.21 as amended by the Family Law (Amendment) Act 1983.
21 See 2.6.3 below. The Law Commission did not mention other jurisdictions.
22 Elias, S. (2000). Address by the Right Honourable Dame Sian Elias GNZM, Chief Justice of New Zealand to the Australasian Family Courts Conference in Auckland on 15 October 1999. 3 BRLJ 107.
23 Interview with Muriel Newman, November 2005.

### 2.5.2 New York

Although open family proceedings are provided for in legislation, prior to 1997 New York's judiciary 'consistently' exercised the accompanying statutory discretion to close the Family Court to the public and media. Two cases in particular are said to have brought the issue to a head (Sanchez, 1998). The first of these, *The Matter of R.R., K.M., T.L., C.L., and R.L.* (New York Law Journal, 1995) concerned child protective proceedings for the siblings of Elisa Izquierdo, a child who was beaten to death by her mother. On application by the *Daily News*, the trial judge ruled to keep the proceedings open to the media, a decision that was appealed to the Appellate Division, First Department. The appeal court overturned the ruling and excluded the media from court.

In her article on the effect of the open system on juvenile delinquency trials, Laura Cohen (1999), the Director of Training for the New York City Legal Aid Society's Juvenile Division, commented on the impact the decision to close Elisa's trial had had:

> This tragic case saturated both the print and electronic media for several weeks and was presented by the Daily News as emblematic of the local child welfare agency's shortcomings. Although the newspaper's motion was denied … (and may well have been even under the revised rules), its arguments regarding the benefits to be gained from open proceedings – namely, the inaccuracies that plague reporting of juvenile cases as a result of denial of access, as well as the media's usefulness as a public education tool – struck a chord with the Family Court judges and with Judge Kaye.[24]

The second prominent case was *Bentrup v. Culkin* (1995),[25] which was a custody dispute for child-star Macaulay Culkin and his siblings. Although the parties' concurrent applications to the trial judge for closed proceedings failed, the appellate court again reversed the decision. This was based on a statute permitting closure and evidence from psychologists attesting that the exposure would harm the children. The court further considered that there would be no public benefit in media coverage of the proceedings.

The convention of privacy was overturned in June 1997 by New York's state court officials, including the chief judge (Finder, 1997). The new court rules[26] formulated put into practice a long-standing presumption of open court that was rarely implemented, but which has rarely been departed from since (Cohen, 1999). The rules mandate open proceedings unless there exists a compelling reason for closure, which the court will assess on a case-by-case basis. A decision to close the court must be supported in the judge's findings, where the following may be considered: the likelihood of disruption in an open court, the privacy interests of the parties, and whether the situation justifies closure to protect "the litigants, in particular, children, from harm".[27] A dependant, in particular a victim of abuse, is more likely to be afforded private proceedings than a juvenile delinquent (Cohen, 1999).

New York's approach was also used in New Zealand by supporters of openness in family proceedings. In New York, however, as in Australia, the media appears not to have taken up the opportunity to report on everyday cases as much as was expected. In the first year the court rules were in effect, only the Daily Mail regularly attended family proceedings (Cohen, 1999). It was suggested that, in practice, open courts were often impractical, due to "the heavy caseload, small courtrooms, and security concerns of the court" (Tucker, 2000). However, the press reported a different story: that "there has not been a single case on record where the public has been barred from the family court", that "pieces about family proceedings are reported every single day", and that "information printed is now more accurate than in the past". In cases where the court believes it inappropriate for the parties to be identified in the media, it has required the media to undertake not to publish names or addresses disclosed in court (Burton, 2000).

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24 Chief Judge of New York State, Judith S. Kaye.
25 *P.B. v C.C.* [1996] 223 A.D.2d 294, 647 N.Y.S.2d 732.
26 N.Y. Ct. R 205.4.
27 N.Y. Ct. R 205.4(b)(3).

### 2.5.3 The United Kingdom

New Zealand's legal system was historically based on English law, so it is unsurprising that our family law prior to the enactment of the Care of Children Act 2004 was similar in terms of access to and reporting of family proceedings. In *Scott v Scott*,[28] cases involving children were held to be exempt from the general rule that justice should be administered in public. Since *Scott*, this rule has been developed in statute and further in common law, but in a way that has been described as confusing and inconsistent. This view is exemplified by the words of Mr Justice Munby, a prominent authority on the issue in England:

> …there is what some might think is the complete illogicality of the present system. For although the county court and the Family Division normally sit in private, other courts dealing with equally sensitive cases involving children do not. The Court of Appeal habitually sits in public – in open court – when hearing children cases, as does the Administrative Court when hearing the increasing number of cases involving children which now come before it. No harm seems to come of this, the children being adequately protected in almost all cases merely by concealing their identities. Even more anomalously, 'representatives of newspapers or news agencies' have a statutory right under s 69(2)(c) of the Magistrates Courts Act 1980 to attend hearings of the Family Proceeding Court except in the case of adoption proceedings or where the court has made an order either under s 69(4) (which permits the. exclusion of the press if it is 'necessary in the interest of the administration of justice or of public decency' to exclude them 'during the taking of any indecent evidence') or under s 16(7) of the Family Proceedings Courts (Children Act 1989) Rules 1991 (SI 1991/1395) (which permits their exclusion 'if the court considers it expedient in the interests of the child') (Munby, 2005).

The Children Act 1989 (United Kingdom) was part of the Lord Chancellor's rolling programme of reform of family law and business. It established a concurrent jurisdiction for family proceedings, allowing for the transfer of cases between the magistrate's court, the county courts and the High Court. The consultation paper *Review of Access to and Reporting of Family Proceedings* was commissioned in direct response to the Children Act's streamlining of family proceedings, which was seen to "highlight the need for consistency in the rules on access to and the reporting of proceedings generally". (Lord Chancellor's Office, 1993). The inconsistent law in this area was attributed to the 'piecemeal' fashion in which the family system was provided for in legislation. Consequently, the Family Law Administration Working Party (FLAWP) was established to undertake work on the paper.

The consultation paper was a comprehensive, 135-page review that set out both the law at the time and the issues to be considered if there were to be changes to the law. Although it put forward options for reform, the paper cautioned against change for its own sake in light of the lack of "any significant dissatisfaction with the current balance between openness and privacy". Furthermore, the Government had made no promises to undertake reform in light of FLAWP's conclusions and the paper contained the heavy caveat that, due to a "preliminary assessment of the likely cost", any changes would probably be *de minimis*. Ultimately, the Government did not implement FLAWP's recommendations in either the consolidation and clarification of the approaches taken in the different courts, or the adoption of any of the options suggested. The consultation paper effectively 'died a death' (House of Commons Constitutional Affairs Committee, 2005).

However, more recently, some piecemeal reform has taken place in the United Kingdom and a new round of significant consultation has been undertaken. In Re B[29], Mr Justice Munby held that, according to the law as it stood, "the publication of any information about a child case, whether or not

28 [1913] AC 417.
29 [2004] EWHC 411 (Fam).

it would identify the child concerned, is almost always prohibited without the direct permission of the court". In response to this, s.62 of the Children Act 2004 (United Kingdom) was enacted to amend the law in two significant ways: first, that if identifying information was disclosed to someone other than the general public, or any section of the general public, no criminal offence would be committed;[30] and secondly, that, where the Rules of Court allowed disclosure, there would be no contempt of court resulting from such disclosure.[31] These provisions prefaced the December 2004 release of a discussion paper entitled *Disclosure of Information in Family Proceedings Cases Involving Children* by the Department for Constitutional Affairs (DCA, 2004). The paper proposed changes to the court rules to allow for the disclosure of information about family proceedings to a wider range of people, including close family members, health care professionals, the Children's Commissioner, mediators, constituency MPs, MEPs, Members of the House of Lords, the General Medical Council, police officers and members of the Crown Prosecution Service, and was implemented on 31 October 2005. Shortly before this, Family Justice Minister Baroness Ashton announced there would be "wider consultation on the transparency of the family courts next spring".

Another prominent report, *Family Justice: The operation of the family courts*, published by the House of Commons Constitutional Affairs Committee in March 2005 dedicated a chapter to the issue of transparency and recommended that the Government go further in its reform of the court rules on disclosure. It identified the judiciary's unanimous approval of reform in favour of greater openness to dispel criticism due to a perception that the family justice system is a secret justice system.

The fathers' rights movement in the United Kingdom has had a far greater profile in recent years than in New Zealand. In particular, the group 'Fathers 4 Justice'[32] has brought the issue into the public eye in no uncertain terms. The group's protests have included scaling the walls of Buckingham Palace and the Foreign Office dressed in super-hero costumes, throwing purple flour at Tony Blair in the House of Commons and storming family courts. At the lobby group's launch in December 2002, more than 100 people dressed as Father Christmas staged a 'singing sit-in' in the lobby of the Lord Chancellor's office.

The impact the campaign has had is evident by the dramatically increased media profile of fathers' rights issues in the United Kingdom. The number of articles in the press concerning fathers' rights increased from practically non-existent in 2002 to 50 articles each month at the end of 2004.[33] However, the group was forced to disband earlier this year after allegations that they were planning to abduct the Prime Minister's son.

Hence, the level of dissatisfaction with the lack of transparency in the English family courts became sufficient to prompt serious legislative review in hopes that "[g]reater openness could help refute some of [the accusations of unfounded bias and injustice] and create a better understanding of the way the system works".[34] The Government has now undertaken wide and comprehensive consultation on the general issue of transparency in the Family Courts and in July 2006, a further significant consultation paper was published. This paper includes details of the New Zealand law change and notes the reports of lack of media interest in reporting family law cases in this jurisdiction (DCA, 2006). In terms of movement towards a more transparent system, it appears New Zealand has been the more active jurisdiction, and is now being monitored by those interested in reform in the United Kingdom.

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30 Amending s.97(2) Children Act 1989 (UK).
31 Amending s.12(4) Administration of Justice Act 1960 (UK), and various other statutes.
32 www.fathers-4-justice.org
33 'F4J heralds a new era in political campaigning', Reputation Intelligence, 15 September 2004.
34 Family Justice Minister Baroness Ashton, quoted in Government News Network report, 27 October 2005. Retrieved from www.gnn.gov.uk/content/detail.asp?NewsAreaID=2&ReleaseID=175276

## 2.6 Responses to criticism

### 2.6.1 Principal Family Court Judge Peter Boshier

Peter Boshier replaced Judge Mahoney as Principal Family Court Judge in March 2004, and was very influential in determining the extent of openness eventually achieved in the changes to the law. In 2001, before his appointment as Principal Judge, Boshier invited the media to report on the failure of CYFS in enforcing Family Court orders relating to a delinquent child (Clarke, 2001). This was a huge break with the traditional position of the court and presaged his future calls for more openness. On 26 March 2004, just weeks after becoming the Principal Judge, Judge Boshier "waded into the political controversy" (Taylor, 2004) surrounding the issue of Family Court openness by announcing publicly that the restrictions should be relaxed. On 18 April 2004, Judge Boshier responded in the media to the continual allegations that the Family Court was secretive and biased, calling them "extravagant and misplaced". He did, however, admit that better performance could be achieved through a few simple reforms. One of the suggested reforms was to "embrac[e] the possible future opening of the court to greater media scrutiny". This opinion was reiterated publicly by Judge Boshier several times throughout 2004 (Dye, 2004; NZPA, 2004; Tunnah, 2004).

In his evidence submitted to the Justice and Electoral Committee considering the law change on 5 May 2004, Judge Boshier submitted that:

> I think it is a good idea that all court judgments are able to be published. I think it is a good idea that the media is permitted to attend court proceedings, because these two things straightaway mean that there is scrutiny, which isn't easy and evident at the moment.

These suggestions coincided with the Law Commission recommendations released in a March 2004 report *Delivering Justice for All: A vision for New Zealand courts and tribunals* (NZLC, 2004). Judge Boshier advised against full scrutiny through the public's attendance at proceedings for two reasons: the practical issue of space in family courtrooms built to accommodate only a small number of people, and the fact that "some people come knowing that they can cry and show emotion and they are not going to risk having that broadcast". Judge Boshier asked the question, "[i]s it better that the public scrutinises the system and the process rather than individual people's lives?"

Judge Boshier suggested that privacy could be maintained by the allocation of code numbers and the deletion of names in reports of proceedings, but that the judge should have the power to authorise the publication of names where in the public interest:

> …if the judge believes it is in the public interest that there should be publication, of identifying information, that should be permitted. My reason for saying that is that there are times when the public do need to know what people are doing in the Family Court by name, and what lawyers are doing.

Judge Boshier, in partnership with the Ministry of Justice, has also been instrumental in the creation of a Family Court website,[35] which, as he mentioned in his evidence, would have judgments routinely posted on it. This would have the effect of increasing the public's knowledge about family law, where:

> …with so ready ability or access to the net …people can go to a web and go to a matter of interest and look up knowingly what the law is and what the courts are saying about the law.

35 www.justice.govt.nz/family/home.asp

The website was launched in July 2004 by an address of Judge Boshier at the Jury Assembly Area of the Wellington District Court (Boshier, 2004b). Here Judge Boshier predicted that the service "will provide a window into how the Court does its work for those who believe, as I do, that justice must also be seen to be done". He further applauded the website as "a milestone in achieving greater openness in the Court while preserving those elements of privacy that are essential to its processes".

### 2.6.2 The Government's review of the Guardianship Act

In August 2000, after the defeat of Dr Muriel Newman's Shared Parenting Bill,[36] the Government took the first step in reviewing the Guardianship Act. The Ministry of Justice published the discussion paper *Responsibilities for Children: Especially when parents part* (Ministry of Justice, 2000) which described a private Family Court as possibly "prevent[ing] the public from gaining an understanding of important social issues and approaches taken to address them by the Family Court". The discussion paper posed four questions under the heading of 'Private Proceedings':

> Should the proceedings be more open?
> How do we balance the need for openness with the essentially private nature of these proceedings and the need to protect the interests of the children and young people involved?
> Does the Family Court have a role in promoting a better understanding of its services and the way it operates? How can this be achieved?
> Should the Family Court provide information sessions to potential participants? Who should facilitate such sessions? What information should be provided to participants?

Responses were invited from the public, and a summary of the received submissions was released in October 2001. Under the heading 'Views of the Media', one submission directly addressed the issue of a private court: the Commonwealth Press Association "focused on the issue of secrecy of proceedings of the Family Court and suggested a number of unintended negative consequences occur for both the individuals involved and the New Zealand justice system" (Ministry of Justice, 2001, ch. 5). Such consequences included the prevalence of false allegations against a partner in order to secure custody, lack of public scrutiny and lack of the ability to debate relevant issues based on facts.

The summary of submissions did not clearly indicate whether a private or open court was the preference of submitters, but merely listed the various views held. A number of possible reforms were suggested:

> involving wider family or whānau and support people and no one else
> allowing 'authenticated'[37] media into the courtroom
> making copies of proceedings available – possibly without any identifying information
> letting the judge decide who can attend on a case-by-case basis at the judge's discretion
> allowing the general public to attend
> providing a statistical profile of outcomes of court proceedings
> proceedings need to stay private but from time to time the court could develop 'typical cases' to use as a basis for articles on the operation of the court (Ministry of Justice, 2001, ch. 8).

### 2.6.3 The Law Commission

A number of investigations carried out by the Law Commission have had a significant impact in this area of the law.

#### *2.6.3.1 Dispute resolution in the Family Court*

This series of reports focused more on the procedures and processes of the Family Court than on substantive issues (NZLC, 2002(a), 2003). However, it addressed the issue of dissatisfaction with the Family Court, in particular, claims of bias in custody cases. The January 2002 discussion paper pointed to the dissatisfaction and disempowerment of litigants as leading in part to the Law

36 See 2.4.1 above.
37 This has been replaced by 'accredited' in the Care of Children Act 2004.

Commission being given the project and recognised a "need to engage in a dialogue with those who are dissatisfied". It noted the widespread criticism (Boshier, 2004a) that the Family Court "was biased against men, that without notice applications were granted too readily, it took too long for parties to be heard and that generally matters took too long to resolve" (NZLC, 2002a).

In its March 2003 report, the Law Commission revealed that it was concerned by "perceptions that the Court demonstrated a pro-feminist, anti-male bias, which undermines Court integrity". The report identified the private nature of the court as exacerbating this perception and stated that justice must not only be done, but must be seen to be done. The Law Commission admitted that those working in the Family Court were prey to "unconscious gender stereotypes" which were the result of messages about gender roles and expectations given at a young age; and that bias was prevalent in courts at all levels (NZLC, 2003). However, it highlighted the difficulty in detecting bias, especially where the decision-maker was allowed a high level of discretion. The report went on to identify a tendency among litigants to perceive a bias "wherever they have been dissatisfied with their court experiences" (NZLC, 2003). Added to this was the fact that most allegations of bias were based on anecdotal evidence instead of reliable and impartial empirical research. The media's readiness to report unsubstantiated statistics and individual stories in support of a bias was identified as undermining the credibility of the court.

The Law Commission concluded that although it was difficult to assess the existence and extent of bias (and whether in fact there was a systematic gender bias) in the Family Court, the perception of a bias could be just as damaging. A perception could have the effect of a 'self-fulfilling prophecy', discouraging fathers from pursuing shared custody where their case is weak (NZLC, 2003). In its recommendations, the Law Commission suggested that "promoting greater Family Court accountability and transparency would build public confidence. Accusations of bias are often made when clients do not get what they want, and when processes are protected from public scrutiny" (NZLC, 2003). The Law Commission advocated giving "clients and the public non-identifying information about the Court's work", a suggestion that is an obvious precursor of the later reform in the Care of Children Act 2005.

Ultimately, the Law Commission refrained from recommending substantive changes to the law in light of its restrictive terms of reference. This was left to the project investigating the structure of the courts (NZLC, 2003).

*2.6.3.2 Seeking Solutions: Options for change to the New Zealand court system*
This reference for the Law Commission to examine New Zealand's judicial administration resulted in a sweeping assessment of the structure of the entire court system.[38] A December 2002 discussion paper addressed the openness of several courts under the heading of 'Open Justice' (NZLC, 2002b). It acknowledged that the "Family Court has been at the centre of the most heated debate about the openness in the courts". It again highlighted the issue of bias as having a nexus to the debate surrounding the openness. Two questions were posed:

> When should court hearings be open?
> When should court hearings be able to be reported?

It identified a number of possible degrees of openness and invited submissions from interest groups and the general public on the issue.

*2.6.3.3 Delivering Justice for All: A vision for New Zealand courts and tribunals*
This report came out in March 2004 (NZLC, 2004) and was referred to in the Select Committee's report on the Care of Children Bill. It is obvious that the Select Committee was heavily influenced by the Law Commission's recommendations, with which Judge Boshier also agreed.[39]

38 www.lawcom.govt.nz/ProjectTermsofReference.ospx?ProjectID=89
39 See 2.7 below.

As regards bias, the Law Commission "considered [the issue] carefully, but … concluded that in the main there is a satisfactory balance in the Family Court". The report considered the public policy reasons for keeping the court closed, including the 'compelling' justification of protecting children from the effects of litigation and media exposure. Another argument stated that a private court would promote frankness about events that were deeply personal and often embarrassing, and would lessen the stress associated with their retelling (NZLC, 2004).

In its report, the Law Commission acknowledged the danger of continuing criticism of the court undermining public confidence, but still did not recommend opening the court to the general public as a viable option. The failure of an open Family Court in Australia to combat complaints of bias was used to suggest that the answer lay elsewhere (DCA, 2006). The Law Commission suggested that "the avenues of appeal and review provide a stronger check against bias and unfair process than does the public's attendance in court".

The Law Commission also considered the Australian experience. However, as already noted in section 2.5.1 of this report, it questioned whether public access to the Australian Family Court had "contributed in any meaningful way to the openness of its proceedings", and noted that the court was rarely attended by members of the public, except those with an interest in the case, or whose own case was due to be called (NZLC, 2004).

Although the report advised against wholesale reform, the Law Commission did recommend two classes of persons – support persons and accredited news media representatives – who could attend family proceedings (NZLC, 2004). Support persons were described as having a genuine interest in the outcome of the case, and would be admitted at the court's discretion on application by one of the parties.

In its report *Delivering Justice for All* the Law Commission counselled the Government that accredited members of the media should be permitted to attend family proceedings and report on proceedings without restriction, unless the court should order otherwise. The Law Commission made this subject to the proviso that identifying information must be omitted from reports where child custody or allegations of violence were being considered (NZLC, 2004). Principal Family Court Judge Peter Boshier issued a press release on 18 April 2004 endorsing the Law Commission's recommendation regarding the media, and agreed with the recommendations in his evidence to the Select Committee in May.

## 2.7 Passage of the Care of Children Bill

The Select Committee report on the Care of Children Bill issued in 2003 recommended changes along the same lines as the Law Commission "after strong representation from the newly appointed Principal Family Court Judge and a range of submitters" (NZ Parliament, 2004a). A new clause 129(a)(fa) in the Bill provided for the attendance of accredited news media representatives at hearings and clause 129 was further amended to allow support persons to be present at the request of one of the parties. The National Party submitted that the Bill did not adequately address the issues highlighted by submitters and by the Principal Family Court Judge. The ACT minority view in the report, as submitted by Dr Newman, was that the bill failed to make the Family Court an open court and would be responsible for it continuing to be regarded with suspicion by the public. The Green Party was against wholesale opening of the Family Court, but did support the reforms in the Care of Children Act to increase the openness of the court through the media. United Future was generally supportive of the extent of openness allowed in the Act, although it opposed the Bill for other reasons. New Zealand First thought the only thing that was really necessary to improve the Family Court structure was to bring domestic violence legislation within the scope of the Bill, but that otherwise the Guardianship Act was a short, precise, clear piece of legislation which had worked very well over the years. The Care of Children Bill was passed in 2004 and became effective on 1 July 2005.

## 2.8 Conclusion

The catalysts for New Zealand's increased Family Court openness and its extent as passed in the Care of Children Act 2004 have been multifarious. They have included prolonged protests and lobbying from small but vocal pressure groups; the consequential media coverage; dissatisfaction with the Guardianship Act and the Domestic Violence Act; advocacy in Parliament; and support by the judiciary and the Law Commission for change. However, perhaps the most significant factor has been the acceptance that a perception of bias was undermining and would continue to undermine public confidence in the administration of justice.

# 3. THE LAW AND THE JUDICIAL PERSPECTIVE

## 3.1 Introduction

Judges have long been among the keenest proponents of the principle of open justice, and in a number of landmark decisions, such as the seminal House of Lords judgment of *Scott v Scott*,[40] have unequivocally affirmed the value of openness in judicial proceedings.[41] In *Broadcasting Corporation of New Zealand v Attorney-General*[42] the New Zealand Court of Appeal cited that celebrated House of Lords judgment as an illustration of "…how jealous the judges have always been to preserve the fundamental principle that justice is to be administered openly and publicly".[43] More recently, this same strong judicial sentiment was evident in the dicta of Justices Wild and Mackenzie in *Solicitor-General v Smith*[44] (a case concerning allegations of contempt of the Family Court), with their Honours asserting that recognition above all had to be given to "… the importance of justice being administered openly wherever and whenever practicable". Likewise, in a case dealing with name suppression in civil proceedings, Justice Young pointed to "…an abhorrence of proceedings in camera".[45]

The judges have identified a number of distinct goals and benefits adhering to openness. Justice Heath has declared that the two primary goals are accountability of the judiciary: keeping the judge who is trying a case under trial and transparency of process, which itself leads to judicial accountability.[46] Additionally, Justice Heath acknowledged the possible additional contemporary factor of public comprehension. Underlying all these goals is the self-evident need for the public to enjoy confidence in the adjudicative system.

Despite the compelling arguments and strong judicial endorsement of openness, most common law countries have legislation providing for privacy in relation to family litigation.[47] The rationale for such legislative provisions is clear. As the Law Commission has explained, not only do family proceedings almost invariably involve children but they are intrinsically more intimate and emotionally charged than most others in the court system (NZLC, 2004). However, in the current era where social institutions are frequently subjected to question, and indeed to a degree of distrust, it was unsurprising, as acknowledged by Justices Wild and Mackenzie in *Solicitor-General v Smith*, that the private nature of proceedings in the Family Court should become the subject of much public debate and considerable disquiet.[48] As Judge Boshier, extra-judicially, was to put it, the Family Court was regarded as "an anomaly – even an affront, in the eyes of some, to an open justice system" (Boshier, 2006a).

The societal debate over openness, as discussed in chapter 1 of this report, became somewhat intense and heated, and the 'private' Family Court was frequently characterised as a 'secret' court.[49] That emotive characterisation was in fact misleading and overlooked two important facts. First, the various restrictions on media attendance and publicity applied not only to the Family Court but also to both the High Court, in its appellate or concurrent jurisdiction in family law proceedings, and to the Court of Appeal.[50] In other words, the privacy surrounding most family law proceedings was imposed not by the Family Courts Act 1980, which itself was silent on the issues of attendance and reporting,

40 [1913] AC 417.
41 Lord Shaw, for instance, described as 'enlightened' the view of Hallam, an historian, that the publicity of judicial proceedings should be ranked higher than Parliamentary rights as a guarantee of public security. Interestingly, the case had a family context: a wife had filed for a declaration of nullity of marriage on the grounds of her husband's impotence.
42 [1982] 1 NZLR 120.
43 Ibid, at 123.
44 [2004] 2 NZLR 540.
45 A v B (1999) 14 PRNZ 497, at 499.
46 *Elworthy-Jones v Counties Trustee Company Ltd* (2002) 16 PRNZ 382, at paras [24]-[26]. See also *Glaister v Amalgamated Dairies Ltd* (2003) NZAR 149, at para [6] and *Chief Social Worker v 'Nikki'* (2002) 16 PRNZ 801, at para [3].
47 See the comments of Justice Young in A v B (1999) 14 PRNZ 497, at 499 and of Justice Cooke in *Broadcasting Corporation of New Zealand v Attorney-General* (1982) 1 NZLR 120, at 131-132).
48 [2004] 2 NZLR 540, at para [72].
49 See, for instance, the use of this appellation by Judith Collins MP in the Parliamentary debates on the second reading of the Care of Children Bill, 621 NZPD 16418 (21 October 2004).
50 In *Wellington Newspapers Ltd v X* [2002] NZFLR 623 Judge Inglis QC expressed some puzzlement over the absence of public comment with respect to the same privacy regime for the higher courts (para [20]).

but by the general family law statutes which were applicable to all the courts.[51] Second, and importantly, few of the protagonists in favour of increased openness seemed aware of the fact that a number of family law statutes, such as the much criticised Guardianship Act 1968, specifically authorised media attendance and reporting, albeit with the leave of the court.[52] Obviously the scheme and provisions of the Guardianship Act 1968 did lean heavily against the granting of such judicial leave, and it was seldom granted in practice (Burrows, 2005), but some notable instances of judicial authorisations to attend and report can be found.[53] In brief, contrary to popular assumption, the principles of privacy and child welfare were never of an absolute kind.

Of course since the Care of Children Act 2004 came into effect on 1 July 2005, the presumptions of the Guardianship Act have been entirely reversed. There are now two key provisions in the Care of Children Act 2004 that underpin the new principle of Family Court openness: first, s.137 which deals with media attendance and second, s.139 which deals with media reporting.

Section 137 of the Act lists the persons who may attend a hearing of proceedings under the Care of Children Act 2004. While members of the general public are unable to attend unless permission should be given by the judge pursuant to s.137(1)(l), accredited news media reporters are entitled to attend pursuant to s.137(1)(g). The right of attendance for a news media reporter, however, is not unqualified. Under s.137(4) the judge enjoys the discretionary power to exclude the reporter during a hearing. Additionally, under s.137(6) the court enjoys a general power to hear proceedings in private and to exclude any person from the court.

Section 139(1) of the Act authorises the media, or indeed any person, to publish any reports of proceedings that do not include identifying particulars. The restriction on the publication of identifying particulars is to be treated seriously, as is evident in the quite stringent penalty provisions.[54] Intriguingly, though, the Family Court judge who heard the proceedings has been given the discretionary power under s.139(2) to allow the reporting of those particulars. Some thought, therefore, needs to be given to the situations in which such a discretion might be exercised. It will be seen, as explored below, that while in contexts such as those involving the exercise of judicial discretion to suppress names in criminal cases[55] and tax litigation[56] the New Zealand Court of Appeal has considered the overriding legislative principle to be that of openness. In the context of s.139(2) discretion privacy considerations will unquestionably prove the most weighty.[57] Nevertheless, the very existence of the judicial discretion does, as with the converse judicial discretion to exclude a news media reporter under s.137(4)(d), render the current thinking of the judges on questions of attendance and reportage of considerable interest and importance.

This section of the report, therefore, turns to examine the judicial perspectives on questions of the Family Court and the media. The various viewpoints of the judges will be discussed with reference not only to their judicial pronouncements but also to their more private thinking, as emerged from a survey

51 See this point made by Judge Boshier in Media – Openness in the Family Courts, address to the Manawatu Family Courts Association (Boshier, 2006a). Some family law proceedings, such as those under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949, have always been open. Proceedings under the Property (Relationships) Act 1976 are open, unless one party should request otherwise (s.35).

52 Guardianship Act 1968, s.27(1)(d) allowed the attendance of "[a]ny other person whom the Judge permits to be present" and s.27A(1) of the Act stated that "[n]o person shall publish report of proceedings under this Act (other than criminal proceedings) except with the leave of the court which heard the proceedings".

53 For instance, accredited members of the media were permitted to attend and report, without restrictions as to identifying names or content, on a Hague Convention application by Mrs Jelicich to return the child to Wales, *Jelicich v Jelicich* (Family Court, Waitakere, Fam-2004-090-002218, 2 May 2005, Judge Fleming), para [75].

54 Under s.139(8) an individual is liable to a term of imprisonment not exceeding three months or a fine not exceeding $2,000, whereas a body corporate is liable to a fine not exceeding $10,000 (the financial penalties have been substantially raised from those previously found in s.27A(2) of the Guardianship Act 1968). Possibly a penalty in excess of those statutory maxima could be imposed for contempt: see Burrows and Cheer, 2005) and *Solicitor-General v Smith* [2004] NZLR 540, at 565. Cases that have discussed possible contempt issues in this context include *Chief Social Worker v 'Nikki'* (High Court, Hamilton M 171/02, 18 December 2002, Justice Heath) and *Re the P children (no. 1)* (1992) 9 FRNZ 89.

55 See the comments of Justice Glazebrook, delivering the judgment of the Court of Appeal in *Clark v Attorney-General* (2004) 17 PRNZ 554, at para [36].

56 See the comments of Justice Young, delivering the judgment of the Court of Appeal in *Muir v Commissioner of Inland Revenue* (2004) 17 PRNZ 365, at paras [38] and [39].

57 Burrows (2005) has pointed out that there is now an increasing emphasis on individual privacy in the law generally. For more general discussion on the issue of children's privacy and the media, see Highton, 'Protection of Children's Privacy in the Media' [2006] NZFLJ 147.

conducted of all Family Court judges in 2005 and 2006, and from three oral interviews conducted with Principal Family Court Judge Boshier, Judge McMeeken and Judge Clarkson.

## 3.2 The case law

### 3.2.1 The past approach – and the paramountcy principle

In *K v M*[58] Judge Ullrich QC provided a valuable and comprehensive analysis of the Family Court's approach to issues of attendance and reportage arising under the Guardianship Act 1968. Her Honour acknowledged the general importance of the principle of openness,[59] and noted how the legislature in various statutes (such as in s.83 of the Domestic Violence Act 1995, s.159(2) of the Family Proceedings Act 1980, s.22 of the Adoption Act 1955, s.166 of the Children, Young Persons and their Families Act 1989, and more pertinently to the issues of this discussion, ss.27 and 27A of the Guardianship Act 1968) had considered that the nature of family proceedings and the involvement of children provided compelling justification for departure from that principle.[60] Then, considering the specific issue of media attendance, her Honour held that there would be little utility in a reporter being permitted to be present under s.27(1)(d) of the Act if that reporter was not to be permitted by the court to publish a report, and so thereupon denied permission to attend.[61]

While the linkage between a reporter's attendance and subsequent publication does at first sight appear to be logical, it might in retrospect have been beneficial for the courts to have been readier to permit media attendance, even without accompanying permission to publish, in order to help counter the widespread allegations and suspicions surrounding the so-called 'secret' court. There was in fact some statutory precedent for that approach. In particular, under the repealed Children and Young Persons Act 1974 a bona fide reporter for 'newspapers or news services' was entitled to be present at the hearing of any proceedings in a Children and Young Persons Court,[62] but was not permitted to publish a report of proceedings except with the leave of the court which had heard the proceedings. Clearly the legislature had at that time envisaged that an independent value could attach to media attendance alone.

Considering the issues of attendance and publication more generally, Judge Ullrich QC in *K v M* emphasised that the paramountcy principle of s.23(1) of the Guardianship Act 1968 had to be the starting point for the exercise of any judicial discretion to allow attendance and publication under ss.27 and 27A of the then Act. Needless to say, that same principle will continue to govern the current statutory discretions to either exclude media attendance during the hearing under s.137(4)(d), or to allow publication of identifying details under s.139(2) of the Care of Children Act 2004. Clearly, a judge must remain cognisant of the principles and philosophy of openness now underlying the two key provisions found in the Act, but he or she will nevertheless be bound by s.4 of the Act to treat the welfare and best interests of the child as the first and paramount consideration. In brief, the finding of Judge Ullrich QC in *K v M* that the principle of "openness is a parallel principle which cannot override welfare but can be considered alongside it"[63] will still hold true in any cases where judges need to exercise either of the two current statutory discretions.

### 3.2.2 The discretion to exclude the media

Situations may arise where the court would consider that media attendance at the proceedings is undesirable and inappropriate. However, as Burrows has argued, it is unlikely that s.137(4)(d) gives the power to exclude reporters altogether from the outset, for otherwise s.137(1) would be rendered meaningless (Burrows, 2005). Moreover, the statutory power to exclude is conferred only 'during' a hearing.

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58 [2005] NZFLR 346.
59 Ibid, at para [61].
60 Ibid, at paras [62]-[64].
61 Ibid, at paras [7] and [85].
62 Children and Young Persons Act 1974, s.23(g).
63 *K v M* [2005] NZFLR 346, at para [101].

Nevertheless, in a survey of Family Court judges conducted in July 2006 and analysed below, one judge did recount an incident in which he had decided to deny a litigant's request for the media to attend the proceedings (although there was, admittedly, no indication the media themselves were interested). In this particular case the litigant was in prison for breach of a protection order against the other party. The issue was whether a one-year-old child, who had no knowledge of the litigant, should be brought to prison to see him, and the judge was concerned that the prisoner was being psychologically abusive of the other party. More commonly, though, the judges will very readily comply with the statutory expectation of allowing attendance. A typical response emerged from the August 2005 survey where a judge told of how in one case counsel had made a formal challenge to the presence of a reporter, invited by the Union of Fathers, and how the decision to permit the reporter to remain had occasioned 'little difficulty'.[64]

### 3.2.3 The discretion to allow publication of identifying particulars

A recent decision of the English Court of Appeal *C v C*[65] has declared that once the proceedings concerning the child have terminated the English courts are henceforth unlikely to find a continuing need for anonymity of the child or parties. That radical and unexpected decision is, however, very unlikely to be followed by New Zealand judges. Not only do the particular statutory provisions in the two jurisdictions differ, but New Zealand courts have always been notably more insistent on the dominance of the paramountcy principle when weighing considerations of the child's welfare against considerations such as freedom of the press.[66]

Certainly the New Zealand courts have in the past affirmed that the paramountcy principle must be interpreted and applied consistently with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990, and that orders restricting freedom of speech should be tailored only to the extent necessary to ensure the child's welfare is protected.[67] However, given that the New Zealand legislature has itself propounded the presumption of privacy and anonymity for both the child and parties in the Care of Children Act 2004 it is hard to imagine that the courts would consider that the principle of freedom of expression would extend to the undermining of that important presumption. Indeed, new increased legislative support for the protection of privacy interests can be found in s.139(6) of the Care of Children Act 2004, prohibiting official law reports from including the name of the child or the parties.[68]

Societal and legal concern for the protection of privacy, especially for children, has discernibly increased in recent times. That concern is evident, for instance, in the child's right to privacy being specifically protected by Article 16 of the 1989 UN Convention on the Rights of the Child[69] (with New Zealand courts freely accepting the need to give appropriate weight to New Zealand's various obligations under that convention).[70] More generally, the enactment of the Privacy Act 1993 signalled the heightened importance seen to be attached to privacy interests in New Zealand. Yet another important indicator of current socio-legal trends in our jurisdiction was the decision of the Court of Appeal majority decision in *Hosking v Runting* affording recognition to the existence of the tort of

64 The judge reported, though, that the journalist had got bored half way through the proceedings and left.

65 *C v C* [2006] EWCA 878. The Court of Appeal was dealing with s.97(2) of the Children Act 1989 that prohibits the publication of material likely to identify any child as 'being involved' in any proceedings.

66 See the decision of the Full Court of the High Court in *Newspaper Publishers Association of New Zealand (Inc) v Family Court* [1999] 2 NZLR 344 cf the English cases holding that the paramountcy principle applies only in the exercise of custodial jurisdiction (eg, *Re M (minor) (Wardship: freedom of publication)* [1990] 1 AllER 205). The decision of the Full Court has recently been applied in *Child, Youth and Family Services v Television New Zealand* [2006] NZAR 328. See also *EJW v DW* [2006] NZFLR 393.

67 *Newspaper Publishers Association of New Zealand (Inc) v Family Court* [1999] 2 NZLR 344. This approach was endorsed by Justice Heath in *Chief Social Worker v 'Nikki'* (2002) 16 PRNZ 801, at para [18]. See also *Television New Zealand v W* (2000) 20 FRNZ 42, at paras [13]-[17].

68 The problems caused by the consequent initialisation were deplored by Justice Priestley in *Brown v Argyll* [2006] NZFLR 705, and his Honour created both fictitious names for the parties and town in a relocation case. His Honour had previously alluded to the problems of initialisation in a leading relationship property case *De Malmanche v De Malmanche* [2002] NZFLR 579 at para [227]. The solution that commended itself to Justice Priestley in *Brown v Argyll* was endorsed by the Court of Appeal in *W v N* (CA 132/06, 29 August 2006), at para [63]. Burrows (2005) has suggested the judge may have the power under s.139(2) to allow identifying names in the official law reports.

69 As pointed out by Judge Ryan in *EJW v DW* [2006] NZFLR 393, at para [9]. Article 16 provides that "[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence…".

70 See, for example, the comments of Justice Heath in *Re an Unborn Child* [2003] 1 NZLR 115, at paras [61]-[63] and [70].

privacy.[71] In that landmark case the Court of Appeal also took the opportunity to hold that the special position of children must never be lost sight of,[72] and that the vulnerability of children must be accorded real weight.[73] In brief, it is safe to assume that the protection of privacy and the concomitant prevention of psychological harm, held to be overriding values in other statutes concerning the care of children[74] will continue to be particularly potent considerations in the future exercise of discretion under s.139(2) of the Care of Children Act 2004.

While the privacy interests attach to both the parties and the child, the predominant concern must always be for the interests of the child. Thus, in one case decided under s.27A of the Guardianship Act 1968, Judge Inglis QC considered that the parents could not, either alone or together, waive the parents' right to privacy.[75] The judge reasoned that the court needed to balance against the parents' wishes various factors such as the child's own right to privacy and the prevailing statutory policy of ensuring that the sensitive affairs of those who needed the assistance of the Family Court would not be published.[76] With appropriate adaptations to the new statutory scheme it must remain most unlikely that the waiver of privacy on the part of some of the adult parties would prove a particularly weighty factor in the exercise of the court's discretion under s.139(2) of the Care of Children Act 2004. Leave to allow publication of identifying particulars would only be allowed in the most exceptional of cases (NZLC, 2004, Recommendation 151).

Interestingly though, permission to identify has already been given in New Zealand,[77] and certainly any attempt on the part of judges to adopt a policy disallowing publication identifying particulars as a blanket prohibition would constitute an unlawful fetter on their statutory discretion.[78] The s.139(2) discretion, as with any other, must be freely exercised. On the other hand, if an applicant should seek leave to publish identifying particulars, the court would need to be persuaded that the application was prompted by more than merely the satisfaction of public curiosity,[79] and the granting of any such leave could be made subject to specified terms and conditions.[80] The Law Commission did, however, recommend that publication should not be conditional on the court first vetting or editing the report (NZLC, 2004).

### 3.2.4 Particulars likely to lead to identification

As seen, the media, pursuant to s.139(1) of the Act, is enabled to publish any report that does not include any "name or particulars likely to lead to the identification" of the child, parties, person associated with a party, or a witness. The case law from the past, therefore, remains highly pertinent in determining exactly what might constitute those particulars.

The Care of Children Act 2004 itself envisages that identifying descriptors can emerge from a report without names being used, and in one of the very few judgments to date referring to s.139, *Child, Youth and Family Services, v Television New Zealand Ltd*,[81] Justice Winkelman did intimate, without making a final ruling, that an appreciable risk of identification of the child was going to arise from a

71 *Hosking v Runting* [2005] 1 NZLR 1.
72 Ibid, at para [123].
73 Ibid, at para [147].
74 See, for example, *Re the P children (no 1)* (1992) 9 FRNZ 89, at para [91] per Judge Inglis QC in relation to the Children, Young Persons and Their Families Act 1989.
75 *Television New Zealand v W* (2000) 20 FRNZ 42.
76 Ibid, at 53.
77 See the reference to one such instance by Justice Winkelmann in *Child Youth and Family Services v Television New Zealand* [2006] NZAR 328, at para [5]. There, in admittedly special circumstances, Justice Heath had given permission to publish details of a wardship hearing: in this case the ward had previously disappeared and the police had issued a media release containing her name and photograph. Some restrictions were imposed by Justice Heath, though (for example, there were restrictions as to the name of the caregiver and the school that the child ordinarily attended). In 2005, leave to publish identifying details was given by Judge Fleming in a Hague Convention case decided under the Guardianship Act 1968: *Jelicich v Jelicich* (Family Court, Waitakere, Fam-2004-090-002218, 2 May 2005), at para [75].
78 See the judgment of the House of Lords in British Oxygen Co Ltd v Board of Trade [1971] AC 610.
79 See the comments of Justices Panckhurst and Chisholm in Newspaper Publishers Association of New Zealand (Inc) v Family Court [1999] 2 NZLR 344, at 352. To similar effect, see the comment of Judge Mather in Commissioner of Inland Revenue v C [2004] NZFLR 913, at para [53]. There is, as Judge Boshier (2006b) has put it extra-judicially "…no public interest in prying into the private lives of others".
80 See s.139(3) of the Care of Children Act 2004.
81 [2006] NZAR 328.

proposed interview with the mother despite pixelation and anonymity.[82] Possible identifying descriptors in these cases might include physical descriptions, style of dress, employment, beliefs, or recreational interests of a person.[83]

Sometimes the facts and circumstances of a particular case are so unusual that the children could be easily identified by any person who knew the family, despite the absence of names or any identification of school or domestic addresses. Such an eventuality led Judge Somerville to decline an application to publish a report of proceedings in one case involving a protracted relocation dispute under the Guardianship Act.[84] It must be accepted, though, that the enabling provisions of the new Act are now worded in such a way that the mere fact the children themselves might become aware their case was the subject of discussion in the media would probably, of itself, no longer be sufficient to preclude publication,[85] provided other persons could not identify them.

In the previous debate over media reporting there was often an unstated assumption that the media would just be reporting or broadcasting on a case on a single occasion. However, because the issues arising from a relationship breakdown and parenting dispute can intrinsically be of great human interest to members of the general public (even without the names of the parties being known)[86] a Family Court case could potentially become the subject of quite prolonged media exposure. In any such case of continuing and extensive coverage it would become more and more likely, given the smallness of New Zealand society, that members of the family would become identifiable.[87] That likelihood of identification would be particularly acute when the Family Court was sitting in one of the smaller centres. Thus, as Justice Ellis held in *T v Attorney-General*,[88] the court must always assess the reality of the situation.[89]

### 3.2.5 Where the information has been in the public domain

The fact that proceedings in the case have been the subject of prior publicity in either the established media reports or internet sites must clearly impact on whether persons would be able to identify a child or other associated person in some new report or broadcast.[90] Accordingly, in a number of cases decided under the Guardianship Act 1968, the extent and degree of pre-publication publicity has judicially been acknowledged to be a relevant consideration in the exercise of discretion as to whether publication should be authorised.[91] To take two specific examples. In *Chief Social Worker v 'Nikki'*,[92] the decision of Justice Heath to allow limited publication was influenced, at least in part, by the fact that the names of the participants were already within the public domain and that magazine articles had already been published. In *Newspaper Publishers Association of New Zealand (Inc) v Family Court*[93] Justices Panckhurst and Chisholm also held that the fact that the identity of a child, Liam Holloway, his parents and a sibling were already in the public arena by virtue of an earlier media release had to be taken into account in considering restrictions on publicity.[94] Their Honours held that "[n]o point would be served by endeavouring to suppress material already in the public domain".[95]

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82 Ibid, at para [60]. See also the observation of Justice Gault in *Director-General of Social Welfare v Television New Zealand* (1989) 5 NZFLR 594 in relation to a proposed television broadcast where the name of a child would be obliterated but his Honour was satisfied there would be sufficient means to identify her (at 595).
83 See examples of identifying particulars provided by s.121(3) of the Family Law Act 1975 (Aus).
84 *S v D* (Family Court, Christchurch, 20 March 2002), at paras [84] and [89].
85 Cf the position under the Guardianship Act 1968 where Judge Inglis QC concluded that such knowledge on the part of the children pointed to publication as being contrary to the children's welfare: *Wellington Newspapers v X* [2002] NZFLR 623, at paras [31] and [32].
86 As Judge Ullrich QC suggested in *K v M* [2005] NZFLR 346 there is, as can be witnessed by the subject matter of most written and filmed fiction, a considerable public appetite for the topics of "…love, hate, violence, loss, sexual misbehaviour, high emotion" found in so many Family Court parenting cases, at para [104].
87 See the comments of Judge Ullrich QC in *K v M*, ibid, at paras [91] and [113]. See further the comments of Justice Ellis in *T v Attorney-General* (1988) 5 NZFLR 357, a care and protection case, stating that the more detailed the media discussion of the case, then the more leads would emerge that could be used to trace the identity of persons (at 369 and 373).
88 (1988) 5 NZFLR 357.
89 Ibid, at 377.
90 See the discussion of Justice Winkelman in *Child Youth and Family Services v Television New Zealand* [2006] NZAR 328, at para [33].
91 *K v M* [2005] NZFLR 346, at para [76] per Judge Ullrich QC. See also *Television New Zealand v W* (2000) 20 FRNZ 42, at para [34] per Judge Inglis QC.
92 (2002) 16 PRNZ 801.
93 [1999] 2 NZLR 344.
94 Ibid, at 352.
95 Ibid, at 354. See also Burrows (2005).

The same reasoning is likely to apply to the exercise of discretion to allow identifying particulars under s.139(2) of the Care of Children Act 2004. On the other hand, it must always be borne in mind that the statutory prohibition placed on identifying details is of fundamental importance, and there have certainly been cases where the argument that identifying information was already in the public domain did not prove persuasive.[96]

### 3.2.6 What can be reported

*3.2.6.1 Reports of proceedings*

Provided identifying particulars are excluded, s.139(1) of the Care of Children Act 2004 specifically allows publication of a report of proceedings. There has been considerable judicial analysis as to what constituted proceedings under legislation presumptively prohibiting the reporting, and some of those judicial observations provide useful guidance for the media or parties contemplating the scope of the current authorisation to report.

In a case dealing with the scope of the statutory prohibition under the Children and Young Persons Act 1974, Justice Gault adopted a liberal and broad approach to hold that proceedings included "…all matters in which the jurisdiction of the court is invoked for adjudication or determination and, consistent with its general meaning, may be taken to extend to the execution of enforcement of judgments or orders".[97] Although Justice Holland subsequently preferred a decidedly narrower interpretation,[98] the view of Justice Gault was endorsed by a number of High Court and Family Court judges[99] and was assumed to represent the prevailing law. Following that approach the media was unable to report any of the phases of a case from its initiation to the execution of the order, and the media in fact assumed it was virtually barred from referring to a Family Court case at all (Burrows, 2005).

The implications of this wide approach mean that the overt statutory permission to report proceedings under the Care of Children Act 2004 will correspondingly authorise the media and parties to report on matters beyond what was said or took place in the courtroom. For example, if material and documents are brought before the court then they could be regarded as part of the proceedings (Burrows and Cheer, 2005) and could be safely reported upon without any issues arising, for example, as to breach of confidence and the like.

Finally, it should be noted that the proceedings of the Family Court can be reported in full or in part, and there is no legislative requirement for that report to be complete, or indeed even fair and accurate.[100] Following earlier Family Court authority, authorised publication could be taken to embrace entirely "private and unsolicited reports and accounts of what may have transpired".[101] Somewhat surprisingly, there is still no statutory provision allowing the court to make an order suppressing publication of parts of evidence, although it has been assumed that the court does enjoy that inherent power.[102]

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96 See the unsuccessful argument put forward by counsel for TV3 in *Chief Social Worker v 'Nikki'* (2002) 16 PRNZ 801, at para [7].

97 *Director-General of Social Welfare v TVNZ* (1989) 5 FRNZ 594, at para [596]. (His Honour held, however, that the proceedings did not extend to the encompass the continuing status of a person, such as that of a foster child, consequent upon a determination of the proceedings).

98 *Television New Zealand v DSW* [1990] NZFLR 150, at para [157].

99 See, for example, the judgment of Justice Panckhurst in *Director-General of Social Welfare v Christchurch Press Company* (High Court, Christchurch, CP 31/98, 29 May 1998), at 8-10, followed by Justices Wild and MacKenzie in *Solicitor-General v Smith* [2004] 2 NZLR 540, at para [62]. See also the judgments of Judge Inglis QC in Re the P Children (no 1) (1992) 9 FRNZ 89, at para [91] and *Television New Zealand v W* (2000) 20 FRNZ 42, at para [12].

100 As pointed out by Burrows (2005), though the author notes that the law of defamation or contempt does provide some potential controls over grossly misleading reports.

101 See *Department of Social Welfare v Publisher* (1993) 10 FRNZ 148, at 154-155 per Justice Satyanand (in the context of a magazine's reportage of a personal account of what transpired at a family group conference, held to breach s.38 of the Children, Young Persons and Their Families Act 1989).

102 Burrows (2005) points out that, apart from the assumed inherent power, Rules 15 and 16 of the Family Court Rules, allowing a judge to give directions for the purpose of regulating the court's business, may be wide enough to authorise suppression orders. See also Burrows and Cheer (2005).

*3.2.6.2 Interviews.*

The breadth of the Guardianship Act prohibition on the report of proceedings necessarily meant that any interviews with the parties, friends or family members about a parenting dispute were proscribed.[103] Under the Care of Children Act 2004, however, any such media interviews of parties or associated persons must be within the scope of the statutory authorisation, provided always that anonymity is preserved.

Equally, a child who is the subject of proceedings could seemingly be interviewed, provided that there was no risk of identification and that the consent of guardians had been obtained. Obviously many in the community would share a degree of unease over this prospect, especially in the case of younger children, and would be troubled over the child's likely inability to comprehend the significance of participation and of the possible ensuing emotional harm.[104] Nevertheless, the only effective legal mechanism available to prevent an anonymised interview, assuming the existing guardians had given consent, would be for the court itself to assume guardianship and thereupon, in the exercise of wardship jurisdiction, issue an injunction.[105]

*3.2.6.3 Search of the court records.*

The Law Commission recently declared that the openness of proceedings under the Care of Children Act 2004 might necessitate the need for records to be more open than at present to ensure the accuracy of reporting,[106] and, in the recent past, the Family Court has identified that a reporter could not have all the facts and evidence at his or her disposal if he or she simply attended the hearing.[107] The Law Commission in its report did recognise, though, that there might be good reasons for non-disclosure to the public of sensitive, personal information contained in the records of family law cases, and the Commission accordingly recommended that court records falling under the family law statutes should fall under a different regime from the new proposed general one (NZLC, 2006, Recommendation 11).

There is a very clear rationale for a greater degree of regulation of access to documents relating to intimate private family matters. As Justice Anderson once put it, any public concern with such documents is often more likely to be prurient than justified.[108] It is hardly surprising that Rule 427 of the Family Court Rules 2002 provides that the records of Family Court proceedings are presumptively closed to third parties. However, Rule 427(1)(d) of the Family Court Rules does state that a person who satisfies the registrar that he or she has a proper interest in the proceedings may search the record of the court relating to the proceedings[109] and the documents filed in the court relating to the proceedings. Inevitably, as held by Justice Hansen, difficulties will arise as to when such a 'proper' interest under Rule 427(1)(d) might be said to exist.[110]

Rule 428(2) of the Family Court Rules proceeds to allow a registrar to decline permission to a person to search a particular document in two circumstances. First, if the registrar considers that to allow the person to search would contravene a direction given by a judge.[111] Second, if there is some special reason why the person should not search the document. If a decision under either Rules 428 or 427(1)(d) should be challenged, the registrar must, upon request, refer the matter to a judge who may confirm, vary or rescind the registrar's decision.

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103 See, for example, *K v M* [2005] NZFLR 346, at para [116], *Television New Zealand v W* (2000) 20 FRNZ 42, at para [33] and *Re the P Children (no 1)* (1992) 9 FRNZ 89.
104 But see discussion of the BSA Codes of practice, and the Press Council principles, Part 4 below.
105 See, for example, *Child Youth and Family Services v Television New Zealand* [2006] NZAR 328. (Upon the assumption of court guardianship, the paramountcy principle obviously applies.)
106 The Law Commission (2006) also observed that if other Family Court proceedings became more open in the future then the rules relating to access to court records in those proceedings should change accordingly.
107 See the observation of Judge Ullrich QC in K v M [2005] NZFLR 346, at para [87].
108 *Currie v YMCA of Hamilton Inc* (High Court, Hamilton, M 45/89, 8 May 1989), at 4.
109 See Rule 427(2). As discussed in the text above, it is probable that the proceedings can be considered to have commenced from the time of the filing of the application.
110 *Family Court at Dunedin v Attorney-General* (High Court, Dunedin, CP 2/03, 9 April 2003), at para [17].
111 Family Court Rules 2002, Rule 430.

Rule 69 of the District Court Rules 1992 concerns access to District Court records (with Rule 69(8) stating that, subject to the directions of a judge, the registrar must grant leave to search to any person having a genuine or proper interest). As pointed out by Justice Hansen, the Family Court Rules 2002 impliedly repealed Rule 69 of the District Court Rules insofar as that latter rule related to records of the Family Court,[112] but it remains true, as the Law Commission has observed, that Rule 427 of the Family Court Rules is not actually inconsistent with Rule 69(8) of the District Court Rules. Nevertheless, there is the occasional interesting point of difference. For instance, the Family Court Rules 2002 merely confer an entirely permissive discretion on the registrar when there is a proper interest, whereas the District Court Rules contemplate that leave must be granted, on a mandatory basis, subject to any contrary judicial directions, where a genuine or proper interest exists. Adding to the procedural confusion and complexity, Rule 8 of the Family Proceedings Rules 1981 seemingly also applies to searches for records and documents in relation to proceedings under the Care of Children Act 2004,[113] with a permissive discretion being conferred upon the registrar.

An essentially similar regime for searching High Court files in relation to proceedings under enumerated family law statutes exists under the High Court Rules. Under Rule 66(5) of those rules the files in such High Court proceedings may presumptively not be searched, inspected or copied, but Rule 66(9) proceeds to provide that the registrar shall grant leave to search, subject to any directions of a judge, to any person having a genuine or proper interest. If leave should be refused, Rule 66(11) allows for a judge to review that decision.

Although, as Justice Hansen has observed, there is nothing in the Family Court Rules that directly or expressly allows a judge to exercise the powers of a registrar under the Family Court Rules,[114] it appears as a matter of practice that Family Court judges have dealt with such applications when they are of a complex nature.[115] Justice Hansen said that it was indeed preferable for any complex matters to be referred straight to the judge, as registrars would otherwise simply refuse complex applications on a pro forma basis, leading to a formal review process to be dealt with by a judge.[116] Unfortunately it is unclear on what specific legal basis judges can assume originating jurisdiction under Rule 427, although it might be implicit in Rule 428(2)(a) that the registrar has liaised with a judge.[117] For the future, the Law Commission has recommended the enactment of a specific provision to the effect that leave would be granted only by a judge (NZLC, 2006: Recommendation 14).

The Law Commission has also recommended the discontinuance of references to categories of requesters who could obtain information where the requesters had a genuine or proper interest in obtaining it (NZLC, 2006). The Commission did suggest, though, that leave to access presumptively closed Family Court records could still be sought if, for example, there was a public interest in ensuring accurate reporting or bona fide research (NZLC, 2006). Reflecting some of the factors previously enunciated by Judge Ullrich QC in *K v M*[118] the Law Commission indicated that some of the following considerations might be relevant in the future exercise of discretion to allow search and publication of family files: how any children or other particularly vulnerable people would be affected; whether particular circumstances of a family or person needed to be disclosed; whether identification was likely even if names were deleted; whether the matter was one of genuine public interest; and whether the issue or case had been discussed in the media (NZLC, 2006).[119]

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112 *Family Court at Dunedin v Attorney-General* (High Court, Dunedin, CP 2/03, 9 April 2003), at para [5].
113 Rule 3 of the Family Proceedings Rules 1981 states these rules apply to the Family Proceedings Act 1980 and the Care of Children Act 2004.
114 See, though, the suggestion that the District Court Rules are more restrictive than the High Court Rules: P v P [1995] NZFLR 186, at para [191].
115 *Family Court at Dunedin v Attorney-General* (High Court, Dunedin, CP 2/03, 9 April 2003), at para [22].
116 Ibid, at para [23].
117 Thus in *Pratt Contractors Ltd v Palmerston North City Council* (High Court, Palmerston North, CP 76/92, 26 October 1992) Justice Ellis held that it was implicit in Rule 66(9) of the High Court Rules that the registrar would liaise with a judge where the registrar had concerns (at p. 7).
118 [2005] NZFLR 346.
119 The Law Commission (2006) suggested that concerns that would justify withholding the information could be met in particular cases by redacting personal information and any means of identification from the material before it was made available.

Such factors will, of course, be equally relevant to the exercise of the present discretion conferred on the registrar to determine whether the media has a proper interest under the Family Court Rules to allow the searching of court files in a case falling under the Care of Children Act 2004. However, as explained by Judge Ullrich QC in *K v M*[120] the Family Court Rules, as subordinate legislation, must always be read subject to the principal legislation and the paramountcy principle will therefore be operative.[121] That paramountcy principle is not an absolute consideration, however, as freedom of expression must also be taken into account.[122]

In a number of cases dealing with Rule 66(9) of the High Court Rules, the courts have not been ungenerous in allowing the media to search court records (Burrows, 2005). While the cases admittedly concerned applications where a genuine or proper interest was being argued not in the context of a family law statute but in civil proceedings,[123] the implication that can be drawn is that the definitional threshold of genuine and proper under Rule 66(9) is not necessarily an especially tough one to meet.

For example, in the context of an application by the *Waikato Times* to search and publish extracts from a provisional liquidator's report to the court concerning the winding up of the Hamilton YMCA prior to proceedings being determined, Justice Anderson indicated that the meaning of 'proper' had connotations of "relevant appropriateness in the circumstances".[124] In another case concerning an application from the *National Business Review* to photocopy affidavits and exhibits in a company receivership case Justice Williamson interpreted 'proper' to mean an interest which is "lawful, respectable and worthy", and greater than that of just any honestly motivated citizen or news reporter.[125] In both these cases the respective media organisations were held to have such a sufficiently special interest.

On the other hand, in a different case under Rule 66(9), Justice Tompkins indicated there would need to be very compelling reasons for the court to make evidence filed by way of affidavit available to the news media.[126] His Honour expressed a fear of trial by media.[127] With reference to that same fear, Justice Ellis suggested in another case that the courts may be more reluctant to allow evidence to be searched and published than pleadings.[128]

It is certainly entirely conceivable that when the courts come to consider the meaning of either 'genuine or proper' in the context of family law issues under the High Court Rules,[129] or simply 'proper' under the Family Court Rules, the more cautious approach evident in Justice Tompkins' judgment might be preferred. As seen, the Law Commission has already pinpointed family law proceedings as warranting special treatment, and the interests of freedom of expression and search will need to be weighed against the unusually strong privacy interests of the family and the paramountcy of the child's welfare (Burrows, 2005).

Hence some of the factors identified in earlier cases that dealt with applications to search files in family proceedings would remain highly pertinent in determining the propriety of the interest of the applicant. The court might, for example, still wish to assess the reasons why the person wished to search,[130] and it is possible that any application to search will need to be made in writing and upon

120 [2005] NZFLR 346.
121 Ibid, at para [88]. Exactly the same point was made by Judge Inglis QC in *Wellington Newspapers v X* [2002] NZFLR 623, at para [17] in relation to Rule 8(1) of the Family Proceedings Rules 2002. The paramountcy principle was also employed by Judge Brown in determining the scope of access to Family Court files in respect of an application by the Attorney-General in Grieg v Grieg (District Court, Hamilton, FP 143/89, 11 March 1993), at 5.
122 See *Newspaper Publishers Association of New Zealand (Inc) v Family Court* [1999] 2 NZLR 344.
123 Under Rule 66(3) of the High Court Rules there is a right to search, inspect, and copy (subject to some qualifications, such as where proceedings relate to specified Family Law statutes) where a proceeding has been determined.
124 *Currie v YMCA of Hamilton Inc* (High Court, Hamilton, M 45/89, 8 May 1989), at 6.
125 *Re Fourth Estate Periodicals Ltd* (High Court, CP 67/89, 27 October 1989), at 11.
126 *Titchener v Attorney-General* (1990) 3 PRNZ 60, at 61.
127 Ibid, at para [62].
128 *Pratt Contractors Ltd v Palmerston North City Council* (High Court, Palmerston North, CP 76/92, 26 October 1992) at 5-6. Justice Ellis also considered that the words 'genuine or proper', whilst disjunctive, would in practice usually describe the same thing, meaning the interest must be bona fide, sincere and soundly based.
129 Justice Ellis considered that the words 'genuine or proper' under Rule 66(9) of the High Court Rules, whilst disjunctive in phrasing, would in practice usually describe the same thing (meaning the interest must be bona fide, sincere, and soundly based). *Pratt Contractors Ltd v Palmerston North City Council* (High Court, Palmerston North, CP 76/92, 26 October 1992), at 4.
130 *Wellington Newspapers Ltd v X* [2002] NZFLR 623, at para [17].

notice.[131] The courts might also hold that in order for an interest to be 'proper' it needs to be of a specific kind.[132] And, even if a media representative were able to establish a 'proper interest', that would not ipso facto mean there is an automatic entitlement to the whole of the Family Court's file in the proceedings.[133] The paramountcy principle could mean, for example, that there might be some judicial reluctance to allow search or publicity of psychological reports[134] especially in sensitive cases such as those concerning alleged sexual abuse.[135] It is clear, however, that there will be occasions when judges are perfectly content for the media to have access to general material on court files.[136]

## 3.3 Judges' surveys

### 3.3.1 Support for openness

While it is true that the views of any particular judge only carry especial weight when those views have been formulated and expressed in the course of a formal judgment, the private perspectives of judges obviously do provide valuable informal insights into how many of the issues discussed above would be treated by the courts should they become subject to formal judicial deliberation. To this end a brief questionnaire survey of 42 judges holding judicial warrants was conducted in July 2006.[137]

This survey, conducted out on an anonymous basis, was administered by both post and email. The survey, attached as Appendix 1, contained four very simple questions and requested that the judges provide any salient comments. Also the judges were invited in both August and December 2005 to communicate their personal views on the media and the Family Court to the research team.

An excellent response rate of 90 percent was achieved in the July 2006 survey, with 38 judges participating. Of all the various findings relating to the judges' personal thinking, the most striking was that of an overwhelming support for the new statutory regime of openness. A notable 90 percent of the 38 respondent judges expressed their personal agreement with the new statutory regime allowing the attendance of accredited news media and the reporting of the proceedings.

Although only four of the respondent judges disagreed with the changes, the reasons for their disagreement were of interest and worth noting. One judge claimed that there was no more legitimate public interest in observing the resolution of childcare disputes than in observing a state-funded vasectomy. Another remarked:

> The legal issues in any case can be discussed in the abstract from sources such as judgments which are available to the media… If social issues are to be discussed then trends by area, over time etc need to be highlighted which can be ascertained from other sources but not from sitting in a courtroom listening to one case.

The same judge, concerned perhaps to prevent the impression that advocacy of continued privacy was for the benefit of the judges rather than the parties, continued to say:

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131 See the comments of Justice Hansen in *Family Court at Dunedin v Attorney-General* (High Court, Dunedin, CP 2/03, 9 April 2003), at para [24]. In *Re an Unborn Child* [2003] 1 NZLR 115 Justice Heath made an order under Rule 66(9) that the files (in a case concerning an application to film the birth of an unborn child for the purposes of a pornographic film) not be searched without leave of a High Court Judge and that any application to search, inspect or copy was to be served on the parties, and the chief social worker and counsel for the unborn child (at para [109]).

132 *Family Court at Dunedin v Attorney-General* (High Court, Dunedin, CP 2/03, 9 April 2003), at para [20]. In this case Justice Hansen was concerned that the application by the Police to inspect some Family Court files, as part of a homicide investigation, was phrased too generally, and he held that specific documents should have been identified with precision.

133 In *Grieg v Grieg* (District Court, Hamilton, FP 143/89, 11 March 1993) Judge Brown had no doubt the Attorney-General had a 'genuine or proper' interest under the District Court Rules in seeking access to Family Court documents to defend a claim brought against an employee of the Department of Social Welfare, but his Honour declined access to affidavits filed by experts and the parties (at 5-6).

134 Section 134 of the Care of Children Act 2004 has specific provisions on the circulation of these reports.

135 See, for example, *Wellington Newspapers Ltd v X* [2002] NZFLR 623, at paras [19] and [26] per Judge Inglis QC. See also the discussion of Judge Boshier in *P v P* [1995] NZFLR 186 at 190 (here the application by the Police for release of a psychologist's report prepared under s.29A of the Guardianship Act 1968 was unsuccessful).

136 For instance, Principal Family Court Judge Boshier (2006a) has disclosed that on occasions he has provided the media with material from the court files.

137 See Appendix 1.

> What can be commented by sitting in a courtroom is the behaviour of the judge. Such reporting may well have a useful function but could be permitted separately from allowing comment on the facts of the case and the people involved.

A third judge opposed to the new statutory regime was concerned about the possible inhibiting effects of the presence of a reporter on litigants. This judge predicated that the legislative change had been as a result of the capture of politicians by a "vociferous and dishonest lobby group".

As seen, though, the opposition to openness was surprisingly limited. And not only was there heavy overall support for the new openness, but the survey revealed, possibly contrary to popular assumption, that the great majority of judges had always favoured such openness. Only two of the 34 judges now in favour of openness had previously been opposed to this prior to the commencement of the Care of Children Act 2004.

The noticeably strong predisposition in favour of openness also surfaced in the judges' responses to the question on whether they agreed with proposals for the media to attend proceedings other than those under the Care of Children Act 2004.[138] Only four of the judges favouring media attendance and reporting for the Care of Children Act 2004 would favour a different approach to other family law proceedings. However, a number of judges did suggest that the proceedings under some specific statutes should be excluded from media attendance and reportage. As one judge put it:

> …the court must be accountable in all of its work but be careful to protect the vulnerable. Openness must occur according to each statute.

A number of statutes, dealing with particularly sensitive issues, were identified by more than one respondent as being unsuitable for media coverage. These were the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Protection of Personal and Property Rights Act 1988 and the Alcoholism and Drug Addiction Act 1966. Some other statutes were singled out for exclusion from media coverage by an individual judge. For example the Adoption Act 1955 and the Births, Deaths and Marriages Registration Act 1995 were mentioned by one; the Domestic Violence Act 1995 by another.

On the other hand, one judge specifically identified proceedings under the Domestic Violence Act 1995 as being ideal proceedings for media attendance and coverage, saying "…there is a public interest in educating the public as to the dynamics in violent households". Reflecting similar thinking, four of the respondent judges identified proceedings under the Children, Young Persons and Their Families Act 1989 as being good candidates for media coverage with one saying that those proceedings should be opened because "this is an area of fundamental children's rights and community interest".

It can be seen that, overall, no clear consensus exists on the extent to which the Family Court should be further opened in the future. Moreover, as one judge pointed out, significant practical difficulties could arise if the media were allowed to attend proceedings under some statutes but not others, given that most cases involved more than one piece of Family Law legislation.[139]

Only 11 of the judges had personally experienced an attendance by the media.[140] Five rated that attendance as very 'positive', and six as 'neutral'. One of the judges, rating the attendance as positive and suggesting that media attendance might prove to have a positive effect on some counsel,

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138 Judge Boshier (2006b) suggested that further reform "…to bring the rest of our jurisdiction up to speed" would occur "in the near future".

139 This awkwardness presently pertains with the Care of Children Act 2004 having a different regime from other family law statutes, as pointed out by Burrows (2005).

140 This is broadly consistent with Ministry of Justice figures. These record that 40 requests by the media to attend were made and on 12 occasions a media representative is recorded to have attended a hearing (see the figures given by Judge Boshier (2006a)). There were eight requests where the records do not show the result, and the judge speculated that there may have possibly been a maximum of 20 occasions in which the media attended. However the results of this survey suggest the 12 definite recorded instances are more likely to represent the final accurate figure.

intimated that on the one occasion where the media had been present in his court a lawyer who had been particularly litigious at an earlier stage of the proceedings was far more restrained in demeanour. From the group of six considering the experience to be neutral, a very typical comment was "…absolutely no problem as far as the court was concerned". Another of those judges indicated that no-one had paid the media any attention when the two journalists were present and that the journalists "just did their thing and quietly disappeared without a word".[141] Interestingly, there was not even the slightest negative reaction to attendance detectable from the survey.

Three of the reported 11 media attendances in the survey had not resulted in later publication of proceedings. But of the eight occasions when there had been subsequent coverage, half of the respondents ranked the coverage in terms of balance and fairness, at the highest level of 5 (ie 'very good', on a scale of 1 to 5), three rated it at 4 and one at 3.

One of the judges who ranked the coverage at the highest rating of 5 said it had provided a significant balancing contribution to a recent local story that had been published about the protest actions of fathers' rights activists. Another judge who rated the media experience at the same very positive level indicated that a reporter had sat right through a two-day parenting case, had made extensive notes, taken a close interest in the proceedings, and had at the invitation of the judge, met in chambers with the judge several times to discuss the case and the procedures.

On the other hand, one judge who ranked the particular coverage at 4 expressed disappointment that the journalist had not requested a copy of the judgment after attending for a full three-day hearing. In similar vein, a judge who had offered a journalist the opportunity to peruse the court file, following her attendance for a full one-day hearing, was somewhat disheartened that she had not taken up the opportunity, with the journalist saying that there would probably only be a brief two paragraph report in the newspaper.[142]

Overall, then, it can be seen that there was widespread contentment with the new statutory provisions on openness. As will be examined further below, the judges' only real dissatisfaction is with the failure of the media to attend. Some judges, though, said they were still left with some specific questions, such as whether it would be appropriate to allow cameras in court (Burrows, 2005) and whether a freelance journalist could be described as 'accredited'.[143]

### 3.3.2 Principal Family Court Judge Boshier's views

The Principal Family Court Judge is vested with the primary responsibility for the management of the Family Court's public profile and since his appointment, in 2004, Judge Boshier has been conspicuously active in the delivery of addresses to various professional and community groups. Two of his major addresses in 2006, *Media – Openness in the Family Court* (Boshier, 2006a) and *The Family Court 25 Years On – Has the Vision Been Realised?* (Boshier, 2006b) dealt with the new regime of openness.

In the address *Media – Openness in the Family Court*, Judge Boshier (2006a) pointed out that whereas there had been 183 radio and newspaper reports about the Family Court in the 12 months since the commencement of the Care of Children Act 2004, very few of those reports could be said to have come from the perspective of a reporter who had been actually present in court (given that probably only 12 reporters, or at the most 20, had attended court during the year). The judge then highlighted the danger that exists should the media be approached by an aggrieved litigant involved in a case and proceed to provide that litigant with a public platform from which to air his or her

141 In this case, concerning a two-day defended contact application by a father who was raising 'parental alienation' issues, one journalist stayed until lunch on the first day and the second stayed until the afternoon adjournment on the first day. Another judge reported in August 2005 that a journalist got bored and left half way through (see note 62).

142 The judge also related that the journalist had not returned to the court to hear the outcome.

143 The view of Burrows (2005) is that a freelance journalist would only be able to gain admission in the judge's discretion as a 'person' under s.137(1)(i) of the Act. As Burrows and Cheer (2005) also point out, if this discretion is not carefully handled, this could lead to accusations of favouritism and censorship.

grievances. Although the media might sometimes, he acknowledged, give those who are attacked an opportunity to respond so that "…notional requirements of balance are being maintained", he said that is "…a little like offering someone an opportunity to throw a Molotov cocktail into someone else's front porch and then inviting the party being attacked to respond with an offered fire extinguisher, as an expression of fairness". Continuing his critique on the need for the media to improve its performance, Judge Boshier insisted that the media should observe the standards of accuracy and balance expected in the media reportage of other courts. As he put it:

> …[i]n other courts the media are often present and can see for themselves the self-serving nature of such claims [of injustice on the part of the court and judges]. They have access to arguments presented by counsel, evidence and finally the judgment of the court giving a decision and outlining the relevant facts and the law. It is unlikely that the media would report a case so incompletely and one-sidedly as to include only the assertions of one disaffected party, aggrieved at the decision and report the assertion of that party as fact. Yet that is what happens so often in reports about the Family Court (Boshier, 2006a).

The media, the judge asserted, simply lacked any excuse now that the Family Court was open to them. Earlier in the year, however, Judge Boshier had offered some possible explanations for the striking lack of interest on the media's part. In the course of an interview, conducted on 12 May 2006 with the research team, he advanced the view that the media was but a reflection of society, and that whereas the media would be enormously interested in the unknown, there would inevitably be much reduced interest once the doors were open and there was no suggestion of forbidden fruit behind them. As well, the judge acknowledged the undoubted constraints of media time and resources, and accepted that the media did not always have reporters available who could sit for days listening to cases, particularly given the significant statutory restrictions on what could be reported.

In his October 2006 address, *The Family Court 25 Years On – Has the Vision Been Realised?* Judge Boshier (2006b) also set forth this explanation for media absenteeism:

> …[t]he slow uptake is explainable. Those attending the court have not found the content to be particularly newsworthy – that is if they were expecting to see the court applying the law in the unfair or biased manner claimed by its critics. Nor would they have found the subject matter of individual proceedings to be sufficiently unusual or momentous as to constitute news.

Whatever might be the exact causes for the non-appearance, Judge Boshier reasoned that if the media had not attended a case they should at least obtain a copy of the judgment and relevant court documentation before reporting on it. Postulating that public confidence in the courts must be of greater social importance than media ratings, the judge concluded:

> Criticism is a healthy and proper role for the media – but it requires being informed. And often the media aren't.

In his May interview, Judge Boshier had expressed some tentative optimism that the media might have begun to stop reporting from just one litigant's perspective[144] but he did comment that there were, as he put it, "some notable exceptions".[145] While not citing any specific examples, it is safe to assume one of the instances the judge had in mind was the February broadcast of a Television One news item critical of a Family Court decision declining the mother unrestricted access to a nine-week-old baby whom, according to the Television New Zealand (TVNZ) report, she was allegedly breastfeeding. That

144 See further his comment (Boshier, 2006b) that "[p]erhaps the tide is turning a little", noting that "[r]ecent editorial comment has not taken the criticisms at face value but has contained some rebuttals in favour of the Family Court based on the information we are supplying as part of our enhanced public accountability".

145 The judge averred that an "abundance of reports continue to be based on the uninvestigated word of our critics, as this is often the most sensational 'news'". (Boshier, 2006b).

particular item was shown on the 6pm news following the approach of the mother to TVNZ, and at the time of its broadcast Judge Boshier had publicly deplored the television channel's failure to provide the full facts and to report in an independent and balanced manner.[146]

### 3.3.3 Judge McMeeken's views

It was Judge McMeeken who had been the presiding judge in the early stages of what became known, somewhat emotively and misleadingly, as the 'breast-feeding mother' case. Three months later the same judge was the subject of further media exposure. In May 2006, the *Christchurch Press* published a full-page article on a 'typical' day in the Family Court, with a journalist having spent a morning in the list court presided over by Judge McMeeken (as well as an afternoon listening to an application by Child, Youth and Family Services, presided over by Judge Moran, for a declaration).

Judge McMeeken was interviewed on 20 July 2006 with a view to gauging her responses to both publications, but with the primary focus of the interview being on the television broadcast. Additionally, the judge was asked for her views on media reportage generally.

Before examining Judge McMeeken's comments, the content of the brief TVNZ broadcast needs to be considered.[147] The broadcast, which took place on 12 February 2006, had commenced with the presenter introducing the news item as follows:

> …[t]he Family Court is being criticised for favouring a father's regular access to his children over a child's right to be breastfed. A nine-week-old baby has been put in the joint custody of its mother and father but the mother says that means it's almost impossible to breastfeed.

A television news journalist proceeded to report that "[b]reastfeeding experts are shocked by the decision" and that "…family lawyers are surprised by the ruling". The mother was interviewed (with only her lips, chin, and back being shown), along with two representatives from the La Leche League and the NZ Breastfeeding Federation. Finally the journalist concluded: "[t]he mother's pleased she now has more access to her baby but is angry it's been such a battle to give her son what she says is the best start in life".

Commenting on this news item, Judge McMeeken, echoing sentiments very similar to those of Judge Boshier, said she was both disappointed and saddened that TVNZ had not fully investigated the case, but had rather elected to simply listen to and record the views of one of the litigants. The judge asserted that she would have expected a journalist to have investigated such matters as whether, for example, the baby was being exclusively breastfed prior to the Family Court hearing, whether the baby had been with the mother at the time of the application by the father, and also to have explored and explained the circumstances that had necessitated Family Court involvement. Judge McMeeken did recall that there had in fact been some discussion about the media coming to court on 9 February, but that the media had not taken that opportunity. The judge surmised that the failure to attend was because listening to the facts of the case "…would have ruined the slant of the story" and would have completely countered the serious and sensational allegations of a breastfeeding mother having had her child "ripped from the breast".

While at the time of the coverage, a TVNZ spokeswoman had been quoted as saying that the "…story was in the public interest, and was both fair and balanced", and that the court "…was approached for comment at the time, but did not respond",[148] Judge McMeeken said that neither she nor anyone else had been approached for the judgment or information on the background to the case. On a scale of 1

146 As reported in 'Principal Family Court Judge concerned at media cover'. Retrieved 23 February 2006 from www.stuff.co.nzwww.stuff.co.nz
147 See Appendix 2.
148 See Appendix 2.

to 10, with 1 being 'not balanced at all', the judge would have ranked this broadcast at '1'.

Although the negative evaluation of Judge McMeeken might appear somewhat extreme, it could be postulated that any fair-minded person undertaking an objective examination of the significant facts of the case would reach much the same conclusion. Even a cursory perusal of the various delivered judgments and minutes on the court files would reveal that the TVNZ broadcast did indeed seriously misrepresent the true situation. The narrative of the true facts, as they emerge from the available court files,[149] is as follows.

On 4 January 2006, the father of a baby had made an *ex parte* application for a parenting order on the basis that the mother had left home on 31 December 2005, abandoning both the baby and an older child to his care and had then later taken away the older child while at an arranged meeting. A parenting order was granted in the father's favour and a lawyer for the child was appointed. On 5 January, the mother, having been served with the relevant papers, made her own application to have the 4 January order set aside and an interim order made in her favour. In her affidavit the mother deposed that she had seen the baby for about 10 minutes on 2 January, but she did not suggest that she had sought contact or that contact had been denied. She also deposed, in an affidavit in support of a parenting order, that the baby was still being partly breastfed and that she was the one who got up at night for him "…even though he is bottle-fed at night". In her application to set aside the interim order, however, she deposed that the baby was being breastfed at night so he slept better.

On 10 January, Judge McMeeken discharged the 4 January order, and an interim shared-parenting order was made whereby the children were to spend three days a week with the mother and four days a week with the father. On an urgent basis, the parents were referred by the judge to specialist counselling. In directions, confirmed on 13 January, Judge McMeeken noted there was a dispute about the extent to which the child had been demand breastfed both prior to separation and indeed afterwards. Her Honour was satisfied, though, that it was clear that the mother had gone out on New Year's evening, had not returned to feed the baby and had seemingly taken no steps to spend time with him. The judge held that it, therefore, appeared from the evidence that the baby had not been breastfed from sometime on 31 December until 7 January. On 9 February the parents reached some sort of agreement. The father was to have care of the older child from 1pm Sunday to 10am Thursday and care of the baby from 1pm Sunday to 1pm Tuesday, with the mother providing expressed milk. It was acknowledged, though, that the baby could drink formula milk as in the past. Orders to implement this agreement were made by Judge Moran and an interim care hearing was confirmed to be scheduled for 17 February.

In its 12 February broadcast, TVNZ failed to make reference to critically important facts from the above narrative: most especially, the mother's abandonment of her baby on New Year's Eve and her subsequent failure to return. Nor did the television broadcaster provide any subsequent coverage of the proceedings in the case. Five days after the broadcast, the mother and father were to request that their fixture be vacated, as a consent memorandum had been entered into. At that hearing, on 17 February, Judge Moran said she was perfectly satisfied that the consent was true, with the mother confirming there had been no undue pressure or duress. The 9 February orders were therefore confirmed, with a period of review scheduled for three months later.

With reference to that ultimate outcome, Judge McMeeken said she was saddened the media had failed to highlight what could have been perceived to be a positive final resolution in the case, ie a highly inflamed situation being resolved through the parties' consent within six weeks from the first application. In Judge McMeeken's view, these particular proceedings could, at least to some extent, have been portrayed as a success story for the Family Court mechanisms. The chosen slant of Family

149 See *P v R* (Family Court, Christchurch, Fam-2004-009-000231) (i) Oral Judgment of Judge McMeeken 10 January 2006, (ii) In Chambers Minute of Judge McMeeken, 13 January 2006, (iii) Minute of Judge Moran, 9 February 2006 and (iv) Judgment of Judge Moran, 17 February 2006.

Court ineptitude, she said, was therefore very concerning and had resulted in an unfortunate public impact. The broadcast had led, so the judge related, to a number of telephone calls to the Family Court from mothers worried about their personal situations and querying whether they would have breastfed babies placed out of their care.

The judge had fewer, though still somewhat critical, comments to make about the article in the *Christchurch Press*. She explained that she had declined to provide a photo to the newspaper for the report and that the *Christchurch Press* article had decided to describe her physical appearance. The particular paragraph penned by the journalist read as follows:

> I begin Wednesday in the list court presided over by Judge Jane McMeeken, a tall athletic woman wearing a matching light brown skirt and jacket. With red-framed glasses and a bronze gold necklace over a black top, she has a brisk no-nonsense demeanour but shows herself to be impressively tolerant and non-patronising given the sad flotsam and jetsam which wash up in her court.

Judge McMeeken considered this approach verged on the sexist, as in her view it was very unlikely a male judge's attire or physique would be subjected to such descriptive analysis. She further commented that the reporter had made some personalised comments about the parties which were "not necessary and detracted from the purpose of the article". Taking a wider view of the article, Judge McMeeken considered a much better overview of the court might have been obtained had the journalist observed the court over a period of six to eight weeks. The judge did accept, though, from general feedback she had heard, that the article as a whole on the list court had been both interesting and educative for non-lawyer members of the public.

Finally, by way of a general observation, the judge declared herself to be a strong believer in the potential "huge educative role" for the media. She instanced the issue of relocation disputes and how presently many intelligent people did not know or understand that a primary caregiver of children is unable in law to move to new centres within New Zealand or overseas at whim. She also added that there were some extremely interesting cases and life stories unfolding in the Family Court which the wider public would be very interested in hearing about. Finally, in terms of improving court reporting for the future, the judge recommended the inclusion of material on the Family Court in the various journalism training courses.

### 3.3.4 Judge Clarkson's views

A relationship property decision of Judge Clarkson, in which her Honour declined to make a compensatory order under s.15 of the Property (Relationships) Act 1976, became the subject of intense, albeit brief media interest in March 2006.[150] In this case a wife had sought a compensatory award of $1.72 million and had argued, unsuccessfully, that having regard to her academic and working record she would have risen to the same financial heights and earning capacity had she not stopped working to become the primary caregiver of the parties' two children. On 12 March the *Sunday Star Times* devoted a full two-page article, editorial and part of the front page to Judge Clarkson's decision, and following that publication some discussion on radio stations also ensued. Although this case did not concern Care of Children Act 2004 proceedings, it was decided an interview with Judge Clarkson could provide valuable contextual material and Judge Clarkson agreed to be interviewed five days after the *Sunday Star Times* publication.

The front page coverage of the *Sunday Star Times* had featured the headline 'Stay-at-home mum's $1.7m claim thrown out – Judge slammed for devaluing homemakers', and the article had quoted University of Otago's Dean of Law, Professor M. Henaghan, as saying that the decision devalued the home-maker's role. The ensuing two-page coverage in the 'Focus' section, headlined 'Till dosh us do

150 Reported as *X v X [Economic Disparity]* [2006] NZFLR 361.

part', included comment from not only Professor Henaghan and another family law academic, Professor Atkin (who was quoted as saying that Judge Clarkson had come to a sensible decision), but also from the parties' two counsels and a further leading family-law practitioner. The article did contain the occasional journalistic flourish, for example "[J]udge Clarkson … lobbed a grenade into a live battlefield – whether women should work or stay at home". There were also some personalised comments, such as "[i]nterestingly, the main players in the case were all mothers who had chosen to go back to work – the lawyers representing Mr and Mrs X as well as the judge". At the foot of the article there was a short section summarising the scope of s.15, as it had been interpreted to date by the court.

The editorial in the newspaper, headed 'Ruling sends signal to mothers', argued, inter alia, that the decision appeared to "…be in line with Prime Minister Helen Clark's 'state of the nation' premise last year that New Zealand needs more mothers to return to the workforce and that they should be provided with the dawn-to-dusk childcare options that would enable them to do so". The editorial continued "[o]ne can but imagine the terrified frisson that Judge Clarkson's decision will cause around the tennis courts and hair salons of Fendalton and Remuera – and the palpable relief in the Northern Club".

In comment, Judge Clarkson said she had particular difficulty with both the front page headline and the editorial. She considered that not only was the particular content unbalanced and "completely out of proportion to the context" but that it was also the type of material people would often most easily recall. The judge thought that the journalist had done an overall 'good job' in the writing of the full article. However, she questioned whether it was appropriate for the article to include personalising comments about the fact that she was a working mother or to accuse her of having 'lobbed a grenade', given that there was no comment in the judgment about whether the particular mother should have worked. In similar vein, Judge Clarkson challenged the assumption in the editorial that her personal views were aligned to Helen Clark's earlier reported statements. She dryly observed that any such assumption "happens to be wrong".

More generally, the judge felt the journalist could have usefully highlighted that this specific case was highly exceptional in its nature, with only a handful of people in New Zealand earning as much as the respondent father. In the judge's view, it would have been more valuable for the public to have been informed of some of the more generic points made in the judgment, such as the imperative need for a claimant to provide evidence of his or her potential earning capacity. Judge Clarkson also thought it would have been useful for the media to have considered other cases decided by her before reaching any conclusions as to her assumed philosophy. She said she would 'hate' to think the obiter (ie hypothetical) observations in this exceptional case were perceived by the public to be pertinent to other cases where there was a genuine claim and need for compensation. The judge was also intrigued as to how the two parties felt about this publicity, though she wondered whether the original approach to the *Sunday Star Times* might not have come from one of the parties.

Judge Clarkson explained that the *Sunday Star Times* had sought a copy of her judgment,[151] and that she had been happy to release this on an anonymised basis. She was of the belief, though, that it was virtually impossible to get the flavour of the court by reading a judgment. Ideally, she said, a journalist needed to be physically present to see how a case was run and to hear the evidence.

In wider comment on the media and openness, Judge Clarkson, recently retired but holding a temporary warrant, remarked she had done a 'flip flop' on the general question of openness of the court to the media. Eight years ago, she said, she would have favoured a greater degree of openness, but by 2004 she had reached the conclusion that openness would be more for her personal benefit as

151 The judgment itself had been delivered many weeks prior to the article, on 26 January 2006.

a judge (by revealing the 'bad stuff' was not true), than for the benefit of the court system generally or the child. Elaborating on why she considered the court system itself would not be benefited, she argued that in contrast to the 1980s when the media had run positive stories on what was seen to be an enlightened court, the Family Court was no longer 'flavour of the month' and the media apparently now only had an interest in reporting where a negative angle was perceived.

## 3.4 The judges' general conclusions

While Judge Clarkson's personal doubts on the merits of openness were not shared by the majority of her judicial brethren, as seen from the July 2006 survey responses, her analysis of the media's desire to seek a negative slant on reporting is much more widely endorsed. In the July survey a significant number of judges had speculated that the failure to attend hearings suggested that the media was interested only in the newsworthiness of the claims by detractors of the court and was seemingly quite uninterested in the court itself.

Of course, the most visible and vocal detractors of the Family Court in recent years have been fathers' rights activists, and a large number of respondent judges expressed their frustration at the negative publicity about the Family Court originating from such sources when there had been so few media applications to attend the court and so little media effort to explain the workings of the Family Court. As one judge observed, a knowledge of some of the backgrounds of the activists would suggest that the public needed full and balanced reporting rather than the continuing portrayal of the men as victims. Another comment typified the views of many respondents: "[m]any of the myths and misconceptions around the functioning of the Family Court will be dispelled if good media coverage is provided".

Towards this end, one judge had actually taken the initiative to meet the editor and a senior staff member from his provincial town's newspaper in order to ascertain the paper's expectations and needs, but he soon discovered that there was seen to be no news benefit in reportage, because of the prohibition on identifying details. Another judge had contemplated initiating an invitation to the media to attend one particular Family Court hearing but had then decided that this would not be a proper initiative for the judge to take. Commenting on the dearth of media interest in the Family Court it was observed by one respondent that the same lack of media interest is also evident in the reporting of civil cases, where names of those appearing is available in advance. In this judge's opinion, the lack of interest is simply attributable to a culture " …where celebrities are of more interest than issues".

There was, though, a palpable sense of disappointment at the media's failure to attend and, consistent with Judge Clarkson's observations, many judges were clearly extremely keen to shed the negative image of a 'secret' court. Typical comments recorded in the survey responses were: "[i]t's a pity the media have not backed up their historical clamour for openness by visiting our court", and "[i]t is frustrating that some sections of the media continue to represent the Family Court as some sort of 'Star Chamber' while at the same time few media outlets seek to exercise their rights under s.137 of the Care of Children Act 2004".

In the few cases where the media did attend the court, the judges concerned were generally quite satisfied with the ensuing media coverage of the particular proceedings, though it will be remembered that Judge McMeeken did have concerns about personalised comments on both her appearance and clothing and that of the parties. On the few occasions the media have attended the court, the experience has been perceived by all judges concerned to be either positive or neutral. And one judge observed how attendance can be invaluable for the journalist who sits and listens to the proceedings. In an Auckland case where a journalist had attended a two-day hearing, the judge reported that the journalist had commented how valuable the experience had been and how the journalist had felt the interests of the parties were well protected in the court process.[152]

While it always seemed ironic that the first step towards opening up the Family Court should be in the context of parenting disputes, which in the minds of many should have been regarded as the most private proceedings of all given the paramount consideration of the children's welfare (Burrows, 2005), it is obvious that the principle of openness has received strong widespread support from the great majority of New Zealand Family Court judges. High Court support for the statutory relaxations is also evident in the judgment of Justice Priestley in *Brown v Argyll*.[153]

This pervasive judicial enthusiasm for openness is in fact part of an international trend. In their unanimous landmark decision, *C v C*[154] the English Court of Appeal in 2006 held that a fathers' rights activist, who had been in dispute for three years with his wife, was to be allowed to talk openly in the media about his case following the termination of proceedings. With reference to the particular English statutory framework, Sir Mark Potter, President of the Family Division announced that thenceforth it would be appropriate for courts to consider at the end of the proceedings whether or not there was an outstanding welfare issue which needed to be addressed by a continuing order for anonymity.[155] Lord Justice Wall, agreeing with the judgment of President Potter, intimated that there were unlikely to be many cases in which the protection of anonymity would be required,[156] although both judges acknowledged there might still be cases where publicity could not be allowed as it could harm or distress the child.

Alongside that significant judicial development are recent initiatives of the British Government. In July 2006 the Secretary of State for Constitutional Affairs, Harriet Harman, released a consultation paper which contained proposals for greater media access to family hearings (DCA, 2006). Reference in that paper is made, inter alia, to the New Zealand reforms and Principal Family Court Judge Boshier is quoted as saying that "…the bother we continue to have with the media is in cases where they don't go to court at all, but rather just rely on the report of a litigant that they've been badly treated".

This manifest failure of the New Zealand media to attend the Family Court, analysed throughout this report, is in fact entirely consistent with the experience in Australia. Although the Australian Family Court has been open to the public and media since 1983, the media attendance was recently described as infrequent at best,[157] and, staggeringly, the misconception apparently remains in the community that the Family Court is a 'secret' court.[158] While in the British consultation paper Dame Sian Elias is quoted as saying that the openness provisions of the Care of Children Act 2004 had "…quite radically changed the public perception of our court" and that the previous criticism of the Family Court generally and of its secrecy had "…all but ceased" (DCA, 2006), the experience in both Australia and New Zealand to date does not give cause for excessive optimism.[159]

152 See also the comments of a *Christchurch Press* journalist who, having followed a day in the Christchurch Court, wondered whether radical father groups "…understand the complexities the court deals with". The *Christchurch Press*, 20 May 2006, A 13.
153 [2006] NZFLR 705, at para [4], per Justice Priestley.
154 [2006] EWCA Civ 878.
155 Ibid, at para [77].
156 Ibid, at para [145].
157 See the comments of the Australian Family Court's media manager, as reported in Burrows (2006).
158 Ibid.
159 In this context see the comment by Jackson, Tichbon and Roberts, representing the Equal Parental Rights Working Party that "[n]ow the Family Court is widely held in contempt by the public as more and more people learn of the ludicrous decisions coming out of the secret court…" [2006] NZLJ 242.

# 4. GENERAL CONSTRAINTS ON REPORTING OF THE FAMILY COURT

## 4.1 Introduction

While the media can now fully exercise the important function in a democracy of informing the citizen about the processes and outcomes of custody cases heard in the Family Court, there remains a potential for journalists and broadcasters to behave unfairly, offensively or excessively by, for example, invading privacy, damaging reputations and conducting partisan campaigns. The general law of privacy and defamation may have impact in this area, although such civil actions require stamina and adequate funding for possibly protracted court proceedings (Burrows and Cheer, 2005). Furthermore, both of these forms of action depend on identification of the plaintiff and are therefore unlikely to arise from reports of the Family Court which meet the identification concealment requirements, unless a mistake occurs.[160] However, where the discretionary power under s.139(2) of the Care of Children Act 2004 has been exercised to allow reporting with identifying particulars, then the torts may be engaged. But as concerns about media behaviour of this kind are often more appropriately dealt with at a lower level of regulation, this part of the paper will focus on the different public complaints regimes which apply to different media. Complaints relating to radio and television are provided for in a statutory regime under the Broadcasting Act 1989, which set up the Broadcasting Standards Authority (BSA), and provided for codes of practice developed by broadcasters themselves. In contrast, the print media regulates itself through the Press Council, a private body funded by newspaper proprietors and journalists through their unions. However, the council does not have total coverage of the print media nor does it have any legal powers. This chapter contains an analysis of the possible impact of these two bodies on the newly allowed reporting of the Family Court.

## 4.2 The Broadcasting Standards Authority

### 4.2.1 Background

The Broadcasting Act 1989 provides that every broadcaster is responsible for maintaining, in programmes and their presentation, standards which are consistent with:[161]

(a) the observance of good taste and decency
(b) the maintenance of law and order
(c) the privacy of the individual
(d) the principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest
(e) any approved code of broadcasting practice applying to the programmes.

Complaints are made in the first instance to the broadcaster concerned. Thus, the Act provides that every broadcaster is under a duty to receive and consider complaints about programmes which are alleged to have failed to comply with the standards set out in the codes.[162] If the complainant is not satisfied with the decision or action taken, the complainant may refer the complaint to the Broadcasting Standards Authority (BSA).[163] If the complaint relates to alleged infringement of privacy, the complainant may elect to complain direct to the BSA in the first instance.[164] If the BSA decides a complaint is justified, it has considerable powers of enforcement. It may do any of the following:[165]

160 There is some doubt in the developing law of privacy as to whether identification is required, though this has yet to be finally decided: *L v G* [2002] NZAR 495.
161 Broadcasting Act 1989, s.4(l). See *Ransfield v The Radio Network Ltd* (Unreported, High Court, Wellington, CIV-2003-404-569, 11 June 2004).
162 Broadcasting Act 1989, s.6.
163 Ibid s.8.
164 Ibid s.8(c).
165 Ibid s.13.

(a) It may direct the broadcaster to publish a statement approved by the Authority.
(b) It may direct the broadcaster to refrain from broadcasting at all, or from broadcasting advertising programmes, for a period up to 24 hours.
(c) It may refer the complaint back to the broadcaster.
(d) If it finds the broadcaster has failed to maintain standards that are consistent with the privacy of an individual, it may order the broadcaster to pay the individual compensation of up to $5,000.

Failure to comply with an order is an offence which renders the broadcaster liable to a fine of $100,000.[166]

Decisions of the BSA may be appealed to the High Court, which will treat the decisions as if they were made in the exercise of a discretion.[167] This means that the appellant must establish that the Authority acted on a wrong principle, failed to take into account a relevant matter or had regard to an irrelevant matter or was plainly wrong.[168] The court may confirm, modify or reverse the decision or order made, or any part of it.[169] It may also send the decision back to the Authority for reconsideration.[170]

Complaints made to the BSA are usually based on breach of a code developed between it and broadcasters. There are currently four codes. They cover free-to-air television, pay television, radio and election programmes. The content of the codes which might be relevant to Family Court reporting regulates privacy, the protection of children, fairness, lack of balance and factual errors.[171] These standards will now be discussed.

### 4.2.2 Privacy protection

Perhaps the most obvious broadcasting standards which might be infringed by media in reporting the Family Court are those relating to privacy. The BSA has no specific code relating to privacy. However, it has developed a set of Privacy Principles, which are referred and appended to in the codes.[172] The main Privacy Principle, much like the tort of invasion of privacy, proscribes the public disclosure of private facts, where the disclosure is highly offensive to an objective reasonable person. However, the principles do not generally prevent the filming or photographing of a person in a public place. In theory, then, the filming of a person giving evidence in a Family Court, or being interviewed elsewhere with permission, would be possible, but might well breach the principles if the person was breaking down or behaving in a violent or embarrassing way, so that the filming generally disclosed private facts and disclosure was highly offensive.

Furthermore, the Privacy Principles take more cognisance of the special vulnerability of children than the tort of invasion of privacy currently does.[173] While it is a defence to a privacy complaint that the individual whose privacy is allegedly infringed by the disclosure gave his or her informed consent, and a guardian of a child can consent on behalf of a child, even when informed consent has been obtained, children's vulnerability must be taken into account by broadcasters. Broadcasters must go beyond the consent and satisfy themselves that the broadcast is in the child's best interests.[174] Thus, although an interview with a child now appears possible under the Care of Children Act 2004,[175] the broadcast may still be the subject of a later complaint to the BSA.

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166 Ibid s.14.
167 A complainant becomes a respondent when a broadcaster appeals an Authority decision: *Moonen v BSA* (Unreported, High Court, Wellington, AP 298/94, 30 May 1995). However, a respondent may also choose not to be involved in High Court proceedings, in which case the court may appoint a 'friend of the court' to argue particular points where necessary (BSA, 2004) and www.bsa.govt.nz Complaints.
168 *TV3 v The Prime Minister (Rt Hon Helen Clark)* (Unreported, High Court, Wellington, CIV-2003-485-1655 & 1816, 10 February 2004, para 8).
169 Broadcasting Act 1989, s.18.
170 This power was said to be implied in s.18 by the High Court in *TV3 v The Prime Minister (Rt Hon Helen Clark)* (Unreported, High Court, Wellington, CIV-2003-485-1655 & 1816, 10 February 2004, paras 27-30).
171 Broadcasting Act 1989, s.21(l)(e).
172 See Radio Code: Principle 3, Free-Air TV Code: Standard 3, and Pay TV Code: Standard P9. For the Privacy Principles, see www.bsa.govt.nz/codesstandards-privacy.php
173 See *Hosking v Runting* [2005] 1 NZLR 1, at [121].
174 See Privacy Principles, www.bsa.govt.nz/codesstandards-privacy.php . The Free-to-Air Television Code also requires that broadcasters recognise the rights of children and young people not to be exploited, humiliated or unnecessarily identified: see Standard 9, Guideline 9i.
175 See 3.2.6.2 above.

However, it should be rare for a privacy complaint about Family Court reporting to arise under the Privacy Principles because the BSA requires that the broadcast positively identifies an individual whose privacy is said to have been breached.[176] This will most likely occur where the court has exercised the discretion under s.139(2) of the Act to allow reporting and identification. If, as is more likely, the discretion has not been exercised, and the media has complied with requirements for non-identification, breach of privacy will not be an issue. Nonetheless, some thought has to be put into the matter. Simply removing the participants' names and pixelating faces may be insufficient to prevent identification for the purposes of a complaint to the BSA (and may breach the Act). Some of the BSA decisions illustrate the difficulties faced by the media in this area, especially given that reporting of proceedings can now be interpreted widely to include diverse documents and interviews outside of actual court hearings.[177]

In most BSA cases,[178] the starting point is that a person is not identified if identifiable only by a limited number of people such as family and close friends (Zwaga, Stace and Brunton, 2004). However, identification in another context may support a complaint. In one case,[179] a television programme about theft in the workplace was alleged to identify the complainant's son by showing his legs and lower body in surveillance footage, together with a brief shot of his face pixelated, and with identification of the owner of the business where he worked. The Authority thought that a small number of people in the industry might have linked the programme to the complainant's son. Although the degree of identification was, ultimately, insufficient in this case, the decision suggests workplace identification or within an industry could be sufficient were the extent of identification greater than in this case.

It is clear then, that the Authority does not require that the individual be named for identification to be possible. It is accepted, for example, that a distinctive accent may be sufficient to identify a person,[180] or exterior shots of their home, together with identification of the city involved.[181] Furthermore, the nature of the information can be relevant to the issue of identification. In *Anonymous v TVNZ*,[182] a complex approach was taken. There were no pictures at all of the complainant in the relevant item, but a mother argued that she was identifiable solely through the pictures of her baby which were screened without her consent. TVNZ had ensured that visuals which were broadcast were fleeting and did not reveal more than parts of the baby's face and body. The Authority was divided in its opinion about whether the baby was identified, but a majority concluded that the baby and therefore the complainant would have been identifiable to a circle including family, close friends and acquaintances of the complainant. Ordinarily, this would not have constituted identification. However, the majority considered that it was unlikely that all those who were in the group of people who could have identified the complainant and her baby would have known about the personal information discussed in the item, which involved alleged drug-taking by the mother. Therefore, in this decision, the nature of the information rendered identification to a close circle of family and friends adequate and this aspect of the complaint was upheld.

It seems that identity traps for the media lie in mistakenly identifying the parties, either through failure of pixilation, the accidental release of names, or through combining detail from court reporting with outside detail or visuals which might allow parties involved to be identified sufficiently. In such cases, media will not only be breaching the conditions of reporting, but may also be infringing privacy in terms of the BSA Codes of Practice.[183] It is unclear whether the BSA would interpret the broadcast following such identification as an automatic breach of privacy given the nature of Family Court proceedings and the reasons behind the Care of Children Act 2004 prohibitions, but this is certainly a possibility. Although the Privacy Principles provide for a defence of public interest, defined as a matter

176 BSA Decision *Jobe v TVNZ* 2002-205.
177 See 3.2.6 above.
178 BSA Decision *Khan v TVNZ* 2001-236.
179 BSA Decision *R v TV3* 2000-179.
180 BSA Decision *PD v The Radio Network* 2001-104.
181 BSA Decision *Toomer v TVNZ* 2006-013 (this complaint was upheld on fairness grounds – see 4.2.3 below).
182 2004-106/107.
183 See eg, BSA Decision *JB v Television New Zealand Ltd* 2006-090.

which is of legitimate concern or interest to the public,[184] this would be of little use in the face of the greater public interest which has been statutorily recognised to exist in generally protecting the identities of those involved in Family Court proceedings.

### 4.2.3 Fairness

The fairness standards are broad and may not depend on identification.[185] Hence, these standards may have more impact on broadcast media reporting the Family Court. A broadcast will invariably be unfair if it fails to give a party adversely affected by it or presented in a bad light an opportunity to give their side of the story.[186] For Family Court reporting, this may apply not only to how participants in specific legal proceedings are dealt with, but also to stories which are critical of the Family Court itself. For example, in *Auckland Trotting Club v TVNZ*,[187] serious allegations of mal-administration and corruption against the Trotting Club and its president in a current affairs programme were found to be unfair because although the presenter concluded by reading a letter from the Club's solicitors, this did no more than advise that the matter was being looked into. Additionally, the programme focused on the president and obtained a last minute response from him, but not the club. Broadcasters should, therefore, ensure not only that they give the parties reported about a right of reply, but also that this is given to the appropriate person.[188]

Two recent high-profile decisions, one arising from a television broadcast, and one from a radio broadcast, usefully illustrate many aspects of the fairness requirement. An election was held in New Zealand in 2002 and at the time of the general election campaign, a book was published which made allegations the Labour Government had known of an accidental distribution of genetically modified corn. TV3 broadcast a special programme on the book, which included an interview with the book's author and the Prime Minister (the incident became known as 'Corngate'). However, the interview with the Prime Minister had been pre-recorded the day before the book was published and she had not been told about the book or its author. By the time the programme was broadcast, the allegations in the book had received wide coverage. The BSA held that the interview had not been fair to the Prime Minister, because she had not been advised of the source of the allegations she was asked to comment on, nor had she been advised that the book's author had presented his conclusions on the programme before her.[189] However, the Authority did not find the assertive and challenging conduct of the interviewer (interview techniques) to be unfair. On appeal,[190] the High Court found that the BSA had properly reached its decision about fairness and balance in the presentation of programmes, emphasising that the programme itself and its preparation was to be judged, not other material broadcast on the topic. As to impartiality, the High Court also upheld the BSA decision, finding the context of an election campaign in which serious allegations had been made required a forceful challenge for both accuser and accused to establish an even-handed approach. Any other brief coverage and the offer of another interview (after the publication of the book had been disclosed) did not fix the lack of impartiality in the original interview. The BSA had reached its conclusion based on a proper analysis of the facts and law.

This decision illustrates that serious allegations made in a broadcast require forceful (though not necessarily aggressive) challenges in interviews, especially if they are uncorroborated, hearsay or made by unidentified parties. If parties who are the subject of the allegations are given an opportunity to be interviewed, the offer of an interview must be a reasonable one so that there is no element of surprise. The individual should be advised of the purpose of the interview unless reasons of public interest

184 See Privacy Principles, www.bsa.govt.nz/codesstandards-privacy.php
185 See Radio Code: Principle 5, Free-to-Air TV Code: Standard 6, and Pay TV Code: Standard P7.
186 BSA Decision *Diocese of Dunedin v TV3* 1999-125/137 is a particularly clear example, where the Authority concluded that TV3 decided to broadcast footage because it had a copy of a tape and wished to expose the subject and because it found publication of the tape's salacious content was irresistible. See also *Smith v TV3* 2003-006.
187 BSA Decision 1995-010. See also: BSA Decisions *New Zealand Fire Service v TV3* 1996-182; *Royal Australasian College of Surgeons and Healthcare Otago v TV3* 1996-106-109; *Sawyers v TVNZ* 1996-155-157; *New Zealand Police v TV3* 1997-160; *Arnesen v TVNZ* 1997-100-101; *Kearney v TVNZ* 1997-127; *Department of Conservation v Radio Pacific Ltd* 1998-035-036.
188 See also BSA Decision *Ngati Pukenga Iwi v TVNZ* 2003-109.
189 BSA Decision *The Prime Minister (Rt Hon Helen Clark) v TV3* 2003-055-061.
190 *TV3 v The Prime Minister (Rt Hon Helen Clark)* (Unreported, High Court, Wellington, CIV-2003-485-1655 & 1816, 10 February 2004, paras [7-8]).

prevent this. The fact that a party refuses to be interviewed does not excuse the broadcaster from meeting its code obligations.

In *Ellis v Radio New Zealand*[191] the Authority considered the broadcast of a pre-recorded interview conducted three days earlier, in which a young man made allegations which suggested that childcare worker, Peter Ellis, convicted of sexual offences against children in 1993, had also sexually abused him. The Authority found that the interview breached the requirement of the radio code that persons taking part in programmes be dealt with justly and fairly. It stated as a general principle that any programme in which unidentified accusers allege that an identified person has committed serious but unspecified criminal offences is likely to be inherently unfair to the accused.

Proof of guilt is not required before allegations against a person are broadcast, provided that the broadcast otherwise complies with broadcasting standards.[192] However, allegations must not be baseless or completely uncorroborated. Regardless of opportunities offered to the subject of such allegations to present the other point of view, allegations of such a nature were described in the *Ellis* case by the Authority as generally impossible to defend. Peter Ellis had been offered the opportunity to take part in a 'sympathetic' interview on the day of the broadcast, but RNZ did not disclose to him the nature of the allegations which were to be broadcast. The Authority implied a requirement into the radio code that contributors or participants in programmes be informed of the reason for their taking part and the role expected of them, unless reasons of public interest prevent this. No such reasons were found in relation to Mr Ellis. Furthermore, any invitation to be interviewed must be reasonable. The invitation here was not to allow Mr Ellis to comment on the allegations, but for a sympathetic interview, which meant he would have been surprised by the allegations and unable to defend them.[193]

There is some obligation on interviewers to seriously challenge important discrepancies if they are aware of them. In the *Ellis* case, the interviewer was aware of discrepancies before the interview and did not mount such a challenge.[194] Therefore, further investigation is necessary before broadcasting statements which are uncorroborated hearsay. Although Radio New Zealand (RNZ) argued that imposing these requirements meant interfering with editorial style in broadcasting, the Authority noted that editorial style was not necessarily off-limits in terms of complying with broadcasting standards. In this case, the choice of editorial style placed an even stronger obligation on RNZ to present an alternative point of view, and because it had not done so, a breach of the standards had occurred.[195]

Finally, the fact that a complainant has rejected an invitation to be interviewed does not, of itself, relieve a broadcaster of obligations under the code. Mr Ellis had refused an invitation to be interviewed in this case (such invitation being unfair and unreasonable in any event). However, this was seen by the Authority as presenting a new challenge for the broadcaster to behave fairly.[196]

It is also clear that the requirement to deal justly and fairly will be breached when a presenter adopts an inappropriate partisan response. In *Miller and Smith v TVNZ*[197] the BSA considered a studio debate between the presenter and two MPs. One MP had written a book and was asked to defend the contents of it. In considering the matter, the BSA took into account the structure of the discussion, the roles of the guests, the tone of the discussion and the presenter's role. It concluded there was a breach of the fairness standard because although the author was given an opportunity to describe the book, the item quickly degenerated into a pointless squabble in which both the presenter and the other guest attacked the author. The presenter did not ensure a balanced and fair discussion took

191 BSA Decision 2004-115. In this case, the Authority considered the issues raised were so important, it co-opted Christopher Toogood QC to assist it in its deliberations, though Mr Toogood of course had no voting rights: Ibid, para [119].
192 BSA Decision *Shields v TV3* 2000-106-107.
193 Ibid, at para [125].
194 Ibid.
195 Ibid, at paras [126–127].
196 Ibid, at para [129].
197 BSA Decision 1997-123-124.

place.[198] Similarly, if a presenter reacts strongly and inaccurately to a stance taken by an interviewee, the fairness standard may be breached.[199]

Substantially misreporting events may also breach the fairness requirement. In *Gall v TVNZ*[200] a closing headline in a news summary suggested that a hui discussed during the main news item "disintegrated into conflict and name-calling" when the main item did not support this, nor did any later evidence about the event. TVNZ was required to deal justly and fairly with those who organised and attended the hui, and in misrepresenting the conduct of the hui, the closing headline breached the requirement.[201] Failing to raise doubt about the accuracy of statements made by interviewees when a broadcaster is aware these have been challenged may also give rise to unfairness.[202]

A recent radio broadcast illustrates very clearly how the fairness standard may apply in the context of Family Court reporting. Early in 2006, National Radio carried an in-depth interview with an Auckland mother involved in a long-running custody dispute in the Family Court. This interview dealt with the woman's experience of the custody proceedings and contained many unanswered allegations made by her about alleged incompetence of social workers, particular Family Court judges and by implication, the Family Court.[203] No other party involved in the proceedings was interviewed, nor was any representative of the Family Court. As such, the interview appeared to clearly breach the fairness standards discussed above, because the woman simply gave her side of the story and was assisted in this by the interviewer, who expressed considerable sympathy for her both in question content and tone. Three days later, this apparent breach was corrected by an interview with Principal Family Court Judge, Peter Boshier, in which, having read the relevant files, the judge was able to give further detail of the case without identifying the parties involved.[204] In this interview, the judge emphasised his commitment to openness in the Family Court, but was of the opinion:

> …it's not achieved by one party who's obviously got an enormous commitment to a case and emotional input coming to you and broadcasting their side of the case … the process isn't good accountability and is not good openness.[205]

Judge Boshier went on to comment that the Care of Children Act 2004 encouraged good balanced reporting by the media, not the parties in a case, a charge which is justified and which was not met by the interviewer. But further than this, RNZ not only failed to meet the intent and purpose of the new openness provisions, but may also have laid itself open to a BSA complaint based on lack of fairness. This is because, although the broadcaster stated in the interview that RNZ was in discussions with the father involved in the custody case and with the Family Court, no interview with the former was broadcast, and the contact with the Family Court did not involve any attempt to obtain the other side of the story. It appears that the Family Court was merely informed that the interview with 'Rose' was to be broadcast, but was not invited to actively participate in the discussion. The Principal Family Court Judge was interviewed a few days later only after actively seeking an opportunity to be heard.[206] Further, it is even more likely that the 'breast-feeding baby' story broadcast by TVNZ early in 2006 could have been the subject of a similar complaint about lack of fairness, as it focused exclusively on the mother's perspective, did not give full information and did not report on the outcome of the case.[207]

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198 Cf BSA Decision *McLean v TVNZ* 1998-001.
199 BSA Decision *Carapiet v TVNZ* 2004-041.
200 BSA Decision *Carapiet v TVNZ* 2004-041.
201 BSA Decision 2004-040.
202 See also BSA Decision *Moore v TVNZ* 2004-009.
203 BSA Decision *TVNZ v TV3* 1999-042.
204 RNZ interview between Linda Clark and 'Rose', 31 January 2006. See Appendix 3.
205 RNZ interview, Linda Clark with Chief Judge Peter Boshier, 3 February 2006. In contrast to the previous interview with 'Rose', the judge was closely questioned by Ms Clark. See Appendix 4.
206 Ibid.
207 Interview with Judge Boshier, 12 May 2006. See further Boshier (2006a).

### 4.2.4 Accuracy

Clearly, lack of accuracy in broadcasts may overlap with and contribute to a lack of fairness. Therefore, in reporting Family Court matters, broadcasters have an obligation to 'get it right'. Although the accuracy requirements[208] do not cover expressions of opinion[209], and only apply to news, current affairs (television and radio) and other factual programmes (tv), the factual accuracy requirement is absolute.[210] This means even minor and unintentional mistakes will constitute a breach of the standards. Thus, in *Dickson, Dunlop and McMillan v TV3*[211] a documentary which referred to the use of a semi-automatic military style rifle by two murderers, but which showed shots of a person using a fully automatic weapon was held to breach the free-to-air television code, even though the broadcaster had taken steps to eliminate mistakes and the mistake was a genuine one. Further, extravagant, sensationalised and exaggerated claims which cannot be substantiated should not be made. In *Andrews v TV3*[212], the BSA considered a statement made about the Queen Mother – "the matriarch of the world's most dysfunctional family is resting tonight". This was broadcast on a current affairs programme and was inaccurate because it was stated without qualification. The BSA felt compelled to uphold the complaint although with some reluctance.[213] Matters of excuse such as intention to mislead, carelessness and degree of inaccuracy are relevant to any order made, however.[214]

Broadcasters should also take care not to report implications as explicitly stated facts. In *Associate Minister of Health (the Hon Jim Anderton) v Radio NZ*[215] the Authority concluded that in an interview with Mr Anderton about a possible ban on a particular drug, he gave the impression, but did not state explicitly, that the main source of the drugs was across the border. Therefore, the statement in a later news item reporting that the Associate Minister had said that *most* of the material involved in the illegal drug manufacture was smuggled into the country was inaccurate.

However, reporting speculative theories without supporting any one in particular is acceptable, because allegations of inaccuracy will be difficult to establish.[216] Furthermore, the Authority will decline to determine complaints as to accuracy when it believes it does not have the relevant expertise required,[217] or where it would be inappropriate for it to do so.[218]

### 4.2.5 Balance and impartiality

Also often connected to fairness and accuracy, balance[219] requires objectivity in the sense that competing arguments must be advanced with sufficient purpose to enable a viewer to arrive at an informed and reasoned opinion.[220] The impact of the broadcast and its contents is taken into account.[221] A defect of balance may be remedied during the programme itself,[222] or in coverage following the offending broadcast, as long as it takes place during a period of current interest.[223]

Once again, the *Ellis* and *Corngate* decision referred to above[224] tell us much about these particular standards. In *Corngate*, the BSA found breaches of the balance requirement in the Free-to-Air Television Code, findings which were later upheld by the High Court.[225] Balance under Standard 4 of the Free-to-Air Television Code requires competing arguments to be advanced during the period of

208 See Radio Code: Principle 6, Free-to-Air TV Code: Standard 5, and Pay TV Code: Standard P8.
209 BSA Decision *Genet v TVNZ* 2004-147.
210 BSA Decisions *Diocese of Dunedin v TV3* 1999-125-137; *Robertson v TVNZ* 2001-087-088; *Boyce v TVNZ* 2002-169; *Carapiet v TVNZ* 2004-041.
211 BSA Decision 1998-025. See also *Dewar v TVNZ* 2005-085.
212 BSA Decision 1996-146.
213 See also BSA Decision *Ministry of Social Development v TVNZ* 2004-067.
214 BSA Decision *Dickson, Dunlop and McMillan v TV3* 1998-025-027.
215 BSA Decision 2004-081.
216 BSA Decision *Boyce v TVNZ* 2002-207.
217 BSA Decision *The Prime Minister (Rt Hon Helen Clark) v TV3* 2003-055-061.
218 BSA Decision *Ellis v Radio NZ* 2004-115.
219 See Radio Code: Principal 4, Free-to-Air TV Code: Standard 4, and Pay TV Code: Standard P6.
220 BSA Decision *The Prime Minister (Rt Hon Helen Clark) v TV3* 2003-055-061. See also *Osmose NZ v TVNZ* 2005-115, *Diocese of Dunedin v TV3* 1999-125-137.
221 Ibid, at para [358].
222 Eg: BSA *Decision Anderson v TVNZ* 2003-028-030.
223 See eg: BSA Decision *Ministry of Health v TVNZ* 2000-030-031.
224 See 4.2.3 above.
225 Unreported, High Court, Wellington, CIV-2003-485-1655 & 1816, 10 February 2004.

current interest to allow viewers to reach informed and reasoned opinions. In this case, significant viewpoints were not advanced during the period to counter the strong effects on accountability and trustworthiness of the Labour Government caused by the interview with the Prime Minister about the distribution of genetically modified corn. The programme was a high impact one which was very important in the context of an ongoing general election campaign. It was heavily promoted and lengthy. The issue of the trustworthiness and accountability of the Government was clearly controversial and of public importance.

In determining whether other coverage has provided balance, this is not done by the use of stopwatch measures or mathematical formulae, nor do other programmes automatically provide it.[226] Each item submitted as providing balance is assessed separately, and then their collective and incremental impact on the debate is determined. In this case, items broadcast during the period of current interest predominantly repeated and elaborated on the initial allegations.[227] A press conference hastily organised by the Government and broadcast before the programme complained about was of minimal weight. Overall, although reasonable balance was provided in relation to scientific concerns, it was not in relation to the issue of government accountability and credibility. Impartiality and objectivity[228] were also tested, and the Authority found this had been breached in that the Prime Minister had been treated much more robustly than the interviewer had treated the author of the book. Further, the programme did not refer to a press conference which had been held by the Prime Minister in response to the publishing of the book and to that extent also lacked objectivity.

*Corngate* illustrates that the standard is interpreted taking into account the impact and timing of the programme and the seriousness of the allegations it contains. The higher the impact and the more serious the allegations, the greater the onus to provide balance. Programmes said to provide balance in the period of current interest are first assessed individually and then cumulatively to determine overall effect. Sheer numbers of broadcasts dealing with the topic will not automatically determine the matter since their content is all-important.

In *Ellis*, the Authority considered that the same defects which made the broadcast fundamentally unfair to the complainant also raised the question of whether it was possible for balance to be achieved, because non-specific allegations by unidentified accusers give the accused nothing of substance to defend. In such circumstances the Authority considered that a balanced broadcast was virtually unattainable. The first matter determined was what controversial matter of public importance required balance. In this case it was not the general Peter Ellis inquiry and the attempts to clear his name, but the new, previously unpublicised, non-specific allegations of serious criminal offending by unidentified accusers against Mr Ellis. The BSA found that the interviewer did not provide balance as she did not make reasonable efforts to present significant points of view, but conducted the interview with Mr Ellis' accuser in a conversational manner and uncritically accepted what he and his mother had to say. The interviewer also passed over opportunities during the interview to probe further on the nature of the allegations or critically assess their validity. As to whether other media comment or coverage provided balance, the Authority rejected this in relation to the new allegations. Given the magnitude, impact and gravity of the allegations, and their inherent unfairness as a result of their vagueness and the accusers' anonymity, the broadcasts and newspaper reports patently did not provide balance. A second offer to Mr Ellis of an opportunity for an interview was unreasonable because it was made too late and in any event, there was nothing of substance for him to defend.

The new allegations were also relevant to the question of whether balance had been provided by other programmes during the "period of current interest". As the allegations did not relate to the general attempts to clear Ellis' name and the ongoing calls for an inquiry into his guilt, there was no ongoing period of current interest in the matter. Furthermore, because the new allegations were of such a

226 BSA Decision *Prime Minister (Rt Hon Helen Clark) v TV3* 2003-055-061.
227 Cf: BSA Decision *Ministry of Health v TVNZ* 2000-030-031.
228 Accuracy Standard 5 of the Free-to-Air Television Code.

serious nature, they required balancing at the same time as they were made, or very close to the time they were made. Finally, the Authority stated that a broadcaster cannot rely on unplanned broadcasts sometime in the future to present the balance that its own broadcast lacks.

The *Ellis* decision demonstrates that an offer of participation in a broadcast does not negate the need to provide balance. A party may reasonably decline to take part in an interview and not lose the right to have their side of the story made known.[229] As a general rule, when a person declines to participate in a broadcast, the broadcaster must make sure that viewers and/or listeners are aware that the matter being discussed is controversial and that there exist other significant perspectives. A straightforward method of achieving this would be for the interviewer to explain the other points of view and possibly adopt a devil's advocate approach. However, balance will be very difficult to achieve by any method where unsubstantiated, vague allegations are raised, unless they are strongly challenged and probed, and a reasonable opportunity to respond is given contemporaneously or within a short time after the allegations are broadcast.

While the RNZ interview with 'Rose' discussed above[230] would probably not have breached the balance standards because balance was provided within the current period of interest by the Principal Family Court Judge, the 'breast-feeding baby' coverage on TVNZ, also discussed above, was not balanced in this way.

It is in fact possible to breach the requirement to deal with a person justly and fairly but comply with the balance standard at the same time. In *Hon Murray McCully v Television New Zealand Ltd*[231] the broadcaster presented a programme dealing with a controversial issue in which Mr McCully was named by two participants. Specific allegations were made about his role as the Minister of Customs which the BSA found justified his being given an opportunity to comment. The BSA agreed it would be absurd to require a broadcaster to show balance in each case where a critical comment is made about a person, but in this case, fairness required it because of the nature of the comments made, the relevance of them to the debate and the fact that there was reasonable time to seek a response. However, TVNZ had complied with the balance standard overall because of the ongoing nature of the debate and the fact that another MP had appeared on the programme addressing general criticism of the department's efforts.[232]

### 4.2.6 Conclusion

The broadcast media is now in a position to take advantage of the new openness of the Family Court. However, it must not do this in such a way as to breach the broadcasting codes administered by the BSA, otherwise it will be exposed to the possibility of complaint and the imposition of sanction. The standards to which broadcasters should turn their minds when reporting Family Court matters require consideration to be given to privacy, fairness, accuracy and balance. The greatest risk of breach of the privacy principles exists where media has been authorised to include identifying details in its reporting. It is less likely that privacy standards will be breached where the broadcaster has been required to strictly protect the identities of those involved in proceedings. However, care will always be required in determining the method of identity protection.

Broadcasters should be particularly mindful of the requirements for fairness, accuracy and balance. One-sided stories tend to have greater dramatic appeal because of their simplicity and do make for compelling viewing or listening, the more so in the Family Court because these cases have a heavy emotional component. However, reporting only one side of a story is fundamentally misleading and hence a failure of the central function of the media – to seek the truth. The BSA codes assist this

229 *RNZ v McCully* [1998] NZAR 293.
230 See 4.2.3 above.
231 BSA Decision 1997-130.
232 The BSA has recently published a report in which broadcasters discussed how they see the balance standards (BSA, 2006).

purpose. Hence broadcasters need to ensure stories about the Family Court and the cases being heard there reflect truthfully and fairly the nature of the disputes involved; present the positions of the parties as accurately and fully as possible; allow those parties to present their viewpoints, in particular where serious allegations are involved; and take account of the vulnerability of all parties, in particular that of children. Further, if reporting on the work of the Family Court itself, the broadcast media should raise allegations of incompetence, bias or unfairness with the court itself and seek a response – it is inadequate to simply advise the court that a broadcast is to take place.

## 4.3 The New Zealand Press Council

### 4.3.1 Introduction

Unlike the BSA, the New Zealand Press Council (Press Council or NZPC) regulates the print media and is a purely voluntary organisation with no legally enforceable punitive powers. The council is sponsored by the Newspaper Publishers' Association, the New Zealand Community Newspapers Association and the media union, the NZ Amalgamated Engineering Printing and Manufacturing Union (EPMU). It has 11 members, the majority of whom are members of the public and its principal objectives are:[233]

1. To consider complaints about the conduct of the Press; to consider complaints by the Press about the conduct of persons and organisations toward the Press; to deal with these complaints in whatever manner might seem practical and appropriate and to record resultant action;
2. To promote the established freedom of the New Zealand Press;
3. To maintain the character of the New Zealand Press in accordance with the highest professional standards.

The first of these objectives has proved the most important and most of the council's time has been taken up in considering complaints. The council has ruled that all complaints against a newspaper must first be made to the newspaper concerned in order to give the editor the opportunity of dealing with the matter at first hand (NZPC, 2005). Complaints may be about publication and non-publication and must be made within three months of the date of publication or when the material ought to have been published. In the investigation of a complaint by the council there is provision for both sides to be heard, and the council conducts the hearing not unlike judicial proceedings. However, the complainant has no entitlement to be represented by a lawyer, and the hearings are not open to the public. The council has no power to fine, or make other orders about costs or correction. The only sanction it imposes is that publishers named in any complaint are expected to publish the council's decision (NZPC, 2002).

Furthermore, as it is a self-regulatory body reliant on the voluntary adherence of members of the print media to its rulings, the council has never had comprehensive coverage. Originally, the council had jurisdiction over nearly all metropolitan and provincial newspapers and the great majority of community newspapers. However, it did not cover magazines which it acknowledged comprise a significant and influential part of print publication. In 1997 the council stated that in the public interest, magazines should be under its jurisdiction and expressed "an active desire to carry forward the changes under contemplation" (NZPC, 1997). Thus, the council began to quietly extend its jurisdiction. The policy now is that the Press Council considers complaints against newspapers, magazines and periodicals in public circulation in New Zealand (including their websites). If the editor of a publication does not respond to the council concerning a complaint, the council will proceed to consider the complaint as best it can in the circumstances. The Complaints Procedure of the council now includes the following statement:

> The Council's mission is to provide a full service to the public in regard to newspapers, magazines or periodicals published in New Zealand (including their

233 The objectives of the Press Council are set out on its website: www.presscouncil.org.nz

> websites) regardless of whether the publisher belongs to an organisation affiliated with the Council. If the publication challenges the jurisdiction of the Council to handle the complaint, or for any other reason does not cooperate, the Council will nevertheless proceed to make a decision as best it is able in the circumstances (NZPC, 2005).

Its adjudications, all of which have been summarised in its annual reports since 1999,[234] constitute a guide to the requirements of ethical print journalism in New Zealand.

### 4.3.2 Principles of the Press Council

*4.3.2.1 Introduction*

The range of complaints dealt with by the council is vast. They include complaints about inaccuracy, distortion and failure to verify facts; lack of balance; unprofessional and unethical conduct; subterfuge; bias; misrepresentation; censorship and suppression of facts; breach of confidence and failure to observe embargoes; the abridgment and editing of letters to the editor and failure to publish such letters; refusal to allow a right of reply; offensive or sensational language, particularly in headlines; unnecessary publication of the names of persons or schools involved in sensitive matters; invasions of privacy; intrusions into private grief; wrongful or unnecessarily upsetting use of photographs; racist reporting; the insensitive reporting of suicide and tragedy; and lack of good taste generally. Complaints have been received not just about published articles, but about pictures, cartoons, advertisements and billboards; and also about breaches of good journalistic practice in obtaining information.

Until 1996, the council reiterated that it did not see as part of its job the establishment of guidelines for newspaper editors to follow, nor to police such guidelines. However, its 1997 Annual Report announced a decision to publish its own written document to guide the public, the industry and the council in dealing with complaints (NZPC, 1997). This document has accordingly been issued in the form of a Statement of Principles.[235] Complainants are now directed to specify the nature of their complaint, and to give precise details of the publication containing the material complained against. The statement also notes that it will be of great assistance to the council if the complainant nominates the particular principle(s) from the 13[236] listed that have been contravened.[237] However, the preamble to the statement, which is part of the principles, states that a complainant may use other words or expressions in a complaint and nominate grounds not expressly stated in the principles. In the preamble, the council also notes that though complaint resolution is its core work, promotion of freedom of the press and maintenance of the press in accordance with the highest professional standards rank equally with that.

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234 Decisions can also be searched on the council's website: www.presscouncil.org.nz

235 These are reproduced in each annual report and also on www.presscouncil.org.nz The principles most relevant to the reporting of the Family Court are:
1. Accuracy
Publications (newspapers and magazines) should be guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission, or omission.
3. Privacy
Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious significant public interest. Those suffering from trauma or grief call for special consideration, and when approached, or enquiries are being undertaken, careful attention is to be given to their sensibilities.
5. Children and Young People
Editors should have particular care and consideration for reporting on and about children and young people.
7. Advocacy
A publication is entitled to adopt a forthright stance and advocate a position on any issue.
10. Headlines and Captions
Headlines, sub-headings, and captions should accurately and fairly convey the substance of the report they are designed to cover.
11. Photographs
Editors should take care in photographic and image selection and treatment. They should not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of the manipulation. Those involving situations of grief and shock are to be handled with special consideration for the sensibilities of those affected.
13. Council Adjudications
Editors are obliged to publish the substance of Council adjudications that uphold a complaint.
Note: Editors and publishers are aware of the extent of this Council rule that is not reproduced in full here.

236 Principle 13 describes the sanction imposed by the council and is, therefore, not really a principle.

237 See www.presscouncil.org.nz Complaints.

A discussion of some of the significant issues arising from Press Council decisions which might impact on the print media reporting on the Family Court follows.

*4.3.2.2 Balance and fairness*[238]

The Press Council has made it clear that in ordinary circumstances it is unacceptable, where serious accusations are made, not to provide an opportunity for the opposing side to give its viewpoint. Deadlines or nominal attempts at making contact are not adequate reasons for failing to provide balance (NZPC, 2001). In one case, a newspaper article gave the impression that a deserving patient had been left forgotten on hospital waiting lists for an operation, when this was not so.[239] The article also stated, without any factual basis, that the patient had been neglected and the health system had failed to provide suitable care. The newspaper relied on one telephone call late in the afternoon as an attempt to get at the other side of the story. The council held this was inadequate.[240] However, opinion pieces allow a writer the opportunity to present a point of view and to enjoy the right of free speech provided they are clearly-stated opinion.[241]

Having said this, the council recognises it would place an impossible burden on newspapers and readers to require that every article, report or quotation in each issue cover all sides on every topic. For example, reporting the proceedings of Parliament does not require reporters to check the accuracy of every political opinion expressed there, as long as the report of the proceedings is itself accurate.[242]

However, even human interest stories need to observe the basic tenets of balance and stories about the Family Court tend to be a combination of this and factual material. A useful decision is one involving a complaint about an article that briefly previewed the chances of a particular horse in the New Zealand Derby. In canvassing the history of a case of selenium poisoning of horses in the care of the horse's trainer, the story quoted only the trainer's version of the history.[243] The council upheld a complaint that the story lacked accuracy, fairness and balance which came from the owner of one of the horses that suffered selenium poisoning who had another side to the story. The council found that where other parties are affected adversely in a complicated and contentious story and have another view of things – it is fair and balanced, even within a single story, to acknowledge that there is another side. The facts should remain unvarnished. Therefore, the print media should take care not to take partisan approaches to the reporting of Family Court cases and should at least acknowledge the content of all sides of each story.

Nevertheless, the council has stated that the media should not be upbraided for zoning in on the criticisms and apparently focusing on negative aspects of the news.[244] It regards a substantial part of a newspaper's job to identify things that are wrong or need rectifying, which can be otherwise seen as pursuing the important and the newsworthy with a positive intent. This means that stories focusing on the criticisms of the Family Court would not, in themselves, breach the Press Council principles, as long as balance and accuracy was also maintained.

*4.3.2.3 Accuracy* [245]

The council will uphold complaints about inaccuracy and connected complaints that attempts to publish corrections have not been given appropriate prominence.[246] Accuracy applies to work submitted by non-staff members also. Even submitted material must withstand scrutiny.[247] This might

238 See Principle 1.
239 NZPC Case 909 *Canterbury District Health Board v the Timaru Herald* (2003).
240 See also NZPC Cases 808 *Mesdames Rusesco, Fotiadis and Papanicolaou v the New Zealand Herald* (2000) and 855 *Tony Booker v the Manawatu Evening Standard* (2001).
241 NZPC Case 964 *Noel Cox v New Zealand Herald* (2004).
242 NZPC Case 975 *Stuart R Lowery v New Zealand Herald* (2004).
243 NZPC Case 981 *Cato v New Zealand Herald* (2004).
244 NZPC Case 986 *Frew, Beban and Nolan v the Press* (2004).
245 See Principles 1 and 2.
246 NZPC Cases 779 *Sam Knowles v the National Business Review* (2000), and 1047 *TV3 News v Bay of Plenty Times* (2005).
247 NZPC Case 908 *Poultry Industry Association of New Zealand v the New Zealand Herald* (2002).

apply to material submitted by lobby groups wishing to publish their views of cases in the Family Court. Further, journalists should not contrive debates from separate interviews where the interviewees do not know the premises on which an opposing argument is based, particularly where the argument is about scientific evidence.[248] Headlines which present two opposing views, with neither party able to question the assertions of the other, are misleading, as are those which do not match the content of the actual story.[249] Attributions should not be the reporter's words, opinions and thoughts.[250]

*4.3.2.4 Breach of a court order*

Complaints alleging breach of name suppression orders or something similar arise from time to time. The council generally considers that the courts are the usual forum for such complaints.[251] However, it has adjudicated on some of these complaints and, in theory, could do so on a complaint about breach of the identification protection provisions in the Care of Children Act 2004. In a case where a newspaper had disclosed medical evidence and details of the home of a child rape victim which it was argued could lead to her identification, the council found that the newspaper had taken sufficient care not to identify the child. The newspaper had been aware of the suppression order and although the medical evidence had not been suppressed, the home and its location had only been generally described (NZPC, 1996).[252] Further, a complaint from a coroner that information about the manner of a death had been published without authority as required by the Coroners Act 1988 has been upheld. The council stated that apart from the statutory breach, the report had caused distress to a grieving family (NZPC, 1991).

The rules governing publication of images by the media in trials have also been interpreted and enforced by the Press Council, which might impact on Family Court reporting. In one case,[253] it upheld a complaint about the publication of a photograph of the complainant in a newspaper taken as she emerged from the High Court at Wellington after giving evidence in the Scott Watson murder trial. At the time, a pilot project dealing with media filming and photography of court trials was taking place and rules had been developed (which have since become permanent).[254] The complainant had been a witness at the trial and was the subject of a court order granted by the trial judge, at her request, for pictorial protection, which was made and granted in this case pursuant to a rule which stated as follows: "Any witness or party to proceedings who conveys to the judge a prior objection to being identified shall have their identification (through pictorial means) protected in any coverage by still photography." An explanatory comment had also been issued which contained a guideline about out-of-court film or photographs. This stated that the use in any news report of any out-of-court film or photography of any person who is subject to pictorial protection under the rules was contrary to the rules. The council held that the explanatory comment was to be read as part of the rules. In this case, the newspaper had sought permission from the trial judge to take still photographs during court proceedings and signed an application form nominating the trial and other details. The complaint was made on the grounds that the newspaper was in breach of the court order by publishing the photograph and that there had been an invasion of the complainant's privacy. The newspaper argued it had the right under the general law to photograph a person in a public place. Further, it argued that by the precise nature of its application it was not in breach of the permission granted by the trial judge because it had obtained permission to photograph counsel, the defendant(s) and the judge, but not witnesses. The council held that the argument was based on a technicality. The newspaper could not claim that the omission to tick witnesses on the form provided it with an exception so that outside the

248 NZPC Case 957 S*teven Courtney v the Wairarapa Times-Age* (2003).
249 NZPC Case 1060 *Trina Stevens v Woman's Day* (2005).
250 NZPC Case 957 *Steven Courtney v the Wairarapa Times-Age* (2003).
251 In NZPC Case 855 *Booker v the Manawatu Evening Standard* (2001), for example, the council refused to interpret s.29 of the Coroners Act 1988 to determine whether a newspaper had wrongfully published information about a suicide.
252 See also the NZPC annual reports for 1992, 1993 and 1995.
253 NZPC Case 755 *Yvonne Greer v The Dominion* (1999).
254 The In-Court Media Coverage Guidelines, 2003, produced by the Courts Consultative Committee, regulate the practice of in-court media coverage, either by film, still-photography or recording. They have no statutory basis and cover all proceedings in the Court of Appeal, the High Court and the District Court. In practice, media are granted access presumptively, unless the guidelines are not complied with, there is statutory restriction or some other compelling reason exists for restriction: see Murray (2006). There appear to have been no applications so far under the guidelines to cover the Family Court.

courtroom it could fall back, for witnesses, on the general right to photograph a person in a public place. This was because omission to tick 'witnesses' did not carry with it any inference the applicant wished to reserve to it the general right. The result is that once an applicant newspaper voluntarily enters the scheme pursuant to the rules it is bound to observe all the rules.[255] Although the decision encourages care by the print media in applying to photograph in court, it also makes it attractive for the media to avoid courtroom photography altogether by not making applications under the rules if it considers that better photographs of trial participants can be obtained outside the courtroom.[256]

There are other decisions where the council has dealt with suppression which may be relevant to how it could deal with reports about the Family Court. Serious offending is regarded by the council of great public interest which needs to be reported. The council has noted that courts are given considerable discretion as to what information about defendants may be suppressed.[257] Where interim and final orders made by different judges suppress only a name, the media is entitled to publish other information stated publicly in the court proceedings, such as age and employment.[258] This implies that the council would give leeway to the detail the print media can refer to in reporting Family Court cases, as long as these do not breach the non-identification requirements.

*4.3.2.5 Privacy* [259]

The principles recognise a right to privacy of person, space and personal information. However, this right should not prevent publication of matters of public record, or obvious significant public interest. Publications should therefore exercise care and discretion in reporting matters in the Family Court where the discretion to identify has been authorised. Once again, care is necessary to avoid accidental identification where identification is prohibited. In general, sensitivity is required when approaching or making enquiries involving those suffering from trauma or grief.

As with the privacy tort and the BSA standards, significant public interest in a story can outweigh privacy. The council has stated that most political coverage is unquestionably in the public interest – this includes coverage of Parliament, select committees, council meetings, elections, political parties, pay and allowances (NZPC, 2000). It seems likely that this would apply also to reporting of the Family Court. However, this does present greater challenges because of the involvement of children. The council is clearly conscious of the special vulnerability of children. It has noted that it must make very careful decisions balancing redemptive movements of society in providing greater protection for children against the necessity of society to be fully informed about activities of a group central to its existence (NZPC, 2000). It directly associates the need to protect children with privacy (this being the association of Principles 5 and 3).

Children or young people are being more consistently treated with some concern by the council,[260] and it will often draw attention to the adverse effects of undue publicity on children, even where it finds the principles have not been breached. For example, the council strongly criticised a newspaper which ran a photograph on its front page of two young girls involved in an alleged abduction, at the time when the newspaper knew one of the children had made up the story. The newspaper had blurred the faces of the girls, but the council expressed its great concern that the photograph was used at all. This was an example of unnecessary media attention and the council thought there was an overriding public interest in protecting young people and children from it (NZPC, 1997). Thus, a story complying with the Care of Children Act 2004 requirements might still breach the Press Council Privacy Principles if it directs unwanted media attention on children involved in custody hearings.

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255 The council was satisfied the breach by the newspaper was caused by a misunderstanding as to the application of the rules and was not a deliberate flouting of them.
256 The 2003 version of the rules allows protection against photography outside the courtroom also. However, this merely reinforces the attractiveness to the media of not applying under the rules.
257 NZPC Case 858 *X v Waikato Times* (2001). See also NZPC Case 859 (2001).
258 Ibid.
259 See Principle 3.
260 See Principle 5.

As with the BSA, this approach may have impact on identification issues. The Press Council has upheld two complaints against the *New Zealand Herald* over a photograph of a young girl which filled about 60 percent of a front-page boxed story about an 11-year-old who drove a stolen car and was stopped by police.[261] The child's eyes were blocked out by a black rectangle. The council accepted this was a dramatic and highly newsworthy incident. However, it considered that the steps taken to conceal the identity of the child were insufficient, and that it was an error of judgement to treat the child's eyes as her sole identifying feature. There were no compelling reasons for allowing the child's privacy to be intruded on and it was not essential to show the child's face to bring home to readers the central point of the story.

Of course, for the print media also, privacy does not apply to publication of matters of public record or of obvious significant public interest. Usually this does not arise in stories supplied by readers about domestic traumas and events which therefore carry a greater risk of breach of privacy. Stories from the Family Court have elements of both public and private interest, in that they show the workings of the court itself, but also invariably expose intimate detail of people's lives. The print media should take particular care in accepting approaches of individuals wishing to publicise the details of Family Court cases in which they are involved. The council has upheld a complaint from a woman about her privacy being breached by the publication of a 'first person story' in the weekly magazine *That's Life*.[262] The story, told from the point of view of a woman reader, was a personal account about an affair that the complainant had with the woman's husband. The council noted the complainant was not a public figure, and while there might be public curiosity about a private domestic drama, it was hard to see significant public interest being served by its publication. This personal story was not a matter of prior public record. Furthermore, the council thought that a standard disclaimer that the story was not intended to offend or embarrass the complainant, her friends or family, and an offer from the editor to publish the complainant's side of the story for the same fee, was a commendable corrective which seemed exploitative and scarcely protective of privacy. The first person story did not require a balancing view of events, however, it was incumbent on editors prior to publication to ensure there was accuracy, balance and fairness and no breach of privacy, by carrying out checks with any parties affected, not just the seller of the story. The council thought these latter may not be acting from the most altruistic of motives and may manipulate a magazine invitation to tell their story for their own purposes. Therefore, the council thought that editors needed to be aware of the dangers of what it described as a kind of voyeurism.[263]

Similarly, lifestyle magazines, which use 'lifestyle journalism', are not absolved from acting in accordance with the principles. In another case, a weekly magazine contained an article about a woman whose marriage had ended and was coping with raising her sons at the same time as embarking on a legal career.[264] The feature made several references to her former husband, who complained that the article gratuitously publicised salacious details about his private life. Unlike the *That's Life* cases, the council did not regard the references to the complainant as unduly intrusive, given that the totality of the article and the references to the husband were brief and not egregious. It did, however, re-emphasise to editors of such magazines that their dependence on single sources of information carries risk and encouraged them to carefully consider who might be affected by the human-interest stories they feature, in particular when children are involved.

As with the BSA, it seems likely that if the requirements for non-identification under the Care of Children Act 2004 are met, then a privacy complaint is unlikely to be successful under the Press Council principles. However, if there is identification by the print media in a story about the Family Court, or if identity protection is inadequate, or if identification has been authorised by the Family Court under the discretion provisions and the story is exploitative, particularly of the children involved, then the principles might be engaged.

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261 NZPC Case 811 *Youthlaw and the Department of Child, Youth and Family v the New Zealand Herald* (2000).
262 NZPC Case 911 *M v That's Life* (2003). See also NZPC Case 914.
263 Ibid.
264 NZPC Case 946 *Andrew Beck v NZ Woman's Weekly* (2003).

## 4.4 Conclusion on the BSA and the Press Council

It seems clear that the regulatory regimes of the BSA and the Press Council can have an impact on reporting the Family Court. This possibility most clearly arises in relation to reports which are permitted to contain identifying information under the discretionary power contained in s.139(2) of the Care of Children Act 2004. However, in all reporting, there is a need to ensure that privacy is not invaded and that fairness, balance and accuracy are maintained. Additionally, there is a need to ensure that mistaken identification does not occur. Once again, it is a truism to state that these requirements are no more than the basics of media ethics and professionalism. But under the BSA regime, and to a lesser degree, the Press Council principles, they can have significant negative effects if not complied with.

The media should take full advantage of the new Family Court reporting freedoms in order to comply. Media can now report on all phases of Family Court cases, by sitting in on all custody hearings, and using all material and documents brought before the court. Court records may be searched. Interviews with parties, associated persons and with the children involved in custody proceedings are also possible. While resources and time are always an issue for the media, it can hardly be claimed that full and balanced information is inaccessible. At the very least, it is a simple matter to obtain a copy of the judgment in a case to find out what the outcome was and how that outcome was reached. It is also clear from the judges' surveys that the judiciary is ready and willing to assist the media to report about the Family Court if at all possible. Currently, however, the Family Court itself appears to be an untapped resource.

# 5. MEDIA COVERAGE OF THE FAMILY COURT SINCE JULY 2005

## 5.1 Introduction

From July 2005, the news media were able to attend and report about the Family Court subject to the provisions of the Care of Children Act 2004. Judges interviewed for this study observed in section 3.3 that attendance by reporters has been extremely limited. This is confirmed by our analysis of media coverage of the Family Court since July 2005. The methodology comprised a content analysis of New Zealand daily and weekend newspapers between 1 July 2005 and 30 June 2006 and interviews with senior editorial executives representing a mix of metropolitan and provincial dailies. By way of comparison, we also undertook a content analysis of the period 30 June 2002 to 30 June 2005. The monitoring of television and radio news was beyond the resources of this part of the study.

## 5.2 Content analysis

The content analysis used the Factiva articles database to search all daily and weekend newspapers over the period of a year from when the Care of Children Act 2004 took effect. When the same story appeared in more than one newspaper it was counted as one article for each time it appeared. Articles were broken down according to three genres – general news, feature articles and opinion pieces, which included editorials. There were four categories within these genres according to the context in which the Family Court was mentioned:

> Legal issue relevant to Care of Children Act 2004: reporter attends court
> Legal issue relevant to Care of Children Act 2004 reporter does not attend
> Legal issue not relevant to the Care of Children Act 2004
> Incidental mention of Family Court.

Appendix 5 details articles that mention the Family Court and were published between 1 July and 31 December 2005, and Appendix 6 details similar articles for the period 1 January to 30 June 2006. In total, there were 101 articles of which 69 were general news, 16 features and 16 opinion pieces. The research assistance of Amanda Cliff, Lorie Clarke and Katie Chapman in undertaking this extensive content analysis was invaluable.

Interestingly, the analysis of the three-year period before the Care of Children Act 2004 took effect produced 507 articles which mentioned the Family Court – an average of 14 a month compared with eight since July 2005. However, this rate may be somewhat artificial. It is important to note that two major news topics – the Family Court case involving MP Dr Nick Smith and the Jelicich custody case – accounted for more than 30 percent of the articles published. The average number of articles for the months when the Smith and Jelicich stories were not reported was also eight (rounded). However, in terms of a pure number count, it can at least be said that the change in the law has not resulted in any increase in coverage of Family Court matters.

More importantly, the key findings relate to content and attendance at court. Of the 69 general news stories published over the year 1 July 2005 to 30 June 2006, evidence could be found of only one in which the reporter attended Family Court. (When it was unclear whether or not the reporter actually attended court the article was categorised as non-attendance.) This was a *New Zealand Herald* article published on 2 July 2005 headlined 'Discomfiture all round as media gain entry to Family Court'. It was categorised as general news because of its relative brevity and placement in the news section but was written in the style and tone of a feature article.

Judge Boshier told the Manawatu Family Court's Association in August 2006 that in the 12 months after the Care of Children Act 2004 came into force, there were 40 requests by the media to attend a hearing. There were 12 recorded occasions on which one media representative attended a hearing. On 20 occasions nobody attended following the request. There were eight requests for which the records do not show the result.

He said for the print and radio media, the Knowledge Basket database gave 183 results that were substantially about the Family Court since 1 July 2005. The breakdown was:

1. Fathers' rights groups: 61 or 33 percent
2. Domestic violence: 47 or 25 percent
3. Court reform or initiatives: 17 or 9 percent
4. Discussion of openness provisions: 12 or 6.5 percent
5. Appointments or articles on judges: 11 or 6 percent
6. Reports from inside the court: 9 or 4.9 percent
7. International child abduction cases: 4 or 2 percent
8. All of the following subjects: 3 or 1.6 percent

For television media, the TVNZ website yielded 17 results in total, including prior to the enactment of the Care of Children Act 2004. The 11 reports after 1 July 2005 covered:

> Fathers' rights groups: 6 or 54 percent
> Domestic violence: 3 or 27 percent
> Openness or Care of Children Act 2004 provisions: 1 or 9 percent
> Child support: 1 or 9 percent

The TV3 website was not easily searchable, but Judge Boshier found four references to fathers' rights groups and one of domestic violence.

In the case of the 16 feature articles in the sample, it appeared that five involved attendance at court.[265] Perhaps ironically, three of the feature articles published in 2006 explored why so few journalists were attending Family Court since the law change. These provide some insights into the absence of reporters. For example, Chris Barton wrote in the *New Zealand Herald*: "[The judge] provides a 'media' sticker to be worn at all times, which marks me a pariah. The lawyer for the children seems friendly, though, and it's easy to understand why the parents might not appreciate a media presence. I'm an intruder on private matters – a paid voyeur of their bickering, blaming and sad, painful circumstance."

This sense of unease is evident in others, such as Martin van Beynen of *The Press*: "An hour in Family Court in Christchurch and I already have pages of misery, dysfunction and dislocation in my notebook."

This 'discomfiture', as Bronwyn Sell of the *New Zealand Herald* described it, is clearly a factor in how journalists perceive attendance at Family Court but of even more pertinence are the restrictions on what can be reported. Deborah Morris of the *Dominion Post* wrote in a January 2006 feature: "The new openness of the court is offset by what the media cannot do." Morris noted that after six months only 11 reporters had gone to have a look at the Family Court and just one story had been written.

The feature articles were generally informative in approach as indicated in their stand-alone story summaries. For example, *The Press* said "reporter Martin van Beynen goes behind the lines to find out what an average Family Court day is all about". The *Herald on Sunday*: "After years of secrecy, the Family Court has finally opened its doors to the public. Deborah Coddington finds out whether it is

265 This result is confined to the print media sample used in this part of the study (see 5.1 above). From the survey of the judiciary, it appears all media probably attended between 12–20 times in the period investigated: see note 140 above.

really as dysfunctional as many suggest." *The New Zealand Herald*: "For so long closed to public scrutiny, last year the Family Court was opened to the the media. Chris Barton went along to see what happens inside."

The Coddington and Barton pieces, written in November 2005 and January 2006 respectively, were notably in-depth and comprehensive in explaining the functions and operation of the Family Court in respect of parenting hearings. Anonymous case studies were used effectively to illustrate key points. Generally, the feature articles analysed gave readers a fair and balanced insight into the court's workings and it was evident that the judges involved had been co-operative.

The news coverage appeared to be driven mostly by specific incidents or events which would be expected given media practice. Predictably, there was a cluster of stories on 1 and 2 July 2005 noting the changes to the Family Court coming into effect at that time. Predictably, too, the principal source was Chief Family Court Judge Peter Boshier. The most widely published story (circulated via the New Zealand Press Association) used the phrase 'McDonald's dads' – who see their children for only a few hours a fortnight at a fast-food joint – in its intro (first paragraph) which is intended to grab the readers' attention. Unfortunately, it is not clear from the story if this phrase was coined by a media-savvy judge because, contrary to good journalism practice, there is no attribution of the phrase anywhere in the story.

However, Judge Boshier subsequently proved himself adept at attracting media coverage of his views on Family Court. Speeches to the New Zealand Law Society, the Auckland Family Courts Association and a hui on domestic violence were all reported. The media first picked up on the need for what Judge Boshier described as 'refinements' to the operation of the Family Court, then his calls for more formality to improve the authority of the court and for a higher standard of evidence. The *New Zealand Herald* highlighted his comments regarding New Zealand's high rate of domestic violence in its report of the hui.

The judge was also quoted during the most substantial cluster of news stories in May 2006 when protest activity by groups such as the Fathers Coalition and the Union of Fathers was widely reported. The 'disgruntled fathers', as Judge Boshier called the activists, demonstrated outside the homes of Family Court judges, lawyers, court-appointed psychologists and Members of Parliament. The reports focused on the criticisms and grievances of fathers' groups around the country who displayed a good understanding of how to attract media attention by staging what have been called 'pseudo-events'. For the media, claims of injustice had an inherent news value; the demonstrations were straightforward to report; and television reporters were provided with essential visual images.

Only two feature articles attempted to analyse the claims of injustice voiced by the fathers. Both provided a degree of balance with comments from lawyers experienced in Family Court hearings and other relevant sources, for example a senior psychology lecturer and a women's refuge spokesperson.

In his August 2006 speech, Judge Boshier was strongly critical of a Sunday television current affairs item that dealt with the claims of bias against fathers in the Family Court.

> There was nothing evident in the programme that showed the researchers had read the Court's judgments in any of the cases, which concerned parenting issues, these men had been involved in. These men loved their children but had not achieved the outcome they desired and so, according to their logic, they had been wronged. The argument went further. If these men had been wronged then the system itself conspires against them.
>
> I am sorry but that is just not good enough. Firstly, an aggrieved party is not an objective critic of his or her own argument – there needs to be balancing argument

> of the kind that the Court will hear. Secondly, the parties may omit parts of the argument that don't suit them – the programme did not rectify that deficiency for the viewers – we heard nothing from the mothers or the children in these cases – and thirdly, all but a handful of Family Court cases are resolved by agreement, which any basic research would have established. It just does not follow, then, that decisions that have not been acceptable to a very few male litigants establish that the Court as a whole is biased against men. Yet that is exactly what was being maintained in this television item (Boshier, 2006a).

Judge Boshier's comments highlight his expectations of fair and balanced reporting as an interested party. The broadcaster, invoking standard 4 of the Broadcasting Standard Authority Free-to-Air Television Code, could well respond that it was required to "present significant points of view either in the same programme or in other programmes within the period of current interest". All perspectives did not have to be included in the one item if they were being addressed in other coverage. The broadcaster might also question how practical it would have been to make a programme in the form proposed by the judge given constraints of time and resource and the rules around covering the Family Court.

The choice of relatively few stories since July 2005 and how they have been framed, as identified in this research, strongly suggests that there are significant impediments from a media perspective to reporting Family Court hearings despite the new level of openness. These are now explored.

## 5.3 Interviews with editorial executives

The restrictions in reporting the Family Court alluded to in the Deborah Morris quote in section 5.2 were a common theme in our interviews with editorial executives or those deputed to speak for their newspaper. Practical difficulties in routinely reporting the Family Court were also uniformly identified. Nine editors, representing metropolitan and provincial dailies and Sunday newspapers, were invited to respond to eight questions. They could be interviewed by telephone or respond by email. Six participated, five by email. They either responded themselves after consultation with relevant staff or delegated the response to a staff member with relevant experience or expertise.

The questions were:

- How is Family Court routinely assigned? (For example, is a court reporter normally expected to check the court list and identify cases of possible interest?)
- To what extent have lawyers or parties to Family Court hearings alerted your newsroom to cases?
- News organisations have to be highly selective in choosing each day what cases to report across the various courts in session. In what circumstances would a Family Court hearing have sufficient news value to be reported?
- Would certain types of cases eg: custody, generally be of most interest?
- What difficulties/issues have been encountered by your news organisation in covering Family Court since the law change?
- Why do you think the media have reported few Family Court hearings since the law change?
- Do you think the Nick Smith contempt of court decision has had any impact on the coverage of Family Court?
- Should the processes and/or rules for reporting Family Court be amended in any way? If so, how?

It is clear that provincial newspapers do not routinely assign staff to cover the Family Court. One editor said his newspaper had not covered the court primarily because of staffing difficulties:

> As it is, we're very stretched to cover District Court and High Court with the reporters who are sufficiently competent to do it.

He also commented that the inability to report names removed some of the news interest:

> In other words, until now the chief reporter and senior court reporter have deemed it a low enough priority that we haven't sent anyone along … and I guess other provincial newsrooms face the same challenge.

Another provincial editor said his newspaper had not covered any Family Court cases.

Only one of the newspapers surveyed routinely assigns Family Court coverage and that is usually in the form of a weekly check by a court reporter of the week's hearings. This in itself is seen as problematic. A metropolitan daily editor said its court reporters were sent a daily email with a fixtures list but these were "inaccurate and basic. They can include 'Family Court, 10.45am', for example, but nothing more." A senior journalist said she looked for recognisable names and checked out the type of cases, for example, custody or Hague Convention. "Names are only indicative since we can't identify people. The court registrar only has a limited idea of the scope of a hearing."

It was generally noted that reporters have to attend the court in order to find out if cases are worth reporting. The view was summed up:

> It is difficult to get a handle on Family Court. There are no press sheets or daily lists so all information is second-hand. Reliance on court staff is problematic especially if they are obstructive.

Surprisingly, the respondents had rarely been alerted to hearings by lawyers or interested parties since the law change. Indeed, some believed it was more common beforehand. Said one editor:

> In the past, we were sometimes contacted by individuals (usually fathers) who wanted us to write their stories. Since the law changed, we haven't had any of those approaches and nor have lawyers approached us.

Two editors said they very occasionally received such approaches. One reporter noted:

> I do indeed get told about Family Court cases, mostly from lawyers and almost always after the event.

Faced with a lack of resources and limitations on what can be reported, news organisations must be highly selective in what cases they choose to report. A provincial editor observed:

> Given the blanket suppression on identifying individuals that applies in the Family Court, a case would need to have strong news merits to warrant our coverage. Perhaps a custody dispute or some ground-breaking case or decision.

For a court reporter it is a pragmatic call:

> Of the two types of cases in the Family Court, the international tug-of-love or Hague Convention cases are most likely to get coverage. They are also the smallest number of all the applications before the court. Custody stories without identification might mean little to the public unless someone was trying to retain custody of their 20 kids.
>
> Unless the case was very high profile like celebrities or something very bitter that had been in the news or an international tug-of-love case … and we had the time and resources … it is unlikely to get a look in.

A senior journalist who had written a feature on the Family Court since the law change pointed to the challenge of constantly finding something newsworthy:

> Each case will have its own intricacies but in the end they all generally tend to be kind of the same.

As result, most journalists would tend towards a feature article. Here the problem was that "once you have done one, you will not do another for quite some time". He believed a wider range of cases should be open to the media, for example, domestic violence and protection orders and mediation hearings.[266] "Many cases don't make it to a defended hearing. Possibly, journalists could sit in on some mediation hearings."

No one interviewed thought that the Nick Smith case had had any impact on Family Court coverage, either positively or negatively. Indeed, one respondent commented: "Only in that it has drawn public interest and media attention to the Family Court."

## 5.4 Conclusion

What, then, are the general reasons advanced by the media for so little reporting of the Family Court, even though it is now more open? These appear to be connected to the practicalities of operating commercial media businesses today, as identified by one editor:

> I suspect a combination of a lack of high-profile cases; the time already spent in the courts; and the suppression orders which dilute public interest.

Further, it seems that media interested in reporting about the court are having to think about how to get access to relevant information, as well as adapt to the nature of the proceedings themselves.

There is also evidence of frustration because the reforms are not seen to go far enough. As one reporter stated:

> Because the limitations of reporting mean we can't be open, we don't go. What we have is a half-arsed approach to the Family Court. We can see a little bit but can't report most of it.

266 Further openness is under consideration in the Family Court Matters Bill.

# 6. CONCLUSION

This study has investigated reporting of Family Court custody cases since the opening up of the Family Court to reporting by the media in 2005. The most striking outcome has been that the media does not appear to be interested in going to the court or writing much about it in depth at all. We have attempted to investigate reporting of the court from the point of view of both the judiciary and the media. It is clear there is some tension between these viewpoints as revealed in the brief concluding points set out below. However, it is hoped these conclusions will assist in a fuller understanding of the ability to report, of how the media has responded to it and how it might respond in the future.

- Media can now report on all phases of Family Court cases, by sitting in on full custody hearings, and using all material and documents brought before the court. Court records may be searched. Interviews with parties, associated persons and with the children involved in custody proceedings are also possible.
- An overwhelming majority of Family Court judges are in favour of the new regime of openness in the Family Court and would welcome media attendance.
- Judges have been disappointed with the limited and unbalanced reporting of the Family Court in the first year of the new regime.
- Where the media does report, the regulatory regimes of the BSA and the Press Council can have impact. Media should ensure that privacy is not invaded and that fairness, balance and accuracy are maintained.
- It is risky and inadequate to take a partisan approach to reporting Family Court cases. All relevant viewpoints should be accurately presented, either by seeking comment from the parties involved, or by at least outlining opposing views or allegations.
- Where the Family Court is criticised, it should be given an opportunity to respond to the criticisms within the period of current interest.
- Care should be taken to ensure that mistaken identification does not occur.
- The media can take full advantage of the new Family Court reporting freedoms. Obtaining a copy of the judgment in a case to find out what the outcome was and how that outcome was reached is a useful starting point for reporting.
- The judiciary in the Family Court are apparently very willing to give assistance to the media in reporting the proceedings.
- The media faces significant practical impediments to fully reporting about the Family Court, including lack of personnel and time to cover cases.
- Some media have faced difficulties finding out about newsworthy Family Court cases.
- Some media do not consider Family Court cases newsworthy.
- Some media feel uneasy reporting Family Court cases.
- Some media think reporting the Family Court would become more attractive if there was more openness.

The door to the Family Court is open, but the media has not gone through. Some of the reasons for this are practical limits imposed within the highly competitive media sector. However, others appear to be lost opportunities or failure to capitalise on or adapt to new sources of information. Meanwhile, protests about the Family Court continue.[267] While the media could assist public understanding of the work of the court by taking more advantage of the new openness, it will be assisted in this if the plans for opening the court more fully are brought to fruition.

267 Throughout 2006, fathers' rights groups have continued to campaign outside the homes of Family Court lawyers and judges, see eg, Barton (2006).

# 7. REFERENCES


Australia Parliament. (1980, July). *Family Law in Australia: Report of the Joint Select Committee on the Family Law Act.* Australian Government Publishing Service, Canberra.

Barton, C. (2006, 11 June). 'Family Court is "No-Man's Land"'. *New Zealand Herald.*

Boshier, P. (2004a). *The Family Court and the Future.* Address delivered by Principal Family Court Judge Peter Boshier to the University of Otago on 15 July 2004. Retrieved from www.justice.govt.nz/family/publications/speeches-papers/archive.asp?inline=speach-otago-university-july-2004.asp

Boshier, P. (2004b). *Launch of Family Court Website.* Address delivered by Principal Family Court Judge Peter Boshier, Jury Assembly Area, Wellington District Council, 29 July 2004. Retrieved from www.justice.govt.nz/family/publications/speeches-papers/archive.asp

Boshier, P. (2006a). *Media – Openness in the Family Court.* Address delivered by Principal Family Court Judge Peter Boshier to the Manawatu Family Court's Association on 8 August 2006. Retrieved from www.justice.govt.nz/family/publications/speeches-papers/default.asp?inline=manawatu-family-courts-association-august-2006.asp

Boshier, P. (2006b). *The Family Court 25 Years On – Has the Vision Been Realised?* Address delivered by Principal Family Court Judge Peter Boshier to the Roy McKenzie Centre for the Study of Families on 17 October 2006. Retrieved from www.justice.govt.nz/family/publications/speeches-papers/default.asp?inline=the-family-court-25-years-on.asp

Broadcasting Standards Authority (BSA). (2004). *Annual Report for the Year Ended 2004.* Wellington. Retrieved from www.bsa.govt.nz/publications/annualreport2004.pdf

Broadcasting Standards Authority (BSA). (2006). *Significant Viewpoints: Broadcasters discuss balance.* Proceedings of a symposium convened by the Broadcasting Standards Authority. Auckland, May 2006. Wellington.

Burrows, J. (2005). 'The Care of Children Act 2004 and the Media'. *New Zealand Family Law Journal*, pp. 85–95.

Burrows, J., & Cheer, U. (2005). *Media Law in New Zealand* (5th edition). Oxford University Press, Melbourne.

Burton, E. (2000). 'Symposium: Panel III: Secrecy and the Juvenile System'. *Journal of Law and Policy* (US), 9:125–134.

Chamberlain, C. (2003, July). 'The Grandparent Trap'. *North & South*, pp. 70–78.

Clarke, J. (2001, 28 March). 'Boy unwisely placed with father, says judge'. *New Zealand Herald* A3.

Clifton, J. (2004, 10–16 April). 'Nick Smith: Poster boy for court reform?' *The Listener.* Retrieved from, www.listener.co.nz/issue/3335/features/1739/nick_smith_poster_boy_for_court_reform.html

Cohen, L. (1999). 'Section III: Developments in the United States: Kids, courts and cameras: New challenges for juvenile defenders', *Quinnipiac Law Review*, 18:701–733.

Department for Constitutional Affairs (DCA). (2004). *Disclosure of Information in Family Proceedings Cases Involving Children.* CP37/04. United Kingdom. Retrieved from www.dca.gov.uk/consult/disclosure/disclosure-cp37-04.pdf

Department for Constitutional Affairs (DCA). (2006, July). *Confidence and Confidentiality – Improving transparency and privacy in family courts.* CP 11/06. United Kingdom. Retrieved from www.dca.gov.uk/consult/courttransparencey1106/consultation1106.pdf

Dye, S. (2004, 22 April) 'Judge calls for open efficient family'. *New Zealand Herald.*

Family Law Section. (2003). *Submission on the Care of Children Bill.* Retrieved 1 February 2007, from www.nz-lawsoc.org.nz/general/submissions/COCBill260903.htm

Finder, A. (1997, 19 June). 'Chief Judge in New York Tells Family Courts to Admit Public'. *New York Times*, A1.

House of Commons Constitutional Affairs Committee. (2005). *Family Justice: The operation of the Family Courts.* Fourth report of session 2004-05, Volume II, Q46. London.

Kaye, M., & Tolmie, J. (1998). 'Discoursing Dads: The rhetorical devices of fathers' rights groups'. *Melbourne University Law Review*, 22:162–194.

Langwell, R. (Ed.). (2003, August). *North & South*, quoted in an interview with Muriel Newman, November 2005.

Law Commission (NZLC). (2002a). *Family Court Dispute Resolution.* Preliminary Paper 47. 1 January 2002. Wellington. Retrieved from www.lawcom.govt.nz/ProjectPreliminaryPaper.aspx?ProjectID=87

Law Commission (NZLC). (2002b). *Seeking Solutions: Options for Change to the New Zealand Court System.* Preliminary Paper 52. Wellington. Retrieved from www.lawcom.govt.nz/UploadFiles/Publications/Publication_89_218_PP52.pdf

Law Commission (NZLC). (2003). *Dispute Resolution in the Family Court.* Report 82. 25 March 2003. Wellington. Retrieved from www.lawcom.govt.nz/UploadFiles/Publications/Publication_87_208_R82.pdf

Law Commission (NZLC). (2004). *Delivering Justice for All: A vision for New Zealand courts and tribunals.* Report 85. Wellington. Retrieved from www.lawcom.govt.nz/UploadFiles/Publications/Publication_89_219_Part_1_R85%20Introduction.pdf

Law Commission (NZLC). (2006). *Access to Court Records.* Report 93. Wellington. Retrieved from www.lawcom.govt.nz/UploadFiles/Publications/Publication_119_330_R93.pdf

Lord Chancellor's Office. (1993). *Review of Access to and Reporting of Family Proceedings.* Family Law Administration Working Party, United Kingdom.

McCann, R. (2002). *Fathers' Perspectives.* Speech to the Family Court Conference, 5 August 2002. Retrieved 1 February 2007, from www.fatherandchild.org.nz/Resources/2003+before/res_atleasttwoparents.htm

Ministry of Justice. (2000, August). *Responsibilities for Children: Especially when parents part.* Discussion paper. Retrieved from www.justice.govt.nz/pubs/reports/2000/resp_for_children/index.html

Ministry of Justice. (2001, October). *Summary Analysis of Submissions in Response to the Discussion Paper: Responsibilities For Children: Especially when parents part.* Retrieved from www.justice.govt.nz/pubs/reports/2001/submissions_children/index.html

Munby, J. (2005, October). 'Access to and Reporting of Family Proceedings. *Family Law Review.* Retrieved 1 February 2007, from www.msbp.com/forum/post-9502.html

Murray, P. (2006). 'Electronic Media Coverage of Courts and the Role of Counsel: A survey of counsels' views and the possible impacts'. *Media & Arts Law Review*, 11(26):28–29.

New York Law Journal. (1995, 13 December). 'The Matter of R.R., K.M., T.L., C.L., and R.L.' p. 30. New York.

New Zealand Parliament (NZ Parliament). (2003a, 10 June). *Questions to Ministers. Family Courts – Reviews.* Hansard, Wellington.

New Zealand Parliament (NZ Parliament). (2003b, 1 July). *Care of Children Act. First reading.* Hansard, Wellington.

New Zealand Parliament (NZ Parliament). (2004a, 29 June). *Select Committee Report for Care of Children Bill,* Wellington.

New Zealand Parliament (NZ Parliament). (2004b, 2 November). *Care of Children Act. Second reading.* Hansard, Wellington.

New Zealand Press Agency. (2004, 1 September). 'More Open Family Court Inevitable, Says Leading Judge'. *New Zealand Herald.* Retrieved from www.nzherald.co.nz/search/story.cfm?storyid=3CD66C88-39E2-11DA-8E1B-A5B353C55561

New Zealand Press Council (NZPC). (1991). *The 19th Annual Report of the New Zealand Press Council.* Wellington.

New Zealand Press Council (NZPC). (1996). *The 24th Annual Report of the New Zealand Press Council.* Wellington.

New Zealand Press Council (NZPC). (1997). *The 25th Annual Report of the New Zealand Press Council.* Wellington.

New Zealand Press Council (NZPC). (2000). *The 28th Annual Report of the New Zealand Press Council.* Wellington.
New Zealand Press Council (NZPC). (2001). *The 29th Annual Report of the New Zealand Press Council.* Wellington.
New Zealand Press Council (NZPC). (2002). *The 30th Annual Report of the New Zealand Press Council.* Wellington.
New Zealand Press Council (NZPC). (2005). *The 33rd Annual Report of the New Zealand Press Council.* Wellington.
Nicholson, A., & Harrison, M. (2000). 'Family Law and the Family Court of Australia: Experiences of the first 25 years'. *Melbourne University Law Review*, 24:756.
Quaintance, L. (2001, June). 'Court of Injustice'. *North & South*, pp. 34–43.
Sanchez, K. (1998, Winter). 'Barring the Media from the Courtroom in Child Abuse Cases: Who should prevail?' *Buffalo Law Review*, 46:217.
Taylor, P. (2004, 27 March). '"End Secrecy", says Family Court Judge'. *New Zealand Herald*, A1.
Tucker, L. (2000). *Open or Closed: A survey of the opinion and the realities of opening Juvenile Court dependency proceeding.* Retrieved 1 February 2007, from www.childwelfare.net/activities/interns/2000summer/OpenCourts/
Tunnah, H. (2004, 2 September). 'Judge urges revealing ugly truth'. *New Zealand Herald.*
Zwaga, W., Stace, M., & Brunton, C. (2004). *Real Media Real People: Privacy and informed consent in broadcasting.* Broadcasting Standards Association. Wellington.

# APPENDIX 1

## Survey of judges

Family Court at _____

Do you personally agree with the provisions in the Care of Children Act 2004 permitting the attendance of accredited news media and reports of proceedings?
Please circle: Yes No

Has your view on this question changed since 1 July 2005?
Please circle: Yes No

If you answered 'Yes', please feel free to state your reasons _____
_____

Would you agree with the media attending the Family Court in proceedings other than Care of Children Act matters, as proposed in the Family Court Matters Bill?
Please circle: Yes No

Any comment on the Family Court Matters Bill?

Have you had any personal experience of the media attending the Family Court since 1 July 2005?
Please circle: Yes No

*If you have had any personal experience of media attendance:*

(a) Would you regard the experience as: (please circle)
(i) positive (ii) negative (iii) neutral

(b) Was there any subsequent media coverage of the proceedings?
Yes No

(c) If you answered 'Yes', how would you rate the coverage in terms of fairness and balance on a scale of 1–5.

| Very poor | | | | Very good |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |

Any comments? _____
_____

Any general comments. (Please continue on back page if necessary.) _____
_____
_____

# APPENDIX 2

## Transcript of TVNZ news item on breastfeeding baby, 12 February 2006

*Presenter:* The Family Court is being criticised for favouring a father's regular access to his children over a child's rights to be breastfed. A nine-week-old baby has been put in the joint custody of its mother and father but the mother says that means it's almost impossible to breastfeed.

*Journalist:* For this mum, breastfeeding her three-month-old son has been an almost impossible job.

*Mother (Shows lips and chin only):* You tell any mother out there but sorry you can't even breastfeed your child for even three and a half days a week and the rest of the time you've just got to cut it all off.

*Journalist (Shows back shot of a female and young child/baby playing on the floor):* After their relationship ended both the mother and father applied for custody of the children. Until a final decision's made a judge has said they should share but that breastfeeding should continue (Baby noises). At first the Family Court judge granted the mum care three days a week and the father four. That's now been changed and the mother does have them five days. The baby has a bottle at night but the mother says it's very hard to breastfeed the rest of the time when she only has access for two hours on the days the baby's with its dad.

*Mother:* I've got no milk. I've got nothing to feed him. Um by the time it's ready to hand back is when my milk's back in supply. And then he's gone again.

*Journalist:* Breastfeeding experts are shocked by the decision.

*Barbara Sturmfels (La Leche):* Baby needs to have pretty well unrestricted access to the mother. And the mother to be able to respond to the baby's cues and feed, feed her according.

*Journalist:* The Family Court won't talk about individual cases but family lawyers are surprised by the ruling. They say the courts appear very keen to give fathers equal access to their children but say that can be at the expense of breastfeeding.

*Julie Stufkens (NZ Breastfeeding Federation):* In terms of advocating for that infant I would say that the infant needs to receive human milk.

*Journalist:* The mother's pleased she now has more access to her baby but is angry it's been such a battle to give her son what she says is the best start in life. Sarah Azam One News.

# APPENDIX 3

## Transcript of Radio NZ interview with 'Rose', 31 January 2006

**Linda Clark, Radio NZ (interviewer) and 'Rose' (mother)**

This is a story, let me remind you, that tells us a great deal about the power of judges and the workings of the Family Court. My guest is an Auckland mother. A mother who seven years ago lost custody of her own two children, even though there has never been any complaint about her parenting and she is at the moment a foster mother to a child for CYPS. This mother lost her own children though as a result of a ruling by Judge Jim O'Donovan. His decision has since been described as incomprehensible by other judges but still that decision has set this woman and her family on a convoluted and damaging path and an expensive path. She has spent nearly three-quarters of a million dollars trying to get her children back, but still the case drags on. This case involves the Family Court so the mother cannot be named but I began by asking her about the day she lost her children.

*Mother:* I went down to their school to pick them up, it was a Monday when they had been to their father's for the weekend, so it was a normal procedure that I would go down and pick the children up from school. And as I came into the playground I saw my son who was carrying a pot, a little pot with a plant in it, because it was coming up to Mothers Day and the children had been making terracotta pots and growing plants as gifts, and I saw him being ushered by the principal of the school into the offices and he had this very bewildered look on his face and the principal had a really startled look so I went into the office and my children were gone and the principal had received a fax through from the court saying that custody had been granted to the father on an ex parte basis. She was absolutely shocked. She was in tears and I was completely in shock.

*Interviewer:* So you had no idea this was about to occur?

*Mother:* None.

*Interviewer:* And until that day you had always been the prime carer for those two children?

*Mother:* Yes for all of their lives.

*Interviewer:* So what happened? I mean try and explain for us because this doesn't make sense I'm afraid, so that here is a man you tell us with a protection order out against him to protect both you and the children and then along comes a decision which hands the children over to this man.

*Mother:* And that's the nub… Linda it doesn't make sense. There is no reason in behind it and a subsequent High Court Judge called it extraordinary, a travesty of justice and his ruling said there was no reason for the ex parte change of custody.

*Interviewer: Ex parte*, let's define it.

*Mother: Ex parte* means the other party doesn't get any notice whatsoever of an application in to court.

*Interviewer:* And surprising in your case, I guess, because what we can already make, what's already clear from this conversation so far is that you and your husband both clearly had lawyers, everyone knew you both had lawyers.

*Mother:* Absolutely and it would have been normal and usual, particularly because of the background of the case, for the counsel for child to have notified my lawyer.

*Interviewer:* But that didn't happen.

*Mother:* She didn't do it.

*Interviewer:* Let's talk about your children for a moment. I mean, so the day that your children, the day you saw your son walking towards you with the flower pot, you were never given a chance then to explain to your son what was happening?

*Mother:* No, he had absolutely no idea. He had told me and had been through doctors' interviews, evidential interviews, police that he had been abused by his step-mother and I told him how brave he was and that the people that would take care of him would protect him but that he would have to tell certain people his story.

*Interviewer:* Now we are talking about a primary school-aged child here.

*Mother:* Seven-year-old boy.

*Interviewer:* And so when he told you about the allegations of abuse …

*Mother:* Yes.

*Interviewer:* What did you do with that information?

*Mother:* I first of all rang an eminent paediatrician in Auckland who had 25 years in the field of child abuse and asked him what I should do. He said I should ring a psychologist, he recommended me to a psychologist and that I should speak to a lawyer and to CYPFS. So I spoke to the psychologist that he recommended. I haven't met her but I said to her this is what my son has said, what do I do, he was due to go to his father's for the weekend, and she told me pretty much, that on no account should he go, I needed to take him to the doctor, which I did, and then I notified the CYPFS on the Monday, it was a weekend.

*Interviewer:* And what happened then?

*Mother:* My son had said that it was happening to him and to his step-brother who was younger, so CYPFS assigned it critical.

*Interviewer:* So top of their scale?

*Mother:* That's right. And they came and interviewed my son, two social workers came to my son, they have to do that within a certain timeframe and that was within a week. They then said that his allegations had substance, he was consistent, they matched absolutely consistently what he had told me and told his family doctor, and that they would arrange for an evidential interview, which is an interview that takes place in the police station where a child is in a sound proof room and interviewed by an expert. After that interview the policewoman told me that he was consistent, that there was substance to the allegations and that the access must be stopped so that a full investigation could be carried out and they also wanted to interview his step-brother.

*Interviewer:* But there wasn't a full investigation, was there?

*Mother:* In the end, there was no investigation, no full investigation at all.

*Interviewer:* And have you been able to get to the bottom of that why there was no full investigation?

*Mother:* Not really. There's been excuses and now of course there's been so many years pass that you can never really get to the bottom of it.

*Interviewer:* Well and it's important to say that a certain point along this chronology your son retracted the allegations.

*Mother:* Yes, yes. He retracted the allegations when he was made to go to his father's house and made by …

*Interviewer:* Who?

*Mother:* The first judge that heard the beginning of this case, where I applied to have access suspended on the grounds of the allegations, refused to have access suspended, even though he had a police report in front of him and CYPFS report, he said the children had to go to the home and of course at that point in time my son knew that his father and step-father, ah step-mother, knew what he'd said. At some stage during that weekend, they talked about what he had said and he says in the report, psychologist's report, that he says dad tried to make me blame it on mum and he retracted and they called, and this is the next extraordinary thing that happened Linda, they called the father, called counsel for child and she sent her junior who was barely out of law school and had no experience whatsoever to their family home and took a retraction in front of everybody.

*Interviewer:* So the child was not on his own.

*Mother:* Not on his own.

*Interviewer:* At the time this is done.

*Mother:* Not on his own.

*Interviewer:* So your version of events is that he was pressured to retract.

*Mother:* Well yes and actually in the evidence he states that his father made him blame it on his mother.

*Interviewer:* And of course your ex-husband's view on all of this is precisely that, that you put him up to the allegations in the first place to poison his relationship with his father.

*Mother:* Interestingly Linda, that has been his case, if you like, for many years and until September of last year when we were due to go back into court and all of a sudden he has said that he no longer believes that I made my son make the allegations.

*Interviewer:* You've said that to the custody decision, the decision to give custody to your husband, to your ex-husband, this is the decision that Judge O'Donovan …

*Mother:* Yes, Judge O'Donovan.

*Interviewer:* Now this is the crux of it all isn't it, because from that, I mean that is the decision that you have spent years trying to revisit, review, have overturned.

*Mother:* It was a decision that was found to be extraordinary in the High Court, incomprehensible again by another justice in the High Court and it's just unfathomable, this judge had to break two statutes, one for section 23 of the Guardianship Act, which states that the interest of the child and the welfare of the child is paramount. How can a judge when he's presented with evidence that a child has made allegations, serious allegations of abuse, that is backed up by police, by a doctor and by CYPFS and actually subsequently a report saying that the children should be returned to the mother, ignore that? I cannot understand that. And secondly there was a domestic protection order in place.

He again had to completely wipe that ruling that we have in this country that you have to protect the children. It just doesn't make sense.

*Interviewer:* Now as you said at the outset, this was seven years ago and you have spent the past seven years appealing that decision and reviewing it and so-forth, and another lesson here I suppose is that the system isn't very straightforward is it?

*Mother:* Oh the system can be used by people who know how to use it and can build in delays, and you know change, because you are dealing with people's lives and children growing up and dynamics that shift and change the whole time.

*Interviewer:* Both children have become alienated which is a term that describes a situation where the children for various reasons will say they don't want to see the other parent, so they don't want to see you.

*Mother:* They are now what is now called severely and unreasonably alienated, they don't want to see me, they don't want to see anybody that has got anything to do with me, that includes their friends that they used to have.

*Interviewer:* And how difficult is that?

*Mother:* Um, I can't describe how difficult it is, to know that your children are out there, somewhere, and to not be able to hold them, to not be able to share their lives with them, and to have promised your child that you would protect and look after him when he'd been so brave and have that child's trust in you and in the people that were supposed to care for him broken. I can't put into words how hard that is to live with.

*Interviewer:* So how often or if ever do you ever see your children?

*Mother:* I saw, um, when my child, my daughter started secondary school, during the first couple of years, she wasn't completely alienated, she would say one thing to people who she knew would report back to her father and step-mother, but around me she was completely normal and in the school grounds in those early couple of years, she felt safe enough to be herself with me. Then gradually that obviously became harder and harder as she became more and more alienated. So I haven't seen her for over two years, until I went to her prizegiving late last year and I saw her from a distance in a darkened auditorium. I haven't seen my son for four years and again I went to his prizegiving a year ago and saw him for approximately 30 seconds and then again one more time on Christmas Eve for about five seconds. Not to touch, not to hold, not to speak to.

*Interviewer:* Just these fleeting moments.

*Mother:* Yep, but I have no idea even what he looked like, you know. I would walk along the street and I would see a child that might, you know, have his colouring, and I thought maybe his height and ah …

*Interviewer:* But you presumably have been granted access visits by the court, have you?

*Mother:* There was a hearing in 2001, there was a, I appealed the original decision and that was when the High Court sent the hearing back to the Family Court for a reventilation of all the issues. That particular judge was absolutely livid with the process that occurred in the Family Court and ordered that a new hearing take place within five weeks. However, the Family Court allowed itself to be, for various reasons, there were applications put in by the children's father, counsel for child failed to arrange a hearing as she was ordered to by the High Court judge, and subsequently the reventilation

which never turned out to be one, the rehearing, happened not five weeks later but over a year later and that particular judge ruled that there was alienation, that the alienation had come from the father's household that I needed, a programme need to be put in place to rebuild my relationship with my son.

*Interviewer:* Yet at the bottom of this there's a child who at seven was brave enough to say, this is what's happened to me, repeat his story to the doctor, to the police, to CYPFS and then get taken away from school and put in a home where he says these things happened to him. So much time has passed and so much damage has been done, given that you know without agreeing with your version of events or your ex-husband's events, I mean the reality is out of all of this very protracted legal process you have a family now that is utterly fractured. You have two children who don't want anything to do with their mother, who had to be ordered by a court to have something to do with their mother which is the most unnatural state of affairs. How do you deal with the here and now?

*Mother:* Oh I have huge support from my husband. He's the most amazing man, standing next to me. My friends have been absolutely extraordinary and my family, the same. They have lived this with me. We are a large family, there have been four children born since this happened, four children that my children don't know, who are their cousins. I keep myself very very busy, I'm studying for a Masters in pain medicine, I'm doing the Coast to Coast, I just gave up teaching music recently, I just keep myself very occupied.

*Interviewer:* In the most recent court ruling made just before Christmas, Judge Priestley described this, said that your family and your children have been victims of this systemic failure, is there comfort in that for you?

*Mother:* Linda I've had, if you like, the moral high ground for the best part of seven years in the rulings that have occurred. It doesn't change anything for my son or my daughter.

*Interviewer:* Well yeah and I mean Judge Priestley also says that in that ruling that this is really your last chance to re-establish a relationship with your son.

*Mother:* Yes and subsequently the ruling so far hasn't been complied with.

*Interviewer:* The compliance being that you're meant to have had meetings with your son?

*Mother:* Absolutely.

*Interviewer:* So they haven't occurred?

*Mother:* No. I'm in a, if you like, powerless position. I cannot do anything other than be there when they contact or a meeting has been arranged and I would be there at the drop of a hat for even 30 seconds of contact.

*Interviewer:* But they don't turn up?

*Mother:* They haven't agreed to the meetings even at this stage, which is you know a meeting with the …

*Interviewer:* Which raises the question for me is why you would want to talk about this publicly, because doesn't that harm your chances of reconciliation with the children?

*Mother:* I had thought about this long and hard and to be honest there have been other opportunities in the past to go public and I have thought no this could damage any hope that I had of rebuilding a relationship with my children, or damage them further. However it has now got to the point where the

relationship with them is so damaged that, and the court has got to the point where it hands are so tied, my son was made a ward of court in this last year and which is what I wanted, that gives the court certain powers, but the reality of it is that the child's interest still has to be kept in mind and you have to say well how will they function as adults and while I, you know, people could say well why don't you just walk away and leave it, my response is how can I? Judge O'Donovan that made this decision at the beginning that has been roundly criticised and nobody has been able to say, you know, give a reason and it's been … it's just so wrong. He goes home and he spends his time with his family, birthdays with his family, he may have grandchildren that he's watching grow up. Same with the other judges that came into contact with this case. Same with counsel for child. They had a duty and an obligation to protect my children and they failed and I have been, you know I have been blessed with a good education, an incredibly strong network and the financial resources to say this should not happen and to keep fighting is not for my children to make someone say this should not happen, someone has to be accountable, even if it's a change in a system, because Pat Mahoney who was head of Family Court at the time said he would, he apologised, in fact he said he acknowledged, I should say, that there were serious administrative flaws and delays, as if this was a building site that he was talking about and not some children's lives.

*Interviewer:* And knowing what happens, I mean if you … the most optimistic version here, the most optimistic outlook is that you can somehow rebuild a relationship with your children.

*Mother:* Yes.

*Interviewer:* But that seems a remote possibility, with your daughter in particular.

*Mother:* A very remote possibility.

*Interviewer:* And then what, do you still … what do you do with the rest of your life with that?

*Mother:* I don't know Linda, um. If your children die, the grief would be extraordinary and you pick up the pieces and you would go through a grieving process and somehow you have to carry on. My children aren't dead. I am unable to go through a grieving process that allows me to pick up pieces and go on. If I can't rebuild a relationship with my children, somehow I am going to have to do that, somehow I'm going to have to maybe imagine that for the time being my children are gone, they are dead. I can't see that at this point in time, I don't know how to do that and I don't know how to accommodate it into my life. While there is still a chance that my son will be helped and, through my son, actually I think my daughter because if my son is able to get help then I know that my daughter will start questioning and that will start her on the road to recovery as well, and to getting her, just to start questioning things?

*Interviewer:* That was an Auckland mother of two children, she's lost custody of her children as you heard there. We have been in touch with the other side, there is always another side in these stories, is there not, with the lawyer representing the father of these two children, the father who was given custody of these two children seven years ago. We are in discussions with him, we are also in discussions with the Family Court. We expect to offer you other versions and other views on this story later in the week.

# APPENDIX 4

## Transcript of Radio NZ interview with Chief Family Court Judge Peter Boshier, 3 February 2006

**Linda Clark, Radio NZ (interviewer) and Judge Boshier**

*Interviewer:* Earlier this week I spoke to an Auckland mother who, seven years ago, lost custody of her two children. This woman, who I can't name, wasn't in court when the ruling against her was made. Her lawyers hadn't been alerted to the hearing and by the time the case came up in court again, months had passed. Her children were settled, living with their father and her daughter, while still only 10, now opposed any return to the mother's home.

Seven years on, this woman has spent nearly three-quarters of a million dollars trying to get access to her kids. She's had legal judgments critical of the initial ruling against her, one judge called it incomprehensible, but she's got no progress towards what she really wants, and that is a reconciliation with her children.

As I said to you on Monday, this case sounds a note of warning about what can happen in the Family Court.

The Chief Family Court Judge is Judge Peter Boshier. I spoke to him about this case before we came on air this morning and I began by asking for his first impressions of this particular custody battle.

*Judge:* My first impression is that it's a very long running case which started in 1993 and it's a case that has been driven on my reading of the judgments by the parties. The parties have had a singular and committed wish to fight and my overwhelming impression is that try as it might, the court has been driven by these parties to endless litigation. That's my first impression. That's partly reflected by the fact that although I want to promote openness of the Family Court and accountability, it's not achieved by one party who's obviously got an enormous commitment to a case and emotional input coming to you and broadcasting their side of the case, because as you will appreciate in a 12-year case for one party to give her side of the story and for there to be no balance in the judgments and the process isn't good accountability and is not good openness.

*Interviewer:* So you don't approve of what the mother did earlier in the week?

*Judge:* No I don't, and I don't actually approve of what you did because I think that good balanced reporting, which is what the Care of Children Act encourages, means that it's not the parties that should [be] reporting on a case, it should be the media reporting on the case.

*Interviewer:* Yeah although this case is a bit of a challenge to everybody, to all parties actually, because at the heart of this case is a single judgment which even other judges have commented and said was incomprehensible and they couldn't see the reason behind that first judgment. Had that first judgment by Jim O'Donovan not been made, not have been made, then this family might have been in a very different position now, do you accept that?

*Judge:* It may have been. I want to say one thing about the *ex parte* order that the judge made which has been the centre of attention and there are two things about this Linda I'd like to say. The first is that I'm pleased that there is a robust appeal process. I'm pleased that Judge O'Donovan's decision where he gave *ex parte* custody to the father was tested in the High Court and that the High Court has commented that that's a good robust appeal system but the second important thing is that at the end

of 1999 there was a five-day hearing before Judge Aubin in which the whole case was traversed, everything that could be said by each party, by the psychologist, by everyone was traversed and the judge left the care of the children with the father.

*Interviewer:* And another judge after that case had another look at Judge Aubin's findings and didn't agree with them and asked that the whole thing be reventilated again.

*Judge:* What happened was that after the five-day hearing there was an appeal to the High Court. By that time the children were expressing a very clear wish to live with their father. In fact, there are two children, only one was referred to by the mother interestingly enough on Monday, there are two children…

*Interviewer:* No that's not true, she referred to both of them.

*Judge:* The older one seems to me to have influenced the younger one and has had very strong views against the mother.

*Interviewer:* Well not just to you, I mean that's what the judges have said along the way.

*Judge:* All right.

*Interviewer:* And one of the problems here is, I accept what you're saying, but if we go back to the heart of the complaint, if you like, about how this case has been dealt with, the mother's complaint. The mother's complaint is that Judge O'Donovan's ruling was wrong and she was disadvantaged in any appeal of that because of delay and in essence there seems to be, I mean who can judge yes or no on these things, but none of the things that happened, because this is the Family Court and we're dealing with young children and not simply matters of law, is that in the months that passed between Judge O'Donovan's *ex-parte* decision and the next opportunity for a full rehearing of those issues, the children's opinion of the situation had changed and then because the interests of the child are always to be taken into consideration, the interests of the children had changed disadvantaging the mother, do you know what I'm saying?

*Judge:* Yes, can I set up a context as to why some time expired? I want to help by just reading a very brief passage from Judge Aubin's judgment which helps explain why the case had to be set up taking time and this is what the judge said:

> "of these two parents, to my mind these observations need to be made in this case where both parents have indulged themselves in inundating the court with a tide of self justificatory material. It is an excellent example of how educated, socially adept and materially well-off people can be as incapable of working together sensibly over the needs of their children as parents without those advantages"

And the point I want to make is that, Linda, if there's one single thing about this case that strikes me, it's that these two parents have done everything they can to undermine themselves, to undermine their children and to make the processing of the court case difficult.

*Interviewer:* Well can't the court do something about … if that's … if that is what's happened here, if we've got two intelligent, financially secure people who can use both their intelligence and their finances to do battle endlessly in front of the court, if the interests of the children is what is paramount, and under the Care of Children Act, of course, that is what is paramount, can the court not put a stop to endless to-ing and fro-ing?

*Judge:* Yes it can and one thing that you and I have discussed in fact on the last interview we had was the Care of Children Act the impact that that will have and my own commitment to doing the high-risk cases better. The Care of Children Act, for instance, requires and I'll give this exact example, where there is a without notice order made, used to be called *ex-parte* now it's called without notice, where such an order like that is made, this Act requires the court to return to it and to hear it promptly. It's time limited by statute.

*Interviewer:* So this case would have been … would have been dealt differently now … dealt with differently now than it was in 99?

*Judge:* I have no doubt that the case would have been dealt with differently, and one other thing to add in is that one of the principles of the Care of Children Act requires the court to conduct a case in accordance with the children's perception of time and here these children, like all children, want matters dealt with speedily, so what I'm saying is that although we went out of our way to let these parties file all manner of documents and affidavits, everything they could say about each other was said and out of an abundance of fairness we let them say that. I believe now we wouldn't let them do that.

*Interviewer:* Because it's not fair to the children?

*Judge:* It's not fair and the Care of Children Act, I think, recognised that some parents were taking advantage of the court system and taking advantage of delays brought about by assembling huge amounts of material.

*Interviewer:* So the parents involved in this case did that, do you think?

*Judge:* I have no doubt they did at all.

*Interviewer:* Let me go back to the *ex parte* business, the order without notice as it's called now, yeah?

*Judge:* Yes.

*Interviewer:* A lot of listeners were interested in this and felt quite strongly about this. In this particular case, it seemed a very unusual step to take given that by 1999 when Judge O'Donovan issued that order, my goodness me they'd been before the courts before, everyone knew that everybody involved in this family had a lawyer, so there was no reason, was there to have any kind of hearing without having legal representation on all sides.

*Judge:* Ex-parte orders are ones which judges make, under pressure, and along with all the duty work they do for the day. If a judge gets an allegation which seems to have force and seems to have the real need to act, a judge will do so and then look at it afterwards.

*Interviewer:* But the allegation in 1999 was against the father, not against the mother, and yet the *ex parte* order was issued at the father's request.

*Judge:* What happened in 1999 was this … could we just go back a little, can I cover some contextual matters? The parents separated in 1993. The mother had obtained a non-violence order against the father. One of the issues she raised on Monday, you'll recall, was how could a court give custody to a father that's been demonstrated to be violent. You may recall that she said that. She was the one that agreed with the father having contact, there was no access, as we used to call it, or contact issue raised by the mother from 1993 till 1999 so…

*Interviewer:* Despite the protection order being issued?

*Judge:* Despite the protection order made and my reading of the file indicates that there doesn't seem to have been any protection issues before the separation. It seems to have arisen afterwards. So what I'm saying to you is that in 1999 when the judge was faced with an allegation by the father that the mother had been doing very strange things in relation to the children, the suggestion was as you know, she'd put them up to false allegations. I don't … I am not surprised on hindsight that the judge was very worried.

*Interviewer:* Even though before the judge you had this … you had documentation from both Child, Youth and Family, um and the psychol … the child psychologist appointed by the court which seemed to indicate that either at that point in time and this will soon change, but at that point in time either that there was a possibility that abuse had occurred in the father's home or that in the judgment of the child psychologist appointed by the court the children would be better off with the mother. Now the judge chose to ignore both of those.

*Judge:* I'm not aware of the reasons and the exact material that the judge had. I'm certainly not going to say to you what the judge ignored and what he didn't because in fairness to the judge, I don't know what material the judge had.

*Interviewer:* And that's why *ex parte* orders are dangerous.

*Judge:* Ah they … yes but they can be even more dangerous not to make and let's be fair about this. A judge often, and I was in this exact position myself during the week with a parent who had absconded with children over the holidays it's not unusual, you face a balance Linda if you decline to act and a parent, say has got mental health issues, you could put the children at terrible risk. When a judge is faced with a crucial shattering decision to make, you do the best you can under pressure and I don't apologise for that.

*Interviewer:* Yeah but and we … and everyone accepts that and judges are human and people make mistakes and all the rest of it, but you don't have to defend Judge O'Donovan because another judge that looked at this case much later on and here's a sort of, you know, (so many judges have dealt with this case now), but another judge, was it Priestley I think it was either Priestley or Morris? It might have been Morris who said that Judge O'Donovan's decision was incomprehensible to him.

*Judge:* Yes he did. Judge ... Justice Priestley dealt with the case, let's just talk about his involvement in it. The case was moved to the High Court where after a year more delay it was dealt with by the judge. He was being asked to consider wardship to try and see if the boy could develop a better relationship with the mother, so he gave the file the complete overview.

*Interviewer:* And he made the boy a ward.

*Judge:* That's correct.

*Interviewer:* Yep.

*Judge:* And what he's now trying to do is to repair the damage that these two parents have caused to these children, particularly the boy. So although I'm quite happy to talk about the court process, why the High Court's intervened is to recognise that these parents have made a mess of parenting these children…

*Interviewer:* But they have been allowed to make a mess of parenting these children because they have been allowed to manipulate the court system and the rights of their children have been allowed to play second fiddle.

*Judge:* And I'm pleased to hear you put it in that way because that's the thing that I would like to change, and would like to think that the public are behind me in doing it. Parents cannot expect any longer to come to you and to go to the media and say that they personally have been treated unfairly by the court, therefore the court is wrong. That's not the point.

*Interviewer:* Well except one of your judges says in this case the court has been wrong because Justice Priestley says in the December judgment, for the most recent judgment on this says that the parties of … this family both the parents and the children have been the victims of systemic error.

*Judge:* Yes, that was Justice Priestley.

*Interviewer:* It doesn't get stronger than that … the system has done over this family. They might have participated, they might have assisted, they might have not helped their case, but the system has not helped this family.

*Judge:* The system has not helped this family of that I fully agree and that…

*Interviewer:* And so what is the remedy for that?

*Judge:* The remedy is in the very things that we are trying to do in court work at the moment and that is this, to have a more robust approach. I'll encapsulate it in this way: I believe court work has to be driven by the court and the rights of the children and I think we have allowed parents to drive cases too much. I would like to see that changed and I think I've already said to you that in Australia they've piloted a successful programme called The Children Cases Programme which means that judges define the issues, judges tell the parties what they can file and what they can't and judges decide how quickly cases need to be brought on, not when the parties want to bring them on so I'm optimistic that with good will and support we can change but this case provides the real challenge, this is a case that really demonstrates that, how difficult it was. I just want to reinforce the point: after it went to the High Court Justice Morris dealt with it and sent it back to the Family Court. Another judge dealt with it after that and he said this, can I … can I…

*Interviewer:* And this is Judge…

*Judge:* This is Judge Bisphan. Let me capture these brief but lovely remarks:

> "What is this case about? A broad overview of this matter reveals that the case has developed in the way it has because of adult emotions and feelings and has been largely driven by how the parties perceive each other. The adults' hurt, desire for revenge, dislike bordering on hatred, guilt and anguish have all been given the vehicle of the long running litigation which in turn has served to perpetuate and even exacerbate these factors. I make no apology for two trite comments. One, children do not usually make problems over custody and access. Two, children by-and-large must accept their parents as they find them."

I think those are wonderful remarks that sum the whole thing up.

*Interviewer:* Yeah but the court here, I mean … if we, if we stick for a moment with the, with what's in the best interest of the children, where this family has ended up is that there is no longer a bond between mother and child, particularly in the case of the daughter, but also in the case of the son. That bond has been destroyed by this process, do you accept that?

*Judge:* I accept that it has destroyed the bond, I accept that the parents have destroyed the bond, the court hasn't.

*Interviewer:* But well the delays in the court system and the way that the court has allowed itself to be used by the parents has destroyed the bond and in a sense some of the judgments have destroyed the bond. See Judge Aubin, and I know you like his judgment, you've referred to it, he says in his judgment that the child is likely to choose to stay with the parent perceived, in a case like this where there's a great deal of animosity and conflict, the child is likely to choose to stay with the parent perceived as the most powerful in the power struggle and he makes no bones about it. I mean he sees the father as the much stronger figure, he sees the mother in this case as a much more fragile figure.

*Judge:* Correct.

*Interviewer:* The father's more dominating, the mother's more fearful, powerful he says in her own way, but fearful and more vulnerable, and the child, the daughter, who at that point he's really relying on for guidance because she's a little older and she's more clearer about what she wants. She is the one who determined that the children would stay with the father. Now Judge Aubin's right isn't it, she decided that because he was the more powerful parent. Now that isn't to say that was in the best interests of the child, that's just two children caught in the middle of a storm being pragmatic.

*Judge:* I don't want to be hurtful and I don't mean to be hurtful in any way but after Judge O'Donovan shifted custody, after a short time he reviewed the case and decided he would not change his judgment and as you know by the time the case came on before Judge Aubin at the end of that year the children, and in particular the older child, seemed to have taken up a view. Why? One explanation as you've said is that the father programmed or influenced, the other is, and as I say I don't want to be hurtful…

*Interviewer:* No, I'm not saying programming, I'm not even suggest … that's what they all suggest but Judge Aubin doesn't favour the programming theory, he favours that simply these are children who are trying to stop the conflict.

*Judge:* Yes and regrettably for the mother, and I acknowledge regrettably for the mother they seem to have interpreted her as the person they don't want to live with, they seem to me on my reading of their views she's the one they perceive as the one who's driven conflict that they want to get out of. That's the way I read it. Now I'm sorry and I regret that but I'm not surprised that when children see their parents warring to this extent they make a decision.

*Interviewer:* Yeah but Judge Morris, the next judge who touched this case, he totally disagreed with the way that Judge Aubin had r.. had had interpreted all of that. I mean he says quite clearly that Judge Aubin put far too much emphasis on the views of a 10-year-old girl, because who was really to know what was really in her best interests. Did she really know what was in her best interests?

*Judge:* Well interestingly enough on hindsight the Care of Children Act has if anything enhanced the rights of children and their views. Judge Aubin said that he wanted to give effect to the older child's views. What Justice Morris said was that in his view Judge Aubin hadn't given proper effect to the criticism of accepting her views, so it, that is in fact is the context. Justice Morris said he wasn't satisfied that the judge had dealt with all the criticisms pertaining to acceptance of the older child's views but as I say here is Parliament now saying in section 6 of the Care of Children Act judges must listen to the views of children and must give effect to them so if anything children are going to continue to say to judges in cases when they believe one or both of their parents are not driving the case correctly…

*Interviewer:* Yeah but I think what Judge Morris is also saying is that judges need to if you like have an ear out for the under current because sometimes what a child says in the middle of a storm like this, it's the unsaid it's the unspoken that's just as important as the spoken.

*Judge:* Yes. This is a complicated case. You asked me right at the outset how I saw it. I see it as one of those top category of cases that's complicated. Why? Twelve years of endless litigation, so many documents that every judge who's dealt with it has probably had to spend days preparing it.

*Interviewer:* Well I think we talked on this about this on Monday, 22 judicial hearings, something like that?

*Judge:* Yes.

*Interviewer:* An enormous number.

*Judge:* Yes well this is a point that I want to make although there has been delay, in fairness to the court every time a party files an application whether it's to define access, whether it's to stop access, whether it's to go on a holiday, whether it's for the children to go to a school or not a school, the court's got to deal with it along with every other case and where you've got a very high consumption case like this it's not fair that everyone else gets pushed out. It's got to be seen along with all the other casework to be done. Now you say to me does that mean inevitable delays? I don't think it does. I think under the Care of Children Act we're capable now of putting this sort of case at the top and frankly driving it ourselves instead of letting the parties do it.

*Interviewer:* Would it be easier in a case like this if it was assigned to simply … to a smaller number of judges?

*Judge:* Yes it would be and if there is to be a perception the parents have got which I think is a fair perception, it's the fact that they've had a lot of different judges doing this case. This is an Auckland case, so if this had happened in say New Plymouth or Dunedin or Napier you would have had one judge and a different type of case management. Here it seems to have been to the North Shore Court to the Auckland Court. It's had inevitably a number of judges doing it because we are rostered in that way. It's not ideal but it's the reality of Auckland with so many courts to service, so…

*Interviewer:* No but it gives wiggle room for litigious parents, doesn't it?

*Judge:* Yes it does, absolutely no question.

*Interviewer:* Because they didn't like what they got from you and they quite liked the last judge and they might give it another go.

*Judge:* Yes that's right. What we did well after this is we started a docket system in Auckland and perhaps I can just mention that for thirty seconds. What we now do and have been doing successfully in Auckland for some time is the six judges based in Auckland are divided into three docket teams and so only two judges in a docket will do their casework and they become very familiar with the files, familiar with the parties trying to get one over the court, much more successfully so than if one didn't have a docket system.

*Interviewer:* None of the judges who have dealt with this case in recent years are particularly optimistic that there can ever be if you like a happy outcome for this family. Do you share that pessimism?

*Judge:* No not necessarily. I think that these, these children are still teenagers. I think that in the fullness of time they might reflect on the way the case went and see it with more insight than they presently have. At the moment they are caught up I imagine in the heavy emotion of this case being lived out in the kitchen and in the house each day. It may be that when they are apart from that they see it differently.

*Interviewer:* In the December ruling, ah this is my last question really, in the December ruling by Judge Priestley he ordered contact between the mother and son. It's February now, there's been none. Is that … does that seem like dragging the chain to you?

*Judge:* Well I wouldn't want to be accountable for what the High Court's ordered. That, that ... that wouldn't be fair for me to try and explain what the High Court's done and what it wishes to happen. What would be fair for me to say to you is that the single biggest thing we've all got to reduce is delay and if you're saying to me is delay acceptable in Family Court work, it is not and so if I can conclude by saying this to you. There have been delays in this case inevitably because we've been driven hugely by these parties and if we can reduce that in the future and make people have confidence that when they get to the Family Court they'll get a good, swift decision I think that's what we should be doing.

*Interviewer:* Yeah although I wouldn't want listeners to end this … to to..to end this conversation with the impression that the fault is all on the parties. I mean I accept every judge that's touched this case has criticised both parents equally but Judge Priestley, let us not forget, said these were victims of systemic failure, the system failed these people and there is now no remedy for the damage the system has done for this family.

*Judge:* Yes, I think Linda the Family Court has been a success and to some extent has been the victim of that, it's acquired so much jurisdiction and so much work that we are very, very busy. When you have a huge, high demand case like this at times we struggle to find the time with all the other work, the other 19 statutes that we administer we do struggle to find the time to deal with this and so it is possible that if someone really wants to make life difficult they can.

*Interviewer:* Yeah but there's nowhere now for this family to go to seek … I mean I, yeah, financial remedies, not not … not appropriate but I mean we all accept the bond between mother and children has been broken and we all accept that while both the mother and the father are at fault the system is also at fault but the mother has nowhere to go to find a remedy for that, I mean that's a grave injury isn't it?

*Judge:* Yes it is and I regret the fact that these two parents parented these children which were very, very young until 1993 and then totally failed to co-ordinate their parenting efforts after that. If there's one thing we should be trying to do to be constructive and positive, it's to grab parents early on separation, perhaps advise them what can happen unless they are reasonable and this is a stunning example of how with proper parent information we might be able to say to parents you only have one go at parenting, try and get it right.

*Interviewer:* That was the Chief Family Court Judge, Judge Peter Boshier.

# APPENDIX 5

## Breakdown of Family Court newspaper articles, 1 July to 31 December 2005

> Forty-seven articles mention the Family Court in this period.
> Average of eight (exact) articles per month.
> Articles can be broken down according to three genres: general news articles, feature news articles and opinion pieces.
> The articles can be divided into four categories within these three genres, according to the context in which the Family Court is mentioned in the article:
    1. Legal issue relevant to the Care of Children Act 2004: reporter attends court
    2. Legal issue relevant to the Care of Children Act 2004: reporter does not attend court
    3. Legal issue not relevant to the Care of Children Act 2004
    4. Incidental mention of the Family Court.

The search for articles was undertaken using the Factiva articles database, which includes all main New Zealand newspapers apart from the *Northern Advocate*.

Articles that appear across different publications are counted as one article for each time it appears.

**Table 1: General news articles, 1 July to 31 December 2005 (38 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Media access 'will help end Family Court suspicion' | Care of Children Act and changes to the Family Court | 1 July 2005 | Dominion Post |
| Family Court open to media | As headline suggests (news in brief article) | 1 July 2005 | NZ Herald |
| New law gives grandparents greater rights | Care of Children Act and custody cases involving grandparents | 1 July 2005 | NZPA |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Dominion Post |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Manawatu Standard |
| Discomfiture all round as media gain entry to Family Court | Report on actual case; aspects of the Family Court | 2 July 2005 | NZ Herald |
| 'McDonalds dads' on the way out | Changes to the Family Court under Care of Children Act | 2 July 2005 | NZ Herald |
| New law focuses on sharing of parental responsibility | Care of Children Act and implications for the Family Court | 2 July 2005 | Otago Daily Times |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Southland Times |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Timaru Herald |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Waikato Times |

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Judge says Act should speed court process | Care of Children Act and implications for more effective Family Court processes | 8 July 2005 | Otago Daily Times |
| Court opening to press was inevitable, says Judge | Peter Boshier's comments on media access to the Family Court | 12 July 2005 | NZPA |
| Judge has concerns over Family Court coverage | Media access and reporting on Family Court cases | 12 July 2005 | NZPA |
| Six arrested after fracas in Family Court | As headline suggests (short article) | 12 July 2005 | NZPA |
| Arrests at court | Arrests made at Rotorua Family Court (news in brief article) | 13 July 2005 | The Press |
| Sex offender argues against son's seizure | Court of Appeal case about a Family Court custody case | 21 July 2005 | Dominion Post |
| $100,000 for family studies | Families Commission grants for research on the Family Court | 23 July 2005 | Dominion Post |
| Refinements needed to Family Court process, top judge says | Peter Boshier outlines some changes needed for a more effective Family Court | 10 August 2005 | NZPA |
| Judge proposes Family Court reforms | Peter Boshier outlines changes he wishes to make for the Family Court to run more effectively | 11 August 2005 | Dominion Post |
| Family Court changes to help reduce delays | Peter Boshier outlines changes the Family Court should make to make it more efficient | 11 August 2005 | NZ Herald |
| Refinements urged for Family Court | Peter Boshier calls for more efficient Family Court processes | 13 August 2005 | Otago Daily Times |
| Court reform mooted | Peter Boshier outlines changes necessary to Family Court effectiveness | 13 August 2005 | The Press |
| Noon deadline for mother to front up to court | Mother takes off with daughter after she was placed in CYFS care after Family Court proceedings | 19 August 2005 | NZPA |
| Violence an easy option, says Judge | Care of Children Act and changes to the Family Court system | 1 September 2005 | Northern Advocate |
| Fugitive mother arrested in Mangere | Aspects of a Family Court case the arrested woman was involved in | 5 September 2005 | NZ Herald |
| Custody battle puts prostitute's deportation on hold | As headline suggests; aspects of a Family Court custody case | 5 September 2005 | NZPA |
| Judge: public scrutiny has changed the rules for Family Court | Changes resulting from Care of Children Act; aspects of the Family Court | 10 October 2005 | NZPA |
| Greater scrutiny of Family Court | Care of Children Act and changes to the Family Court | 12 October 2005 | Otago Daily Times |

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Faith in protection orders wanes | Report on effectiveness of the Family Court in relation to protection orders | 20 October 2005 | NZ Herald |
| Second try fails to reverse marriage dissolution | High Court case appealing a two-year-old Family Court marriage dissolution case | 11 November 2005 | Dominion Post |
| More than 1,000 crimes a day, Ministry says | Mentions large number of daily Family Court cases and Family Court group conferences | 18 November 2005 | NZPA |
| Tot dies after mother gets custody | As headline suggests; aspects of the Family Court case the child was involved in | 26 November 2005 | NZ Herald |
| Toddler dead one month after return | Toddler dies one month after the Family Court grants custody back to mother; aspects of the case | 26 November 2005 | NZPA |
| Man accused of murdering baby blames his partner | Notes how father of baby tried to get child off those accused of killing her from Family Court; aspects of a Family Court case | 30 November 2005 | Dominion Post |
| Lawyer went to CYFS with baby concerns | A lawyer went to CYFS with concerns about a baby that was later to die of multiple injuries | 3 December 2005 | Dominion Post |

**Table 2: Feature news articles, 1 July to 31 December 2005 (6 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Jury's still out on the Family Court | Feature - a look at how the Family Court operates since the Care of Children Act opened it to the media | 27 July 2005 | Herald on Sunday |
| Breaking up is hard to do - for kids as well | Feature - looks at effect of breakups on children and what can be done to make the situation easier | 4 December 2005 | Herald on Sunday |
| Son priority in custody case | Feature article about Family Court cases and aspects of the court | 13 July 2005 | NZ Herald |
| Two years of big advances in family law | Feature article about the Family Court cases and aspects of the court | 10 August 2005 | NZ Herald |
| Grandparents battle for troubled children | Grandparents' custody rights and access to the Family Court | 25 July 2005 | Otago Daily Times |
| The state's role in the care of children | Feature article discussing how CYFS and the Family Court deal with children who are in need of protection | 28 August 2005 | Otago Daily Times |

**Table 3: Opinion articles, 1 July to 31 December 2005 (3 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| A week a long time in law courts | Feature article looking at implications of Care of Children Act for the Family Court | 4 July 2005 | Otago Daily Times |
| The real risk to children | Opinion piece regarding Care of Children Act and custody cases | 7 July 2005 | The Press |
| Another sad Christmas | Letter to editor about the Family Court taking children from their fathers | 24 December 2005 | The Press |

## General news by category

**Table 4: General news, legal issue relevant to the Care of Children Act 2004: reporter attends court, 1 July to 31 December 2005 (1 article)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Discomfiture all round as media gain entry to Family Court | Report on actual case; aspects of the Family Court | 2 July 2005 | NZ Herald |

**Table 5: General news, legal issue relevant to the Care of Children Act: reporter does not attend court, 1 July to 31 December 2005 (35 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Media access 'will help end Family Court suspicion' | Care of Children Act and changes to the Family Court | 1 July 2005 | Dominion Post |
| Family Court open to media | As headline suggests (news in brief article) | 1 July 2005 | NZ Herald |
| New law gives grandparents greater rights | Care of Children Act and custody cases involving grandparents | 1 July 2005 | NZPA |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Dominion Post |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Manawatu Standard |
| 'McDonalds dads' on the way out | Changes to the Family Court under Care of Children Act | 2 July 2005 | NZ Herald |
| New law focuses on sharing of parental responsibility | Care of Children Act and implications for the Family Court | 2 July 2005 | Otago Daily Times |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Southland Times |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Timaru Herald |
| New act aims to make 'McDonalds dads' history | Care of Children Act and implications for Family Court custody cases | 2 July 2005 | Waikato Times |
| Judge says Act should speed court process | Care of Children Act and implications for more effective Family Court processes | 8 July 2005 | Otago Daily Times |
| Court opening to press was inevitable, says Judge | Peter Boshier's comments on media access to the Family Court | 12 July 2005 | NZPA |

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Six arrested after fracas in Family Court | As headline suggests (short article) | 12 July 2005 | NZPA |
| Arrest at court | Arrests made at Rotorua Family Court (news in brief article) | 13 July 2005 | The Press |
| Sex offender argues against son's seizure | Court of Appeal case about a Family Court custody case | 21 July 2005 | Dominion Post |
| $100,000 for family studies | Families Commission grants for research on the Family Court | 23 July 2005 | Dominion Post |
| Refinements needed to Family Court process, top judge says | Peter Boshier outlines some changes needed for a more effective Family Court | 10 August 2005 | NZPA |
| Judge proposes Family Court reforms | Peter Boshier outlines changes he wishes to make for the Family Court to run more effectively | 11 August 2005 | Dominion Post |
| Family Court changes to help reduce delays | Peter Boshier outlines changes the Family Court should make to make it more effective | 11 August 2005 | NZ Herald |
| Refinements urged for Family Court | Peter Boshier calls for more efficient Family Court processes | 13 August 2005 | Otago Daily Times |
| Court reform mooted | Peter Boshier outlines changes the Family Court should make to make it more effective | 13 August 2005 | The Press |
| Noon deadline for mother to front up to court | Mother takes off with daughter after she was placed in CYFS care after Family Court proceedings | 19 August 2005 | NZPA |
| Violence an easy option, says Judge | Care of Children Act and changes to the Family Court system | 1 September 2005 | Northern Advocate |
| Fugitive mother arrested in Mangere | Aspects of a Family Court case the arrested woman was involved in | 5 September 2005 | NZ Herald |
| Custody battle puts prostitute's deportation on hold | As headline suggests; aspects of a Family Court custody case | 5 September 2005 | NZPA |
| Judge: public scrutiny has changed the rules for Family court | Changes resulting from Care of Children Act; aspects of the Family Court | 10 October 2005 | NZPA |
| Call to respect Family Court | Effects of Care of Children Act and resulting openness of court | 11 October 2005 | Dominion Post |
| Standards push in Family court | Peter Boshier outlines changes he believes will enhance efficiency in the Family Court | 11 October 2005 | NZ Herald |
| Greater scrutiny of Family Court | Care of Children Act and changes to the Family Court | 12 October 2005 | Otago Daily Times |
| Faith in protection orders wanes | Report on effectiveness of the Family Court in relation to protection orders | 20 October 2005 | NZ Herald |
| Tot dies after mother gets custody | As headline suggests; aspects of the Family Court case the child was involved in | 26 November 2005 | NZ Herald |

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Tot dies after mother gets custody | As headline suggests; aspects of the Family Court case the child was involved in | 26 November 2005 | NZ Herald |
| Toddler dead one month after return | Toddler dies one month after the Family Court grants custody back to mother; aspects of the case | 26 November 2005 | NZPA |
| Man accused of murdering baby blames his partner | Notes how father of baby tried to get child off those accused of killing her from Family Court; aspects of a Family Court case | 30 November 2005 | Dominion Post |
| Lawyer went to CYFS with baby concerns | A lawyer went to CYFS with concerns about baby that was later to die of multiple injuries | 3 December 2005 | Dominion Post |

**Table 6: General news, legal issue not relevant to the Care of Children Act, 1 July to 31 December 2005 (2 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Second try fails to reverse marriage dissolution | High Court case appealing a two-year-old Family Court marriage dissolution case | 11 November 2005 | Dominion Post |
| More than 1,000 crimes a day, Ministry says | Mentions large number of daily Family Court cases and Family Court group conferences | 18 November 2005 | NZPA |

**Table 7: General news, incidental mention of the Family Court, 1 July to 31 December 2005**

No articles fit this category.

## Feature news by category

**Table 8: Feature news, legal issue relevant to the Care of Children Act: reporter attends court, 1 July to 31 December 2005 (1 article)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Jury's still out on the Family Court | Feature - a look at how the Family Court operates since the Care of Children Act opened it to the media | 27 July 2005 | Herald on Sunday |

**Table 9: Feature news, legal issue relevant to the Care of Children Act: reporter does not attend court, 1 July 2005 to 31 December 2005 (4 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Son priority in custody case | Feature article about Family Court cases and aspects of the court | 13 July 2005 | NZ Herald |
| Grandparents battle for troubled children | Grandparents' custody rights and access to the Family Court | 25 July 2005 | Otago Daily Times |
| Two years of big advances in family law | Feature article about a Family Court case and aspects of family law | 10 August 2005 | NZ Herald |
| The state's role in the care of children | Feature article discussing how CYFS and the Family Court deal with children | 28 August 2005 | Otago Daily Times |

**Table 10: Feature news, legal issue not relevant to the Care of Children Act, 1 July to 31 December 2005 (1 article)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Make sure your heirs play fair | Issues to do with Family Court and inheritance | 30 October 2005 | Sunday Star Times |

**Table 11: Feature news, incidental mention of Family Court, 1 July to 31 December 2005 (0 articles)**

No articles fit this category.

## Opinion articles by category

**Table 12: Opinion articles, legal issue relevant to the Care of Children Act: reporter attends court, 1 July to 31 December 2005 (0 articles)**

No articles fit this category.

**Table 13: Opinion articles, legal issue relevant to the Care of Children Act: reporter does not attend court, 1 July to 31 December 2005 (3 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| A week a long time in the law courts | Feature article looking at implications of Care of Children Act for Family Court | 4 July 2005 | Otago Daily Times |
| The real risk to children | Opinion piece regarding Care of Children Act and custody cases | 7 July 2005 | The Press |
| Another sad Christmas | Letter to editor about Family Court taking Children from their fathers | 24 December 2005 | The Press |

**Table 14: Opinion articles, legal issue not relevant to the Care of Children Act, 1 July to 31 December 2005 (0 articles)**

No articles fit this category.

**Table 15: Opinion articles, incidental mention of Family Court, 1 July to 31 December 2005 (0 articles)**

No articles fit this category.

# APPENDIX 6

## Breakdown of Family Court newspaper articles, 1 January to 30 June 2006

> Fifty-four articles mention the Family Court in this period.
> Average of nine (exact) articles per month.
> Articles can be broken down according to three genres: general news articles, feature news articles and opinion pieces.
> The articles can be divided into four categories within these three genres, according to the context in which Family Court is mentioned in the article.
    1. Legal issue relevant to the Care of Children Act: reporter attends court
    2. Legal issue relevant to the Care of Children Act: reporter does not attend court
    3. Legal issue not relevant to the Care of Children Act
    4. Incidental mention of Family Court.

The search for articles was undertaken using the Factiva articles database, which includes all main New Zealand newspapers apart from the *Northern Advocate*.

Articles that appear across different publications are counted as one article for each time it appears.

**Table 1: General news articles, 1 January 2006 to 30 June 2006 (31 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| 'Keeping my son is against-the law' says dad | A British father claimed NZ Family Court was flouting international law after the court decided to allow his son to stay in NZ with his Spanish mother | 1 January 2006 | Sunday Star Times |
| Under-fire lawyer assaulted in court | A lawyer was assaulted in the Family Court | 4 January 2006 | Sunday Star Times |
| Legal gaffe for radio host Clark | A mistake on National Radio revealed suppressed names from a Family Court case | 31 January 2006 | Dominion Post |
| Two southern lawyers appointed to bench | New appointment to the Family Court bench | 31 January 2006 | Otago Daily Times |
| N/A | New appointment to the Family Court bench | 2 February 2006 | Otago Daily Times |
| NZ Pitching in for 'chicken boy' | Fundraising efforts for a man who was brought up in a chicken coop in Fiji | 11 February 2006 | NZ Herald |
| Lawyer faces hefty penalties | A disgraced lawyer in Dunedin was having restrictions placed on his practice | 7 March 2006 | The Southland Times |
| Spurned wife loses appeal | A woman failed to get larger settlement in divorce | 12 March 2006 | Dominion Post |
| Stay-at-home mum's $1.7m claim thrown out – judge slammed for devaluing homemakers | As title suggests, regarding divorce case | 12 March 2006 | Sunday Star Times |

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Stay-at-home mum's $1.7m claim thrown out - judge slammed for devaluing homemakers | As title suggests, regarding divorce case | 12 March 2006 | Sunday Star Times |
| Paternity test tipped to be put off | The Government announced it had deferred decisions on recommendations on legal parenthood - including one forcing men to take dna tests in paternity disputes | 15 March 2006 | NZ Herald |
| Strong medicine on horizon for addicts | NZ is lagging in the uptake of an anti-craving medicine used for addicts. Talks to a mother who used it to help regain custody of her son through the Family Court | 15 March 2006 | NZ Herald |
| Bias claim rejected by police | The police rejected accusations by the National Party that they were biased | 21 March 2006 | The Press |
| Family violence blight on NZ | Judge Peter Boshier spoke about the rate of domestic violence in NZ at a hui in Auckland | 28 March 2006 | The Press |
| The country's top Family Court judge says... | Judge Peter Boshier spoke about the rate of domestic violence in NZ at a hui in Auckland | 28 March 2006 | NZ Herald |
| Less domestic violence in court | Statistics show the Family Court is dealing with guardianship and domestic violence cases | 10 April 2006 | Otago Daily Times |
| Alarm at domestic violence | A leader of the city's violence prevention group claims judges are watering down anti-domestic violence laws | 26 April 2006 | Waikato Times |
| Hui criticises Act | Brief - a national hui criticised application of the Domestic Violence Act | 26 April 2006 | Manawatu Standard |
| Legal system 'has failed women' in NZ | At a national hui, women criticised the way the Domestic Violence Act applied by Family Court endangering women and children. | 26 April 2006 | The Press |
| Father targets judge's home | Activist group protested outside homes of legal professionals in Auckland because of Family Court decisions denying access to fathers | 2 May 2006 | Waikato Times |
| We're not done yet, say noisy parents | Protesting parents vow to continue protesting until the Care of Children Act is amended | 8 May 2006 | Waikato Times |
| Fathers' vendetta angers top judge | Judge Peter Boshier speaks out against protests by fathers over Family Court decisions | 9 May 2006 | NZ Herald |
| N/A | Plans for fathers' protest in Dunedin postponed | 13 May 2006 | Otago Daily Times |
| Home | Part of brief - Principal Family Court Judge Peter Boshier comments on protesting fathers | 14 May 2006 | Sunday Star Times |
| Activists stage loud protests | Fathers' group protested about male bias in the Family Court system in Palmerston North | 22 May 2006 | Manawatu Standard |

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Dads condemn lawyers' 'tricks' | Fathers group protested about male bias in the Family Court system in Palmerston North | 22 May 2006 | Dominion Post |
| Fathers stage protest | Brief - fathers protesting in Palmerston North over male bias in the Family Court | 22 May 2006 | Waikato Times |
| Fathers' group scares lawyers | Protests in Canterbury over treatment of fathers in the Family Court | 24 May 2006 | The Press |
| Protesting father's suppressed info posted on website | Suppressed information from a Family Court case posted on website by protesting father | 30 May 2006 | Manawatu Standard |
| Judge to check out website details | Investigation into breach of name suppression in a Family Court case | 3 June 2006 | Manawatu Standard |
| Emotions run high in Family Court cases | Fathers' group protested about perceived injustice in the Family Court system | 10 June 2005 | NZ Herald |
| Fathers' group pickets homes of two North Shore MPs | Fathers' group protested about perceived injustice in the Family Court system | 12 June 2006 | NZ Herald |

**Table 2: Feature news articles, 1 January to 30 June 2006 (10 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Private lives in the public eye | Feature - looks at the Family Court and why media are not covering it since the Care of Children Act | 5 January 2006 | Dominion Post |
| Child's ethnicity | Case study - alongside bigger feature 'The kids are not all right' | 28 January 2006 | NZ Herald |
| The kids are not all right | After the easing of restrictions few journalists have attended Family Court so the reporter goes along to see what it is all about | 28 January 2006 | NZ Herald |
| A sad mix of broken homes and damaged children | After the easing of restrictions few journalists have attended the Family Court so the reporter goes along to see what it is all about | 20 May 2006 | The Press |
| Father v Family Court | A look at the way the Family Court works given the protests by fathers claiming bias | 3 June 2006 | Waikato Times |
| For the sake of the children | A discussion with a Family Court judge - part of larger feature 'The kids are not all right' | 28 January 2006 | NZ Herald |
| When good parents go bad | A look at research into parents who kill their children and then themselves | 12 February 2006 | Sunday Star Times |
| On a crusade for custody | The journalist talks to protesting fathers about the way the Family Court works | 10 June 2006 | Dominion Post |
| Till dosh do us part | Divorce settlements, with some emphasis put on a high-profile case | 12 March 2006 | Sunday Star Times |
| The deadly price of | A look at one marriage that ended in tragedy in the light of revelations about domestic violence in New Zealand | 8 April 2006 | NZ Herald |

**Table 3: Opinion articles, 1 January to 30 June 2006 (13 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Caring fathers | Response to letter 'Another sad Christmas' | 2 January 2006 | The Press |
| Ruling sends signal to mothers | Comment on divorce settlement of wealthy couple | 12 March 2006 | Sunday Star Times |
| News in brief | Editorial touching on many topics - including proposal for an at-risk birth register by a retired Family Court judge | 13 March 2006 | Timaru Herald |
| Law fails to protect abused | Comment piece by a barrister on the shortfalls of the Domestic Violence Act | 21 March 2006 | NZ Herald |
| Ignore justice at our peril | Comment piece by a barrister on temporary protection orders | 24 March 2006 | NZ Herald |
| Piece of paper is no protection | Comment on the failure of protection orders | 30 March 2006 | Manawatu Standard |
| Judge despairs at violence | Comment piece on domestic violence rates in New Zealand | 3 April 2006 | Northern Advocate |
| The deadly dance | Comment piece by a barrister on the shortfalls of the Domestic Violence Act | 3 April 2006 | Otago Daily Times |
| Leaving a frightful legacy | Comment piece by a barrister on the shortfalls of the Domestic Violence Act | 5 April 2006 | Manawatu Standard |
| Dad's army does itself no favours | Comment piece on fathers' protests against bias in the Family Court | 15 May 2006 | Dominion Post |
| Man to man | Retired judge comments on fathers' protests against Family Court bias | 10 June 2006 | NZ Herald |
| Garth George mother tells of losing her son in Family Court farce | Comment piece discussing case where a woman lost custody and used section 59 to defend the case | 15 June 2006 | NZ Herald |
| When discipline goes too far | Response to Garth George's comment piece | 22 June 2006 | NZ Herald |

## General news by category

**Table 4: General news, legal issue relevant to the Care of Children Act: reporter attends court, 1 January to 30 June 2006 (0 articles)**

No articles fit this category.

**Table 5: General news, legal issue relevant to the Care of Children Act: reporter does not attend court, 1 January to 30 June 2006 (20 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| 'Keeping my son is against the law' says dad | A British father claimed NZ Family Court was flouting international law after the court decided to allow his son to stay in NZ with his Spanish mother | 1 January 2006 | Sunday Star Times |
| Legal gaffe for radio host Clark | A mistake on National Radio revealed suppressed names from a Family Court case | 31 January 2006 | Dominion Post |
| Paternity test tipped to be put off | The Government was announcing it had deferred decisions on recommendations on legal parenthood including one forcing men to take dna tests in paternity disputes | 15 March 2006 | NZ Herald |
| The country's top Family Court judge says... | Judge Peter Boshier spoke about the rate of domestic violence in NZ at a hui in Auckland | 28 March 2006 | NZ Herald |
| Less domestic violence in court | Statistics show the Family Court is dealing with guardianship and domestic violence cases | 10 April 2006 | Otago Daily Times |
| Alarm at domestic violence | A leader of the city's violence prevention group claims judges are watering down anti-domestic violence laws | 26 April 2006 | Waikato Times |
| Legal system 'has failed women' in NZ | At a national hui, women criticised the way Domestic Violence Act applied by the Family Court endangering women and children | 26 April 2006 | The Press |
| Fathers target judge's home | Activist group protested outside homes of legal professionals in Auckland because of Family Court decisions denying access to fathers | 2 May 2006 | Waikato Times |
| We're not done yet, say noisy parents | Protesting parents vow to continue protesting until the Care of Children Act is amended | 8 May 2006 | Waikato Times |
| Fathers' vendetta angers top judge | Judge Peter Boshier speaks out against protests by fathers over Family Court decisions | 9 May 2006 | NZ Herald |
| N/A | Plans for fathers' protest in Dunedin postponed | 13 May 2006 | Otago Daily Times |
| Home | Part of brief - Principal Family Court Judge Peter Boshier comments on protesting fathers | 14 May 2006 | Sunday Star Times |
| Activists stage loud protests | Fathers group protested about male-bias in the Family Court system in Palmerston North | 22 May 2006 | Manawatu Standard |
| Dads condemn lawyers' 'tricks' | Fathers group protested about male bias in the Family Court system in Palmerston North | 22 May 2006 | Dominion Post |
| Fathers stage protest | Brief - fathers protesting in Palmerston North over male bias in the Family Court | 22 May 2006 | Waikato Times |

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Fathers' group scares lawyers | Protests in Canterbury over treatment of fathers in the Family Court | 24 May 2006 | The Press |
| Protesting father's suppressed info posted on website | Suppressed information from a Family Court case posted on website by protesting father | 30 May 2006 | Manawatu Standard |
| Judge to check out website details | Investigation into breach of name suppression in a Family Court case | 3 June 2006 | Manawatu Standard |
| Emotions run high in Family Court cases | Fathers' group protested about perceived injustice in the Family Court system | 10 June 2006 | NZ Herald |
| Fathers' group pickets homes of two North Shore MPs | Fathers' group protested about perceived injustice in the Family Court system | 12 June 2006 | NZ Herald |

**Table 6: General news, legal issue not relevant to the Care of Children Act, 1 January to 30 June 2006 (7 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Two southern lawyers appointed to bench | New appointment to the Family Court bench | 31 January 2006 | Otago Daily Times |
| N/A | New appointment to the Family Court | 2 February 2006 | Otago Daily Times |
| Spurned wife loses appeal | A woman failed to get larger settlement in divorce | 12 March 2006 | Dominion Post |
| Stay-at-home mum's $1.7m claim thrown out - judge slammed for devaluing homemakers | As title suggests, regarding divorce case | 12 March 2006 | Sunday Star Times |
| Strong medicine on horizon for addicts | NZ is lagging in the uptake of an anti-craving medicine used for addicts. Talks to a mother who used it to help regain custody of her son through the Family Court | 15 March 2006 | NZ Herald |
| Family violence blight on NZ | Judge Peter Boshier spoke at an Auckland hui about the rate of domestic violence in NZ | 28 March 2006 | The Press |
| Hui criticises Act | Brief - a national hui criticised application of the Domestic Violence Act | 26 April 2006 | Manawatu Standard |

**Table 7: General news, incidental mention of the Family Court, 1 January to 30 June 2006 (4 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Under-fire lawyer assaulted in court | A lawyer was assaulted in the Family Court | 4 January 2006 | Sunday Star Times |
| NZ pitching in for 'chicken boy' | Fundraising efforts for a man who was bought up in a chicken coop in Fiji | 11 February 2006 | NZ Herald |
| Lawyer faces hefty penalties | A disgraced lawyer in Dunedin was having restrictions placed on his practice | 7 March 2006 | The Southland Times |
| Bias claim rejected by police | The police rejected accusations by the National Party that they were biased | 21 March 2006 | The Press |

## Feature news by category

**Table 8: Feature news, legal issue relevant to the Care of Children Act: reporter attends court, 1 January to 30 June 2006 (4 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Child's ethnicity | Case study - alongside bigger feature 'The kids are not all right' | 28 January 2006 | NZ Herald |
| The kids are not all right | After the easing of restrictions few journalists have attended the Family Court so the reporter goes along to see what it is all about | 28 January 2006 | NZ Herald |
| A sad mix of broken homes and damaged children | After the easing of restrictions few journalists have attended the Family Court so the reporter goes along to see what it is all about | 20 May 2006 | The Press |
| Father v Family Court | A look at the way the Family Court works given the protests by fathers claiming bias | 3 June 2006 | Waikato Times |

**Table 9: Feature news, legal issue relevant to the Care of Children Act: reporter does not attend court, 1 January to 30 June 2006 (3 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| For the sake of the children | A discussion with a Family Court judge - part of larger feature 'The kids are not all right' | 28 January 2006 | NZ Herald |
| When good parents go bad | A look at research into parents who kill their children and then themselves | 12 February 2006 | Sunday Star Times |
| On a crusade for custody | The journalist talks to protesting fathers about the way the Family Court works | 10 June 2006 | Dominion Post |

**Table 10: Feature news, legal issue not relevant to the Care of Children Act, 1 January to 30 June 2006 (2 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Till dosh do us part | Divorce settlements, with some emphasis put on a high profile case | 12 March 2006 | Sunday Star Times |
| The deadly price of | A look at one marriage that ended in tragedy in the light of revelations about domestic violence in New Zealand | 8 April 2006 | NZ Herald |

**Table 11: Feature news, incidental mention of Family Court, 1 January to 30 June 2006 (0 articles)**

No articles fit this category.

**Table 12: Opinion articles, legal issue relevant to the Care of Children Act: reporter attends court, 1 January to 30 June 2006 (0 articles)**

No articles fit this category.

**Table 13: Opinion articles, legal issue relevant to the Care of Children Act: reporter does not attend court, 1 January to 30 June 2006 (7 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Caring fathers | Response to letter 'Another sad Christmas' | 2 January 2006 | The Press |
| News in brief | Editorial touching on many topics - including proposal for an at-risk birth register by a retired Family Court judge | 13 March 2006 | Timaru Herald |
| Judge despairs at violence | Comment piece on domestic violence rates in New Zealand | 3 April 2006 | Northern Advocate |
| Dad's army does itself no favours | Comment piece on fathers' protests against bias in the Family Court | 15 May 2006 | Dominion Post |
| Man to man | Retired judge comments on fathers' protests against Family Court bias | 10 June 2006 | NZ Herald |
| Garth George mother tells of losing her son in Family Court farce | Comment piece discussing case where a woman lost custody and used section 59 to defend the case | 15 June 2006 | NZ Herald |
| When discipline goes too far | Response to Garth George's comment piece | 22 June 2006 | NZ Herald |

**Table 14: Opinion articles, legal issue not relevant to the Care of Children Act, 1 January to 30 June 2006 (6 articles)**

| Headline | Topic | Date | Publication |
|---|---|---|---|
| Ruling sends signal to mothers | Comment on divorce settlement of wealthy couple | 12 March 2006 | Sunday Star Times |
| Law fails to protect abused | Comment piece by a barrister on the shortfalls of the Domestic Violence Act | 21 March 2006 | NZ Herald |
| Ignore justice at our peril | Comment piece by a barrister on temporary protection orders | 24 March 2006 | NZ Herald |
| Piece of paper is no protection | Comment on the failure of protection orders | 30 March 2006 | Manawatu Standard |
| The deadly dance | Comment piece by a barrister on the shortfalls of the Domestic Violence Act | 3 April 2006 | Otago Daily Times |
| Leaving a frightful legacy | Comment piece by a barrister on the shortfalls of the Domestic Violence Act | 5 April 2006 | Manawatu Standard |

**Table 15: Opinion articles, incidental mention of the Family Court, 1 January to 30 June 2006 (0 articles)**

No articles fit this category.

**Blue Skies Research**

1/06 *Les Familles et Whānau sans Frontières:* New Zealand and transnational family obligation, Neil Lunt with Mervyl McPherson and Julee Browning, March 2006.

2/06 Two Parents, Two Households: New Zealand data collections, language and complex parenting, Paul Calister and Stuart Birks, March 2006.

3/06 Grandfathers – Their Changing Family Roles and Contributions, Dr Virginia Wilton and Dr Judith A. Davey, March 2006.

4/06 Neighbourhood Environments that Support Families, Dr Karen Witten, Liane Penney, Fuafiva Faalau and Victoria Jensen, May 2006.

5/06 New Communication Technologies and Family Life, Dr Ann Weatherall and Annabel Ramsay, May 2006.

6/06 Families and Heavy Drinking: Impacts on children's wellbeing, Systematic Review, Melissa Girling, John Huakau, Sally Casswell and Kim Conway, June 2005.

7/06 Beyond Demography: History, ritual and families in the twenty-first century, Jan Pryor, June 2005.

8/06 Whānau is Whānau, Tai Walker, Ngāti Porou, July 2006.

9/06 Supervised Contact: The views of parents and staff at three Barnardos Contact Centres in the southern region of New Zealand, Anita Gibbs and Margaret McKenzie, August 2006.

10/06 New Zealanders' Satisfaction with Family Relationships and Parenting, Jeremy Robertson, August 2006.

11/06 Korean Migrant Families in Christchurch: Expectations and experiences, Mrs Suzana Chang, Dr Carolyn Morris and Dr Richard Vokes, October 2006.

12/06 The Role of Whānau in the Lives of Māori with Physical Disabilities, Adelaide Collins and Huhana Hickey, September 2006.

13/06 New Spaces and Possibilities: The adjustment to parenthood for new migrant mothers, Ruth DeSouza, November 2006.

14/06 New Zealand Cultural Norms of Parenting and Childcare and How These Relate to Labour Force Participation Decisions and Requirements, Mervyl McPherson, November 2006.

15/06 Towards a Statistical Typology of New Zealand Households and Families: The efficacy of the family life cycle model and alternatives, Charles Crothers and Fiona McCormack, December 2006.

16/07 The Family Court, Families and the Public Gaze, Ursula Cheer, John Caldwell and Jim Tully, April 2007.

These reports are available on the Commission's website www.nzfamilies.org.nz or contact the Commission to request copies.

Families Commission
PO Box 2839
Wellington
Telephone: 04 917 7040
Email: enquiries@nzfamilies.org.nz

**Wellington office**
Public Trust Building, Level 6
117-125 Lambton Quay
PO Box 2839, Wellington
Phone 04 917 7040
Fax 04 917 7059

**Auckland office**
Level 5, AMI House
63 Albert Street, Auckland
Phone 09 970 1700

**Email**
enquiries@nzfamilies.org.nz

**Website**
www.nzfamilies.org.nz