

+ Cover story

CONCERNS THAT FAMILY COURT FAILING WOMEN AND CHILDREN

The treatment of women in the Family Court desperately needed to be opened up to scrutiny in the spirit of the changes which had flowed from the Cartwright Inquiry into cervical cancer, said University of Auckland School of Psychology Associate Professor, Nicola Gavey.

Professor Gavey spoke at a seminar earlier this month entitled, "Silent Injustice: Women's Experiences of the Family Court", which was organised by the University of Auckland, Women's Health Action and the Auckland Women's Centre.

The Cartwright Anniversary seminar is an annual Women's Health Action event held to mark the release of the *Report of the Cervical Cancer Inquiry 1988* and named after the presiding judge, Dame Silvia Cartwright.



Nicola Gavey

FAMILY COURT FAILING WOMEN & CHILDREN

Associate Professor Gavey said that men's groups had portrayed the Family Court as a hot bed of militant feminism.

However, research conducted in 2005 by Associate Professor Gavey; Faculty of Law Associate Professor, Julia Tolmie; and Sociology senior lecturer, Vivienne Elizabeth; had left the researchers with deep concerns about the treatment of women in the Family Court.

The study, *Raising Questions About the Importance of Father Contact Within Current Family Law Practices*, interviewed 21 women involved in family law processes following disputes over care arrangements for their children.

The three University of Auckland lecturers have published seven follow-up articles, including: "Between a Rock and a Hard Place: Resident Mothers and the Moral Dilemmas they Face During Custody Disputes", (November 2010) and "He's Just Swapped His Fists for the System": 'The Governance of Gender through Custody Law', (February 2012).

Associate Professor Gavey said that the three academics were concerned that Family Court experiences perpetuated bullying of women.

"We were left with deep concerns about trends in the Family Court and concerns about regard for mothers' rights and the emotional life of children and why [there is] the silence about these issues and why there is not an outspoken movement to discuss them."

Associate Professor Gavey said that it was difficult for women to speak out as they were often stretched to the limits, juggling caring for children and financial commitments. They also wanted to stay out of the public eye to protect their children. Many women were still subjected to bullying by their former partners.

She questioned the extent to which the culture of the Family Court had been shaped by concessions to the fathers' rights movement. Researchers had also been silenced by aggressive and offensive responses to their work.

"We hear the least from those who are the most vulnerable."



Dr Vivienne Elizabeth



'Shared care in the context of conflict or acrimony was a key factor linked to clinical levels of distress in children'

Faculty of Law Associate Professor, Julia Tolmie

Associate Professor Gavey said that the uncomfortable truth might be that gender equality was not as advanced in New Zealand as people would like to think.

Dr Elizabeth outlined the 2005 research. She said that nine of the 21 women said that they had been exposed to male partner violence but only three had protection orders. A fourth had an undertaking.

Dr Elizabeth said that recognition of violence was seldom forthcoming in the absence of a protection order or an admission by the father.

She said that the cumulative effects of coercive control were pernicious. As so much emphasis was placed on physical violence, a history of coercive control often went unrecognised.

Dr Elizabeth said the research demonstrated that family law professionals consistently gave priority to fathers' contact with children, regardless of the fathers' parenting skills.

"They also prioritised quantity of father contact, regardless of quality. Father contact was prioritised over other aspects of children's welfare even though it exposed children to high levels of damaging adult conflict and when there was no evidence the father engaged in quality parenting."

Dr Elizabeth referred to one family in the study. The woman's seven-year-old son had a history of being seriously neglected over years of contact with his father. His father regularly failed to show up for contact, showed up late or returned his son early. Despite this he was always given expanded periods of contact by the Family Court when he sought it.

Dr Elizabeth said that Carol Bruch, who had reviewed the research in this field, had concluded that sound empirical research – as opposed to that founded on political rhetoric – suggested that the two most important factors for children's well-being post-divorce were maintaining and strengthening their relationship with their primary caregiver and minimising their exposure to inter-parental conflict.

Despite that, seven of the women in the study said they had been expressly advised by at least one professional in the family law system that shared day-to-day care was either inevitable or the right arrangement for the children, or the women had been pressured to agree to it.

"All the women in the study who had substantially shared care arrangements were committed to the fathers having contact but believed shared care had an undesirable impact on children. The stereotype of the 'obstructive' mother was used to silence women who raised concerns."

Dr Elizabeth said that mothers were labelled "alienating" and felt pressured to increase fathers' involvement with children despite their better judgement.

"Women had to send children off to fathers whose parenting would have been seen in other contexts as criminal neglect."

She said that shared care arrangements relied on large amounts of unacknowledged labour by mothers to make the arrangements work. Many women could not take on paid work because of the amount of time they had to spend on the practicalities of shared care and because of unreliability by contact parents in adhering to agreed contact times.

Associate Professor Tolmie said the research literature – and in particular meta studies – did not support the view that access to contact parents was always in a child's best interests. She said that how often children saw their fathers was less important than the quality of the interactions and what fathers did with their children when they saw them.

Associate Professor Tolmie said children with primary care arrangements witnessed significantly lower levels of conflict than those in shared care arrangements. Shared care in the context of conflict or acrimony was a key factor linked to clinical levels of distress in children.

She said Australian research indicated that particular caution was required in respect of shared care for pre-schoolers. An independent and deleterious impact had been found in very young children who spent two or more nights away from their primary carer on a regular basis.

Associate Professor Tolmie said Australian child clinical psychologist Dr Jennifer McIntosh had concluded that shared care should not be the starting point for children under four years old.

She said that themes of the research included the importance of recognising the reality of gender divisions of labour both before and after separation and of not imposing an overlay of an idealised family at the time of separation. Associate Professor Tolmie said research suggested that a shift in focus away from a mathematical division of time was required.

It's Still Not Okay! spokesperson, Lisa Close, said that abused women had in New Zealand rarely been involved in policy development to any extent and it was even rarer for Maori or Pasifika women to be involved.

She said that her organisation had in 2010 met with the Ministry of Justice and the Law Commission to raise concerns about the Family Court but had not been invited to be involved in the review of the

Family Court.

"A statutory agency that prioritises our safety along with that of our children does not actually exist."

Ms Close spoke about women's experiences in the Family Court, saying they suffered "anguish" when they discovered that processes they thought would support them in fact failed them. She said that, instead of being supported to escape violence, women were labelled difficult, obstructive and mentally unstable.

Ms Close said there was no shared understanding of family violence among Family Court professionals. Myths were reinforced by the media.

"There is no minimum requirement for family violence training in New Zealand and victims have no rights and no way of complaining."

She said that institutional racism existed for Maori and Pasifika women.

"There are children out there right now who are

being forced to have contact with abusive parents who abuse and neglect them. Mothers are having to explain to children why they have to go."

She spoke about one woman whose children refused to go to contact with their father. The police were called and the children were forced into the car and driven away screaming and calling out to their mother from the back window.

"Women are often forced to live in close proximity to their abusers. Women out there thought the system would protect them but find it does not. The most common thing I hear is 'I should have stayed'. This is a shocking indictment on our response to women leaving abusive relationships. Why are there so many of these stories?"

Ms Close said that mothers deeply valued having fathers in their children's lives, so when they expressed reservations or said "no" their statements should be taken seriously.

• By Catriona MacLennan
