



+ Cover story

is the family court unfair to mothers?

More than a decade after fathers' rights groups protested over injustices in the Family Court, Donna Chisholm asks if it's mothers who are now disadvantaged in custody cases.

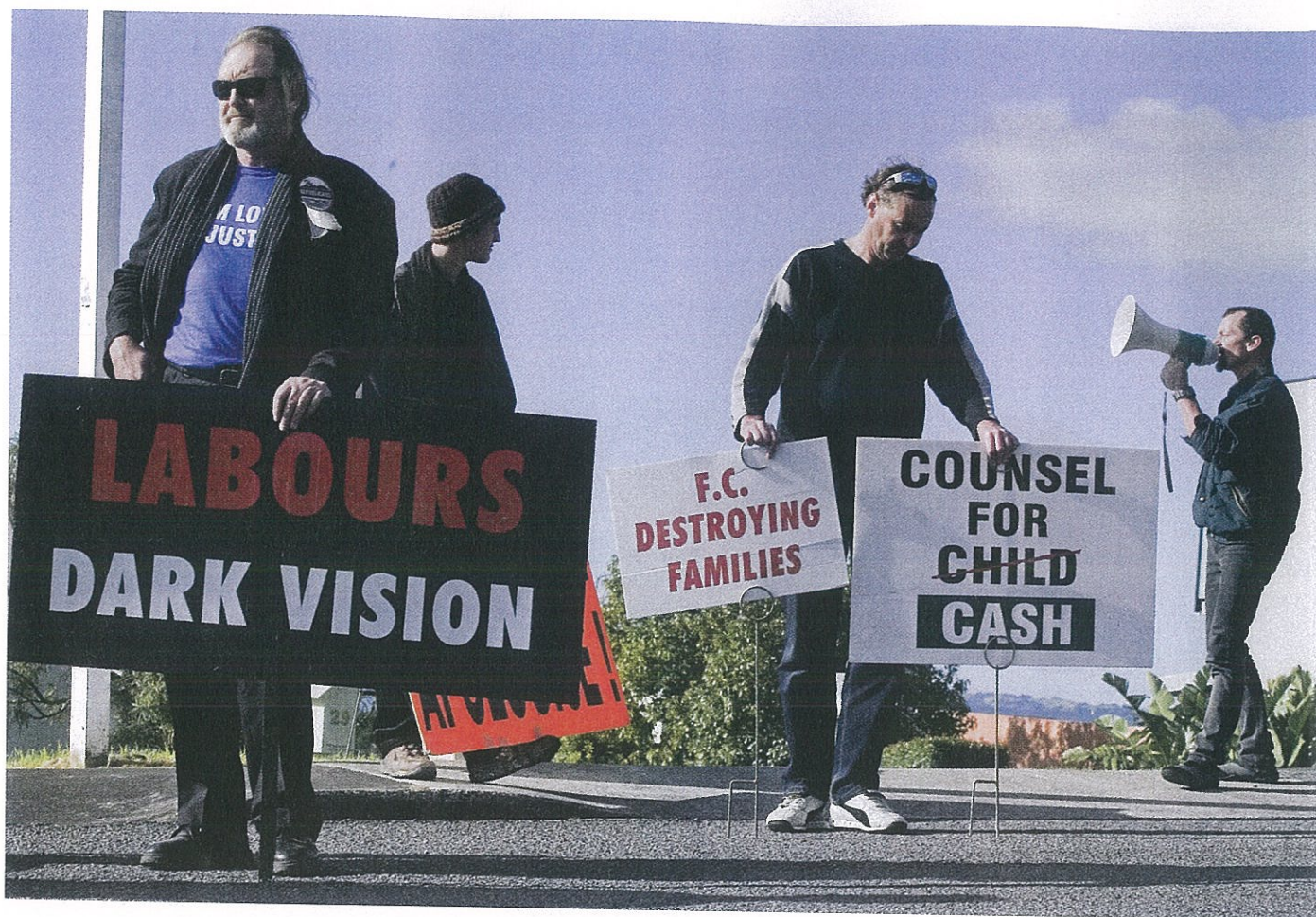
Lisa's ex-husband didn't even turn up at the Family Court when a judge considered their dispute over their daughter's care. He still won.

In a forum where judges often have to decide between one violent, drug-addled partner and another, this case – where a loving father fought a loving mother to get more parenting time – must have seemed a no-brainer. It was all over in 45 minutes.

It didn't matter that Lisa's husband used cannabis every day and visited porn and sex-touting sites. It didn't matter that he bought cocaine on a family holiday. And it didn't matter that his daughter had been hurt in an accident at home when he hadn't been paying attention.

What mattered, says Lisa's lawyer Stuart Cummings, was hammering out a deal at any

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DONNA CHISHOLM IS *NORTH & SOUTH*'S EDITOR-AT-LARGE.



Supporters of the Union of Fathers protest outside the home of an Auckland Family Court lawyer in 2006.

cost. "What the courts are doing is obsessing about getting to 'yes'. My client was leaned on to say yes – 'It's good enough, just do it.' It's got nothing to do with the best interests of the child. It's inconceivable that it's in the best interests of the child."

Seven years ago, Cummings was one of the Auckland Family Court lawyers picketed by fathers' rights groups protesting against perceived injustices in their treatment in custody cases. It was the second time that they'd demonstrated over court decisions and the secrecy surrounding them: in 2001, they waved placards outside the Auckland District Court.

Their actions led to a story in this magazine in June 2001, *Court of Injustice*, which suggested the legal pendulum in the Family Court had swung too far against fathers, who had become victims of the "powerful, politically correct feminist and child protection movements".

While some say the demonstrations helped open the Family Court to greater scrutiny, Cummings says it's also given some men the message that, "If you tough it out, you might succeed."

Also, he says, it has "regrettably, given them a sense of righteousness".

Men's attitudes towards fathering have also changed and many now want a significant role in their children's lives. This – coupled sometimes with a less altruistic incentive to reduce child support payments – has driven a sustained increase in custody disputes, with many men seeking more parenting time after separation than they ever had when their relationship was intact.

Family Court statistics show men are winning a greater role in their children's lives through parenting orders. In 2006, at the time of the men's second round of protests, 59 per cent of mothers won day-to-day care orders. By last year that had dropped to 55 per cent of the 7500 cases heard. The number of cases in which shared custody was awarded also rose slightly, from 10 to 12 per cent.

Over the same period, the number of parents unable to resolve their custody issues without Family Court involvement has risen rapidly; just 4350 parenting orders were made in 2006. The increase confirms the perception of family law experts that more fathers are taking legal steps to claim more time with their children. Parenting orders

are made only if counselling or mediation has failed.

Lisa's ex had been a hands-on parent only a couple of days a week while she worked and she wanted this arrangement to continue for a transition period after his affair ended their 10-year marriage, but the court has now given him six days every fortnight.

Cummings says the judge appeared to believe Lisa was claiming her daughter Sophie might be at risk of violence or sexual abuse, but that was never the case. While she knew her ex was a loving dad, she argued, however, that during the marriage she'd acted as a buffer to protect their daughter from her husband's bad decisions. She kept Sophie away from the garage where he smoked his dope, and made sure she didn't inadvertently access inappropriate internet sites he'd visited.

Cummings says Family Court judges are so used to deciding custody in violence cases, they seem to forget that the overriding principle of the Care of Children Act is to make orders in the best interests of the child.

"A family has gone through massive disruption, followed by massive dislocation,"

Men's attitudes towards fathering have changed. Many seek more parenting time after separation than they ever had when their relationship was intact.

he says. "Common sense tells you that when one major change occurs you don't compound it by others. If traditionally the father wasn't hugely involved, particularly with young children, why would you change the children's care arrangements immediately when you've just changed everything else?"

He believes many fathers seek week-about custody because it gives them "external validation" as a person.

Family lawyers say the court, largely for financial reasons, has become less willing to launch the sort of investigation that many cases require. Judges are chronically overworked, frequently coming to court with only a slim grasp of the information already supplied in affidavits and operating almost like a hospital's accident and emergency department triage. And, they say, the fiscally driven reforms of the Family Court currently before Parliament will only make matters worse. The moves are designed to keep more families out of court. Cases not involving violence must first be mediated in a Family Dispute Resolution Service – applications for the service will cost \$900 – before they can proceed to court. Access to lawyers and psychologists is also expected to be tightened.

Critics say mediation will simply mean the "weaker" or more flexible party will be "ground down" till they give in, especially if the other party is financially better off. "It's just the land of the bully rules," says Cummings.

Though Lisa's daughter has two loving parents who live only a few streets apart, making shared parenting easier, care arrangements are still fraught and the responsibilities remain uneven. Lisa continues to be the one who supervises most homework, organises and pays for all her daughter's after-school activities, and finds herself washing the suitcase of clothes she brings back from her dad's. Sophie often comes home tired after staying up too late and Lisa was horrified to hear her daughter had been



Family lawyer Stuart Cummings: "What the courts are doing is obsessing about getting to 'yes'. My client was leaned on to say yes – 'It's good enough, just do it.' It's got nothing to do with the best interests of the child. It's inconceivable that it's in the best interests of the child."

allowed to watch an R16 horror movie with the children of her father's new partner.

Ironically, though her husband wanted to extend his parenting time, Sophie was often in his new partner's care while he worked.

New research from Australia and the US is beginning to question the purported benefits of joint custody, finding that very young children, and those in high-conflict families,



Associate professor of law Ruth Busch believes the “obstructive” label is being attached to women who are trying to keep their children safe from violent or abusive fathers.

“If a woman voices real concerns about the safety of her children, she is likely to be seen as vindictive, exaggerating, a drama queen,” says Busch.



In 1994, Alan Bristol, from Whanganui, gassed his three daughters and himself to death in his car in the midst of an acrimonious divorce. The ensuing inquiry led to an overhaul of domestic violence laws.

do significantly worse in shared care. For infants, the research suggests it also badly impacts on the primary relationship with their mother. Some of the most influential work, funded by the Australian government and published in 2010, concluded that in high-conflict separations:

- Children in shared care were the least satisfied of all care groups with their parenting arrangements and the most likely to want a change.
- Rigidity in shared-care arrangements significantly impacted on mothers’ but not fathers’ reports of contentment with the plans.
- Children in long-term shared-care arrangements were more likely than other children to report feeling caught in the middle of their parents’ conflict.
- Children in long-term shared care also had greater difficulties with attention, concentration and completing tasks.

Principal Family Court judge Laurence Ryan says psychological and sociological research is hugely influential and judges here are now taking the Australian research into account. He says if a pendulum effect favouring mothers or fathers has been perceived in different eras, this was not in response to gender but the latest research

about what is best for children.

In the 1970s and 80s, the prevailing view was the importance of the security and stability of a primary residence. Then came a push towards the involvement of both parents post-separation, even when the man had been violent towards his wife.

That all changed in 1994 when Whanganui man Alan Bristol gassed his three daughters and himself to death in his car in the midst of an acrimonious divorce. Though Alan and Christine Bristol had a long history of domestic violence, he was still thought to be a good and loving father. The ensuing independent inquiry by High Court judge Sir Ronald Davison led to an overhaul of our domestic violence laws, and broadened the definition of violence to include physical, sexual and psychological abuse.

A year later the so-called “Bristol clauses” came into law, which meant that once a person had used domestic violence either to a partner or child or both, that person – usually the father – could not have unsupervised contact with the child until the court was satisfied the child would be safe.

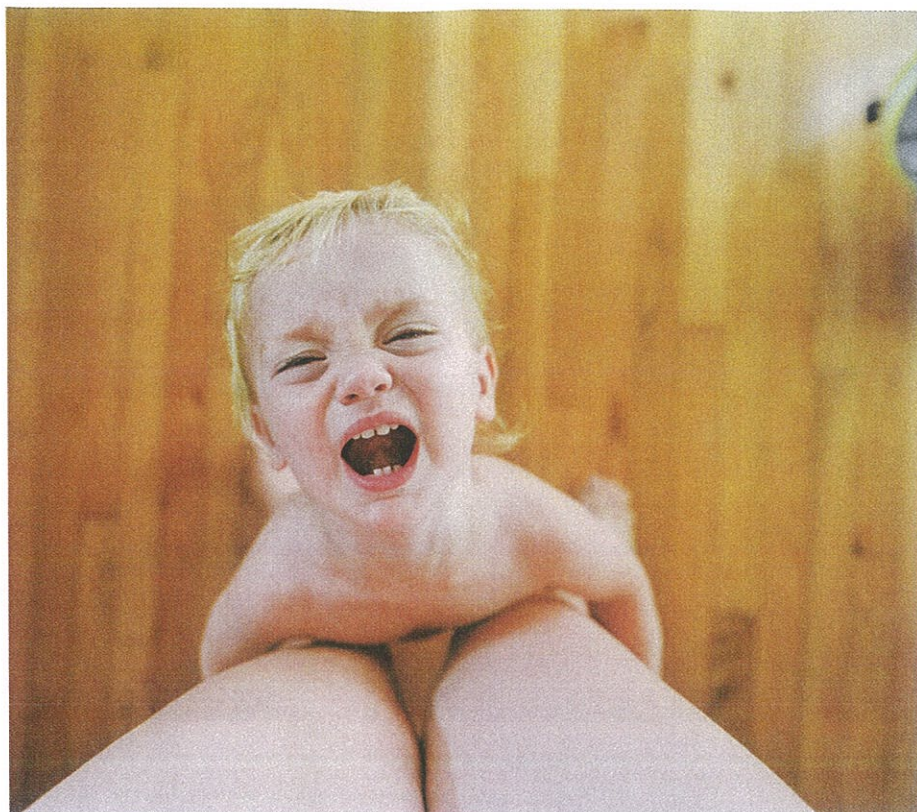
The effect of the Bristol case and its associated legislation formed the backdrop to the men’s groups protests in the early 2000s. Protection orders were often issued

without notice, on the basis of affidavit evidence alone, and men were often stopped from seeing their children for months on end as the court had to schedule hearings to determine the truth of the claims.

The Care of Children Act, however, which came into force in mid-2005, emphasised that children should have continuing relationships with both parents, and reinforced the rule that the courts should be “gender blind”. Lawyers believe that’s been misinterpreted as support for a default position of 50-50 care.

Otago University family law researcher Professor Mark Henaghan says judges often use the words “shared care” in their decisions but that did not usually mean a 50-50 split. “They use it, I think, as a tool to basically convince both parties they’re equally involved. Shared care was not just a reaction to men’s lobby groups – it was a way of trying to take the heat out of these cases because you both go away with something.”

He says that the Child Support Act, which reduces child support payments when one parent has custody for at least 40 per cent of the time, has driven some of the demand for more equal care, but there are signs the court is responding to the latest research. “In some recent cases, judges have been cautious of



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Caring for a young child can be challenging. How would a single, relatively inexperienced parent who is prone to violence respond to this situation?

kids having to move too much.”

But Henaghan says the men’s protests have had an effect, particularly in court enforcement of contact orders. In two recent cases, women have been imprisoned for brief periods for contempt after flagrantly disregarding contact orders. In the past, men had complained orders were being regularly flouted and the courts did nothing about it.

“If a parent is being obstructive, there has been a stiffening-up, and I suppose that’s what the law requires – you have to make the orders work. If you don’t, there’s no point in having a Family Court.”

However, some researchers – including Waikato University associate professor of law Ruth Busch and psychology lecturer Neville Robertson – believe the “obstructive” label is being attached to women who are trying very properly to keep their children safe from violent or abusive fathers. This will be exacerbated by the Family Court reforms, they say, which plan to remove the Bristol clauses and allow judges deciding parenting orders to consider whether a parent’s conduct has been “obstructive”.

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Robertson says there’s a real risk a lawyer could depict women as unco-operative and obstructive, when her fears were justified. “There’s a chilling effect right now, so this change would enshrine that into law.”

Since 2007, when she and Robertson co-authored *Living at the Cutting Edge*, a report investigating women’s experiences of protection orders, Busch has argued judges are allowing contact with a violent parent to trump safety in parenting decisions. She has serious concerns about Ryan’s recent appointment as principal Family Court judge, saying that, in 2004, he twice awarded a violent man

unsupervised access to his four-year-old daughter. He said he “owed it to the child” to give her a normal relationship with her father.

The man had been violent to two partners, and his older child had been exposed to at least some of it. The first order was overturned on appeal to the High Court and the case was returned to the Family Court. Ryan made the same order a second time. This, too, was overturned.

“No one could believe what he was doing,” says Busch, who wrote in *Living at the Cutting Edge* that the scenario indicated the judge was “so committed to what he sees as normal parenting arrangements – that is, unsupervised contact, even for a violent parent – that he failed to take account of his mandatory obligations [to keep the child safe]”.

When *North & South* raised the case with Ryan, he told us, “I didn’t give unsupervised contact.” When we later sent him copies of his decisions, a court spokeswoman said he conceded he had. Ryan told us: “I found as a fact he was a violent man but he was violent towards his partners so I concluded that if I could prevent him from having contact with any of his partners during the time the kids were with him, there was no risk of the kids witnessing violence.”

However, Busch and other domestic violence researchers we spoke to said the “lousy partner, great dad” premise was flawed. Busch says article after article by international researchers estimate that if the wife is being beaten, in 40 to 90 per cent of cases the child is also a target.

She says New Zealand has an implicit “friendly parent” approach in custody cases. “Our approach is that judges will give day-to-day care of the child to the parent who will most enhance the non-custodial parent’s role in the child’s life. So if I raise the issue of violence and I don’t get it over the line so the court knows for sure, I’m by definition an unfriendly parent because I’m unlikely to enhance the non-custodial parent’s role in that child’s life.”

The risk of being branded obstructive or alienating had led some lawyers to advise women not to raise physical or psychological violence without corroborating evidence from doctors, x-rays or witnesses.

Says Busch: “What I think is the most alienating parent is someone standing me up against a wall and punching me with the children around, telling them why I deserve more than he’s giving me and if he didn’t love me so much he’d really give it to me.”

Judge Ryan told us he put in place conditions

when awarding the violent father access; these included that he was not to take any illicit substances or have contact with his wife (whom he'd assaulted) when his daughter was in his care.

But Busch says such conditions are often unworkable and rely on the children themselves to police them. She says in one case, a wife discovered child porn on her husband's internet hard disk but the husband was allowed unsupervised access. "The judgment – and Kafka has nothing on this, you could just lie down and laugh – gave him unsupervised access but said he couldn't have an internet provider while the children, aged six and eight, were with him. Who's going to monitor whether he has an internet provider? Is that the only way he can get porn? Do we really think those children are safe?"

Three academics from Auckland University who've spent the past eight years researching custody disputes argue the push for joint custody has had adverse effects on women and children. Sociology senior lecturer Vivienne Elizabeth, associate professor of psychology Nicola Gavey and associate professor of law Julia Tolmie believe too much attention is being paid to the amount of time spent with the non-resident parent, rather than the quality of that time.

"The most important predictor of children's adjustment to parental separation is the quality of their relationship with the parent they primarily live with," says Elizabeth, "because that parent has the potential to shield children from many of the negative effects of separation and divorce."

She says custody disputes have increased over the past 30 years, mainly due to changing attitudes of fathers. In the 1970s, a man was a good father if he took a "back seat" after separation, moved on to his own new relationship and left the parenting role to his ex-wife's new partner, the "social" father. "To be a good father now is to have ever-increasing amounts of contact."

But she says gender socialisation in terms of a mother's and father's roles is "alive and well". "We've seen an uptake in fathers playing with their children, but we haven't seen an increase in them doing the drudgery work, or the emotionally responsive work."

The trio has done extensive interviews with 21 women in custody disputes and written a number of papers as a result, challenging the tendency of women to be defined as hostile and alienating if they opposed their ex's access.

Elizabeth says many mothers started out trying to do the "right thing" by involving



Children caught in custody disputes can find contact with one parent limited to phone calls

the father in their child's life, but over time, changed their minds because the men were violent, or the contact wasn't working in other ways in their child's best interests. She says that while it's important for children to know about their father, it sometimes isn't necessary to have a continuing relationship with them, particularly if it means they're forced into inflexible routines to do so.

A 2001 New Zealand study of 107 children in shared care showed 40 per cent disliked the inconvenience of moving constantly between their parents' homes. Older children, in particular, said that their "semi-nomadic" lifestyle undermined their friendships and independence.

Women going through separation reported an "incredible push" to 50-50 care arrangements. "That's not what is in the law, but that's what the push is for," says Elizabeth. "Women are not driving that shift. What we're hearing is women who have quite good reasons not to be happy with that are being forced into these arrangements."

She says in intact families, the majority of mothers are still the primary parents, responsible for their children's wellbeing. "They are the ones who are running the household and are held to account for the quality of that work. We haven't radically changed the way in which gender operates to organise care and nurturing within the family, but suddenly when we get into disputed post-separation arrangements, we think 50-50 should be the way to go."

Men who wanted to be seen as a "good father" would pursue joint custody despite the fact they'd been a largely absent parent during the partnership, and some used the law to threaten and coerce mothers.

However, Auckland psychologist April Trenberth says the court is "the great leveller" when it comes to the gender war. "Fathers will say mothers are the privileged gender, and mothers will say fathers are. I've heard that in the same week."

"There are extreme situations where the father is really dangerous, really toxic and very disturbed and their ex-partners are terrified about what's going to happen to the children and are fighting very hard to protect them. These women are well within their rights to be fighting and holding their children back from their ex-partners. But other times they are absolutely alienating their children inappropriately from a father who would be otherwise a positive influence on their children's lives. A lot of these women aren't necessarily consciously aware they're doing that. To all intents and purposes, in their minds they are protecting the children."

She says while judges can misinterpret a merely protective mother as obstructive that did not happen as often as people



feared. "It's very distasteful for a lot of feminist researchers and theorists to wrap their head around the fact there are some really disturbed women out there as well."

Trenberth says, as a therapist, she too has a feminist perspective but, at the very complex end of the spectrum of Family Court cases, "There are just as many damaged, troublesome and toxic mothers impacting on their children as there are damaged, toxic fathers."

Some fathers who had been largely absent parents during a relationship "upped their game" after separation and became much more involved. "It's very, very irritating to those mothers to see that after separation he transforms into a much better dad, but for the children it's a very positive thing."

The problem with Family Court litigants, she says, is they're often interpreting what's best for themselves as what's best for the children.

Veteran west Auckland family lawyer Judith Surgenor, who's spent more than 20 years in the Family Court, often appearing as lawyer for a child, also does not believe judges are allowing contact with fathers to trump child safety. She says because the law does not differentiate between the sort of violence that could put a woman in hospital and a push and a shove in the process of a breakup, "some judges now kind of see, well, you've got to get real here. In the context of a breakup there can be anger and upset, and that can be classified as violence. That's not

"It's hard for the kids - they forget their homework and can't go back to the other house because it's not their week."

to diminish violence in a relationship, but we do get people who claim violence in order, dare I say it, to manipulate the situation and perhaps for control. It's not uncommon."

She doesn't believe that false allegations of abuse are "incredibly rare" as Busch and Robertson claim. She says she's "just blown away" by the allegations people make in affidavits that are later shown to be false. "A lot of women who come to the Family Court are in genuinely violent situations. I'm not saying there are a lot who exaggerate, but there are some."

It would be "highly unethical" for any lawyer to advise a client to not mention or to minimise violence.

Surgenor, who like Cummings was targeted by protesting fathers' rights picketers in 2006, described them then as "the sort of people who are so rigid and bitter and wound up in their own perspective that they've got to blame somebody when things go wrong for them". She's often targeted by those disaffected by her recommendations – on both sides. "As a lawyer for the child, often you can't sit in the centre. You've got to take a

position if it becomes pretty obvious that one parent is infinitely better than the other, and it's certainly not always mum."

She says one of the biggest problems of warring couples in the Family Court is their lack of insight into their behaviour and the impact it has on the children. "Where they're fighting or bickering, and using the kids against each other – they don't get it; they're seeking revenge and it's about one upmanship and game playing."

She says many parents seem to think week-about care was "the panacea for all ills but forget about the kids having to drag themselves back and forwards. It's hard for the kids – they forget their homework and can't go back to the other house because it's not their week, or they'll have a birthday party to go to but the parent lives too far away and won't transport them. People get so concerned with their own rights they miss what the kids benefit from."

Surgenor believes reducing child support payments motivates many men to seek more parenting. For example, a father's payments are reduced if he has 40 per cent or more nights of custody. "It's amazing how people will battle, count out the number of nights they can have – they've almost got it down to the hours because they've got it all calculated. It doesn't mean they're doing a particularly great job with the kids."

It's clearly galling for extended family when they see a father who's been abusive towards his partner remain in contact with the children. We spoke to Auckland grandparents who'd taken in their daughter after she fled her abusive husband, only to see him gain regular unsupervised access to his children. They say the lawyer for the children had used the "bad husband, good father" analogy, leading them to think the lawyer was "pro-father".

"She's so determined the boys need to have time with their father that she's not looking at the big picture."

The father, who was facing a post-separation assault charge, was a regular cannabis user and, in the grandparents' view, a "controlling, bad-tempered bully". He had been pushing for 50-50 custody but was awarded only five days a fortnight. The grandparents told us their daughter didn't want to exclude her ex from the children's lives, "but wanted the balance right – she's scared it might go back to 50-50".

The grandparents say they feared that when the boys get older and challenge their father, he might turn on them as he turned on their daughter. "The judge decided it



Quality of parenting – whether by fathers or mothers – is more important than the amount of time spent with children, researchers say.

wasn't a safety issue. As grandparents, you feel so helpless. You want to do the right thing for the children, but he's a time bomb."

Trenberth says while violence of any kind was always of great concern, "male violence needs to be categorised in different ways. It's not okay to just say that guy was violent, therefore he's a bad father."

She says it's common in "the high, complex end of the Family Court" to find a father who's pushed, shoved, kicked, dragged, slapped and punched. "But on the other side is the mother of his children, who's slept with several of his best friends, come home drunk, spat on him, left the kids screaming in the cot and he comes home to find she's on the internet while the kid is dehydrated in the cot. It's really important to not just say, violent man – end of story. You really have to look at what's been going on."

In the most difficult custody cases, where children are reluctant to spend time with one parent or another, it's likely the term "parental alienation" will crop up at some point. The term was first coined by the late American psychiatrist Richard Gardner in the 1980s to describe children who unjustifiably vilified or refused contact with one parent because of "brainwashing" by the other parent. Gardner originally suggested mothers were more likely to be alienators, by making false

accusations of child sex abuse to prevent fathers having further contact with their children.

While parental alienation as a syndrome has been discredited, allegations of alienation by one or other parent regularly crop up in complex cases today.

Psychiatrist Hugh Clarkson, who with his wife Dale Clarkson, a Family Court judge, has written a number of papers on the issue, told *North & South* it's not uncommon for children to reject one or other parent after separation. He says because judges are obliged to consider a child's views, "We've opened the door for people to either consciously or unconsciously influence their child."

"If the child says, 'I don't want to see Dad,' the court struggles with what to do if it doesn't think the contact resistance is based on reality, or the way the father is behaving. If the child doesn't want contact, should the court simply say, 'Well, contact won't happen,' or say, 'No, it's in the best interests of the child to maintain as good a relationship as possible with both parents and we're not going to go along with what the child wants.'"

Clarkson says he doesn't doubt there are some cases where abuse has happened but is successfully denied. "But I also think it's demonstrably true that the idea of abuse can arise without a basis and children have been denied contact with one parent for reasons

that weren't to do with that."

He says there are many reasons a child will reject one parent – the most common being loyalty to the other parent. "After separation the parents are trying to get over each other and the child is trying to maintain a relationship with both and those goals are slightly contradictory – or they can be initially – so children find it works better to lean towards one parent and away from the other. They may perceive that one parent is more fragile and coping less well, or one is emotionally unavailable because of a new partner."

He says alienation often starts before the split – "There's already a battle going on for the kids' hearts and minds under the surface." Given the chance to maintain good relationships with both parents, most children will do so. "If they move away from that, it's because they're being pushed or pulled. I'm very much a believer that relationships with both parents are very important, and the evidence we've got is where alienation beds in, there tends to be a poor outcome for all involved."

When a man has beaten up his wife, or even killed her, he believes the child should still have the opportunity to have a relationship with his or her father. "It's still true the child is the child of that parent, and they will have complex feelings, both loving and hating, fear and desire. They're going to want to know if the parent cares about them," says Clarkson.

"This is an area that tends to suck in professionals. They get very emotional and take sides and say one side is right and the other is wrong, and that is seldom the case. It's often somewhere in between."

What's of concern to many Family Court participants, however, is the variation in the quality, training and background of lawyers and expert advisers writing court reports.

"It's a worry," says Trenberth, who's been involved in report writing for 18 years and has raised her concerns with colleagues and informally with the Psychologists Board. She says the problem stems from the small pool of specialist court writers available, and the lack of experience by court officials in selecting the right person for the job.

Asked if some parents could be getting a raw deal as a result, she says, "Definitely. Definitely. When people find themselves in Family Court, they are dependent on having a quality lawyer as well as a quality specialist report writer. That can go badly against them or work in their favour really well. It's a bit random."

While the majority of family lawyers were “pretty impressive”, there were inevitably cases where experts were “unconsciously or even consciously biased. It’s a small percentage but when it happens it’s devastating for those on the receiving end. It’s always the children who heavily pay the price,” she says.

“The court has a certain number of options and has to choose the least awful one, but the children still suffer anyway. It’s really hideous. Often parents are allowed to drag their cases out far too long because they have a legal right to do that. That’s why a purely legal system doesn’t work for people with complex psychological issues. It’s just a forum for them to play out their dysfunction.”

Fred Seymour, a professor of clinical psychology at Auckland University who specialises in research into parental separation and children in the courts, agrees “far more effort” needs to be put into the training and continuing education of both psychologists and lawyers in the family court, and the staff of the planned new Family Dispute Resolution Service. “If they are ill-equipped or under-trained, if they have no experience of dealing with children or a basic understanding of child development needs and family dynamics, that’s going to skew the outcomes in a worrying way.”

He says the importance of having a meaningful relationship with both parents post-separation comes with caveats. For example, there had to be an existing meaningful relationship in the first place. It is “plainly problematic” when a father wants equal care when he never lived with the child’s mother or split before the birth.

“Far too much emphasis has been put on time with the children being the main criteria. The idea of 50-50 as a starting point is ridiculous and in most cases not practical. The quality of parenting is not defined by the amount of time spent with the child, but the quality of the interaction. Most parents who are co-operating with each other don’t sit down and count the hours. They work it out to maximise the advantages for the children.”

But Henaghan says any couple heading to the Family Court has to recognise the law is very strong on the importance of both parents being involved in their child’s future. “Clients need to be aware that even though this person isn’t someone they want to be involved with, unless there is a safety issue for the child, [joint custody] is going to happen.”

Naming, Blaming and Shaming

A parents’ support group aims to help mostly women who believe they’ve been let down by court decisions.



KEH DOWNE

Amy McDonald, a west Auckland mother of five who formed a support group for parents going through Family Court cases, says domestic violence is being “pushed under the carpet” as court officials urge women to agree to shared care. McDonald says most of the 50-odd members of her year-old group Parents 4 Justice are women who feel they’ve been disadvantaged by court decisions. After being involved in Family Court cases of her own for 10 years, she wants to help other parents try to resolve their disputes outside the system.

She believes the courts have become increasingly “pro father” in that time and says family lawyers have advised women not to oppose applications for shared care from violent partners, or to raise issues of physical or psychological bullying, lest they be seen as obstructive.

“They’ve learned the hard way what they should and shouldn’t say. You go into court feeling vulnerable and emotional but you can’t be seen to act that way or be critical of the other party. That’s instantly frowned upon and the court will come down hard on you – they believe if you’re talking that way there, that you’re doing it at home and that’s emotional abuse of the child.”

She says group members who attend

supervised access centres such as Barnardos to visit their children have noted increasing numbers of mothers in recent years, where men formerly predominated. An increasing shortage of places at such centres means some judges are allowing unsupervised access with conditions attached, or access supervised less rigidly by other family members.

McDonald says while parents are advised not to bad-mouth their ex, “there’s a lot of naming, blaming and shaming” going on in reports to court by psychologists or lawyers appointed to represent the child. She says a parent who falls out of favour with the lawyer for their child or the psychologist appointed to their case can then face an almost insurmountable barrier, but she’s seen cases where two psychologists have offered diametrically opposing views about one parent’s capabilities.

Some members of the group had also been on the receiving end of what they perceived as judicial misconduct. Last October, judicial conduct commissioner Sir David Gascoigne upheld a complaint against a Family Court judge over her behaviour when considering a parenting order. Gascoigne described Judge Emma Smith’s conduct as “disturbing” and amounting to “gross and gratuitous discourtesy” towards a professional witness.

Smith had apologised and obtained professional assistance for personal difficulties she was facing. While the court said it was unaware of any other complaints about her, several Parents 4 Justice members have posted on its website that they have had issues with the same judge.

McDonald says court officials have often seen so much misery and dysfunction they’d been “dehumanised” by the process. “They’re broken and shut down; they’ve lost their compassion and care for the families. Families have just become a name on a piece of paper. They say it’s about the children, but when you’re going through the process it becomes very apparent it’s not; it’s about the parents.”