Lionel Murphy and the dignified divorce
Of dreams and data

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The dream

In my interview with Lionel Murphy in 1977, he used the word “dignity” twenty six times. (Messenger, 2012, p. 2)

As Attorney-General for much of the lifetime of the Whitlam Government, Lionel Murphy displayed an almost visceral determination to reform Australia’s divorce laws. In correspondence to the Divorce Law Reform Association in 1973, for example, Murphy wrote of his determination to move beyond “a carry over of the old ecclesiastical garbage”, suggesting that under the *Matrimonial Causes Act 1959*, Australia’s divorce laws at the time, had become “a sick joke which few people any longer find funny” (as cited in Swain, 2012, p. 14).

The *Matrimonial Causes Act* contained 14 grounds for the dissolution of marriage, most requiring the establishment of fault on the part of one of the parties. Throughout the lifetime of the legislation, fewer than a fifth of couples sought dissolution on the one major “no fault” ground available—separation for five years or more, with the large majority of applications for the dissolution of marriage being made on the grounds of cruelty, adultery or desertion (Finlay, Bailey-Harris, & Otlowski, 1997).

For Lionel Murphy, the key to the transformation of divorce law and divorce-related proceedings lay in “ridding the law entirely of the concept of fault and matrimonial offence” (Murphy, 1973, p. 282). Consistent with this aim, the *Family Law Act*, which replaced the *Matrimonial Causes Act* in 1975, is perhaps best known for its creation of a single ground for the dissolution of marriage—irretrievable breakdown demonstrated by separation for 12 months or more.

Far less energy, however, was devoted to questions of how decisions about property and children were to be made once fault-focused grounds for dissolution no longer
applied. Rather, a review of the parliamentary speeches and debates prior to passing the legislation (see Finlay, 2005) revealed a commonly held belief that the removal of fault from applications for dissolution of marriage would, in itself, lead to a reduction in, or even elimination of, separation-related conflict—especially conflict over children. The underlying presumption associated with this line of reasoning was that a great deal of the bitterness associated with separation and divorce was caused by the fault-focused nature of most applications for dissolution under the *Matrimonial Causes Act*.

As matters transpired, the limitations of “no fault” divorce as a tool to reduce post-separation conflict soon became apparent. At the extreme end of the spectrum, the early Family Court was subjected to violence of a sort that had rarely if ever been perpetrated against an Australian court. Much of the subsequent commentary (e.g., Goodman, 1986) suggested that the primary cause of such violence lay in challenges that the legislation was presenting to those men who had hitherto assumed a position of uncontested dominance within their family relationships. At the same time, adversarially driven litigation and negotiations were also increasingly being seen as processes that inflamed rather than reduced conflict. Adversarial interventions were regarded by the first Chief Justice, for example, as “destructive of morale and [likely to] create bitterness for all” (Evatt, 1979, p. 10).

Positive and negative critiques of the “adversarial system” have continued since the early days of the Family Court (see Harrison, 2007, for an excellent review). On the critical side, a report that in many ways set the tone for the 2006 family law reforms (Family Law Pathways Advisory Council, 2001) concluded that “too much adversarial behaviour” was apparent in the family law system (p. E4). A subsequent key report (House of Representatives Standing Committee on Family and Community Affairs, 2003), argued that:

> parenting is a life long responsibility. Yet the adversarial ethic pits people against each other to determine a winner and a loser. It pushes them apart when they need to be brought together around their children’s needs. (p. 75)

Though not always easy, bringing separated parents together around their children’s needs must be regarded as a “key performance indicator” for any modern family law system. This is no doubt why, like many others favouring reforms to the *Matrimonial Causes Act*, Lionel Murphy supported important innovations designed to complement no fault divorce. These included having independent legal representatives, as well as access to conciliation conferences and supervisory processes arranged by “welfare officers”, who were to be employed within the proposed Family Court. Thus, though primarily focused on the removal of fault as grounds for divorce, Murphy’s (1974a) vision was also that of a court that would offer assistance to the parties themselves:

> to iron out difficulties affecting the welfare of the child … so much of the bitterness engendered in contested custody cases will be removed. (p. 642)

Interestingly, the Attorney’s ultimate dream had been to remove legal regulation from divorce altogether. Murphy (1974b) noted, for example that:

> the Bill is not presented as my ideal solution to the very difficult problems that arise in the area of human relationships, but is presented as proposals...
which may be generally accepted now. I would prefer solutions even more compatible with the dignity of the individual. It does not seem right to me that divorce itself should be an occasion for judicial intrusion. (p. 760)

Recognising his ideal as having no chance of succeeding, Murphy’s aim nonetheless remained ambitious. It is perhaps best captured by an Attorney-General’s Department press release, which late in 1975 spoke of the new Family Law Act as:

sweeping away the laws and procedures of the past and providing a new era of calmness and rationality, presided over by specialist judges assisted by experts and which would introduce speedy, less expensive and less formal procedures. (as cited in Fogarty, 2006, p. 4)

To what extent was such an “era of calmness and rationality” recognised by family law reformers such as Lionel Murphy as a largely aspirational goal? At that time, virtually no data existed on the efficacy of interventions by social science experts. Nor did reliable empirical data exist on the characteristics of separating couples. We did not know, for example, what percentage of individuals seeking dissolution on the one ground of irretrievable breakdown was likely to be able to manage their separation with dignity and with minimal professional intervention. Or what percentage would need further counselling and assistance. Most importantly, we had almost no reliable data on the percentage of couples for whom the separation itself suggested a history of seriously dysfunctional and possibly dangerous behaviours in need of more intensive and protective forms of intervention.

Swain (2012) sought views from those involved in the early days of the Family Court on why this final category of separating families was virtually ignored at that time. Most interviewees spoke of the fact that the level of violence and other dysfunctional behaviours among separating couples was either not appreciated or thought to be of little relevance. The first of these observations can be explained to some extent by an absence of empirical data on the subject. But the reasons behind thinking that such behaviours were of little relevance are more complex. They may have something do with a prevailing zeitgeist noted by Swain that placed considerable emphasis on individuality and personal freedom and less emphasis on personal responsibility within relationships.

Swain (2012) also cited former Senior Judge, John Fogarty, who, in a reflection on the early years of family law in Australia, concluded that:

the very strong determination … to cut away from the harsh moralistic style [of the era] and to try to model yourself on people who were more dignified … probably went a bit [too far] … You just couldn’t have in any case, in children’s cases, property cases, fault being raised at all. It was a complete misunderstanding, but an almost universally held misunderstanding. (p. 103)

The parliamentary speeches and debates in support of a new “no fault” Family Law Act clearly foreshadowed the approach described by Fogarty. In short, an absence of reliable social science data at the time dovetailed neatly with a prevailing view in these speeches that allegations of cruelty and violence were likely to be mainly an artefact of the fault-driven and deeply flawed Matrimonial Causes Act. As Behrens (1993) was later to suggest, cruelty and violence at that time were too readily associated with the “uncivilised” aspects of the old legislation that reformers were anxious to leave behind.
Ironically, the empirical data that parliamentarians did call upon to support the 1975 reforms, sprang from somewhat idiosyncratic interpretations of divorce statistics associated with the *Matrimonial Causes Act*. For example, in a parliamentary speech in support of reform, McMahon (1975) cited evidence suggesting that 95% of applications for divorce were “uncontested”. He went on to assert that of the 5% of contested cases, less than half were opposed on the grounds of adultery or cruelty (p. 943).

Drawing on inferences made in an English Report (Archbishop of Canterbury’s Commission, 1966), J. McClelland (1974) had previously suggested that an uncontested divorce was, in effect, a divorce by consent. McMahon’s conclusion, therefore, was that the vast majority of couples seeking dissolution of their marriages were, if not reconciled to the reality of the situation, at least acquiescent and focused more on the future than the past. Serious ongoing unacceptable behaviour was assumed to be a relatively rare phenomenon.

Kerin (1975) went further, arguing that applications on the grounds of cruelty and adultery were often “cooked up” in order to achieve a “quicker result” (p. 951). His view that most applications were an artefact of the legal system itself was reinforced by his observation that grounds for dissolution differed significantly from state to state.

Finally, Jenkins (1975) succinctly summarised the argument at the heart of many of the objections to the exiting legislation, arguing that:

vindictiveness, indignity and hatred too frequently are the *results* of divorce proceedings (p. 1369; emphasis added)

and that:

the proof of fault in divorce proceedings has made a farce of the law and has greatly damaged the institution of marriage. (p. 1370)

Analysis of the speeches and debates around the Family Law Bills leaves little doubt that for most parliamentarians in favour of reform, “fault” under the *Matrimonial Causes Act* had become a thoroughly debased currency. In the absence of reliable empirical evidence to the contrary, it was assumed that allegations of seriously unacceptable behaviour were mainly linked to the capriciousness of the legislation itself.

It was only after the commencement of the Family Court of Australia that credible data on the more problematic dynamics of family life in Australia began to accumulate. In particular, the pioneering work of the Royal Commission on Human Relationships (Evatt, Arnott, & Deveson, 1977) and of one of its commissioners (Deveson, 1978), as well as the work of Scutt (1979, 1980, 1983) and her colleagues, began to reveal the existence of dark undercurrents within Australian families, especially with respect to the treatment of women and children.

Of course, data do not in themselves lead to changes in behaviour. For example, with respect to US findings on child abuse published in the early 1960s, Helfer and Kempe (1976) pointed with consternation to the considerable gap between presenting clear but challenging research findings and prompting action on those findings. Likewise, Arrow (2013) found that for a long time Australians were reluctant to hear and accept the reality of many of the more disquieting messages from the Royal Commission on Human Relationships.

Though there were exceptions in the form of a number of judicial statements and scholarly articles on the subject, the extent of significantly dysfunctional behaviours in family law cases received little recognition in the Family Court and among practitioners (both lawyers and non-lawyers) until the early to mid-1990s (see Moloney, Weston, and
Further studies during the second half of the 1990s and the first part of the next decade increasingly pointed to evidence that such behaviours were common among separated families, especially those families actively engaging with the courts (see Moloney et al., 2007).

The true extent of these problems in Australia, however, and how they affected the ways in which decisions were made about children, remained largely a matter of “informed conjecture” until the publication of data by the Australian Institute of Family Studies as part of its evaluation of the 2006 family law reforms. These data—from two waves of the Longitudinal Study of Separated Families (LSSF; Wave 1 in 2008 and Wave 2 in 2009)—form part of more comprehensive reports by Kaspiew et al. (2009) and Qu & Weston (2010).

Relevant parts of the data from these reports are briefly summarised in the next section. In light of this analysis, the final section and concluding statement then reconsider Lionel Murphy’s vision of divorce with dignity.

The data: Post-separation relationships and decision-making over children

Relationships

LSSF Wave 1 2008 drew on a sample of 10,000 separated parents. The data reveal that a year or so after separating, almost two-thirds of both mothers and fathers reported friendly or cooperative relationships with their former partners. About a fifth described their relationships as distant, while a little over one in eight suggested there was still “lots of conflict”. A fearful relationship was reported by 3% of fathers and 7% of mothers—this being the only category in which there were significant gender differences.

These figures had not altered a great deal when parents were again interviewed approximately a year later (LSSF Wave 2 2009). Although the percentage of parents reporting a distant relationship had increased a little, this was offset by small decreases in the percentage reporting lots of conflict and fearful relationships, and a small decrease in the percentage of parents describing their relationship as friendly. The decrease in fearful relationships was entirely accounted for by reports from mothers, though mothers still made up about nearly three-quarters of this category of responses.

At Wave 1, a little over half the fathers and almost two-thirds of mothers said that some form of emotional or physical violence had occurred in their relationship before or during the separation. Emotional abuse alone was reported with considerably greater frequency, though just over a quarter of mothers and a third of fathers said the violence was physical. Family violence figures were similar in the original Wave 1 sample and the continuing sample, suggesting that those who were no longer part of the sample had similar characteristics to those who had been willing to be interviewed again at Wave 2. When the continuing sample of parents was compared at Wave 1 and Wave 2, a modest reduction in reports of violence was found, this being almost entirely accounted for by

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2 The majority of parents in this survey had separated in 2007 (82%), 13% had separated in the second half of 2006, and 5% had separated in 2008. The interviews were conducted over the period August and October 2008.

3 A detailed description of the sampling and methodology—allowing for comparison between the two samples via an “continuing sample” (Wave 1 parents who agreed to be interviewed again at Wave 2)—can be found in Qu and Weston (2010, Chapter 2).
lower rates of physical violence (from 22% to 4%). The most common expression of emotional violence at both waves was “humiliating insults”.

Links between family violence, addiction issues and serious mental health problems have been well established (Bromfield, Lamont, Parker, & Horsfall, 2010). Half the Wave 1 mothers and around one-third of the fathers indicated that mental health issues and/or the use of alcohol or drugs, gambling or other addictions (classified together as “addiction issues”) were apparent before separating. Consistent with the findings of Bromfield and her colleagues, a large majority of the parents who said that mental health and addiction issues had been present before separation reported the experience of some form of family violence, with physical violence being higher between these parents than in any other group. Violence was also commonly linked to mental health problems and/or addiction issues among parents interviewed at Wave 2. Indeed regardless of gender, parents who indicated that there had been mental health problems and/or addiction issues in the relationship before separation were more likely than other parents to report that they had experienced some form of abuse inflicted by the other parent.

**Decisions and decision-making pathways**

Notwithstanding extensive reports of violence, 71% of fathers and 73% of mothers reported at the Wave 1 interview that they had sorted out parenting arrangements for the focus child;4 19% of fathers and 16% of mothers indicated that they were in the process of sorting out arrangements; and 10% of both fathers and mothers reported that nothing had been sorted out.

Of those who had sorted out arrangements, about two-thirds saw “discussions between themselves” as the key pathway, while a further one in six said that their parenting arrangements “just happened”. In other words, professional interventions were perceived as a main pathway towards resolving post-separation parenting arrangements by only about one in six parents who had reached agreement, with courts being cited as the least used pathway, followed by lawyers and then “counselling, mediation or family dispute resolution” (FDR) as the pathway employed most frequently.

Of those parents who said they were still in the process of sorting out parenting arrangements at the time of the survey, a majority continued to report “discussions” or “it just happened” as their main pathways. Most of the remainder (about two in five parents) attributed their main pathway, in roughly equal proportions, to courts, lawyers and FDR.

A detailed analysis of these data provided by Kaspiew et al. (2009) included comparisons with pathways taken by a “retrospective” sample of parents (the Looking Back Survey), who had separated prior to the 2006 reforms. This comparison provided qualified support at that time for the suggestion that following the reforms there had been a drift away from the use of courts and lawyers. These data were reinforced to some extent by the results of a court file analysis, also conducted as part of the AIFS evaluation, which found that there had been a decline of 22% in the total number of applications for final orders in children’s matters during the period of the evaluation.5

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4 The focus child was the first child aged under 18 years who was listed in the database that provided the sample for this study.

5 More recent evidence (Parkinson, 2013) suggests a 32% decline in court hearings in these cases in the five-year period between 2005–06 and 2011–12.
By Wave 2, there had been a modest increase in the proportion of parents who reported that their arrangements had now been sorted out, and a modest decrease in the proportion reporting that they were in the process of sorting things out. The proportions in the “nothing sorted out” category, however, remained almost unchanged. The “sorted out” group was easily the most stable, with 87% of those who had sorted out matters at Wave 1 providing the same report at Wave 2. On the other hand, “sorted out” was by no means a static concept, with almost half of this group noting that they had made (usually modest) changes between waves.

Although “discussions” or “it just happened” continued to be the most frequent main pathway for sorting out parenting arrangements, by Wave 2 there was increased nomination of services and courts as the main pathways. That is, as time went on, services and courts are more likely to be called upon. In addition, when parents at both waves were asked about their satisfaction with a number of dimensions of their main dispute resolution pathway, “discussions” were viewed the most positively, followed by FDR, lawyers and then courts.

These findings link in turn to data strongly suggesting that use of professional services and courts to assist in resolving disputes over children is related to the experience of family violence. Only 23% of Wave 1 parents who nominated FDR as their main pathway towards reaching a settlement reported that there had been no violence in the relationship. The equivalent figure for those who nominated lawyers as their main pathway was 16%, while among those who nominated courts, only 9% had not experienced violence. The proportion of the violence that was physical also increased as the interventions became more formal (FDR: 25%; lawyers: 37%; and courts: 48%).

These figures contrasted with results from those who mainly used discussions among themselves (easily the largest sub-group), or said that the resolution “just happened” (the next largest sub-group). Roughly half of these sub-groups reported no violence, while physical violence was reported in about one in six of these cases.

**Family dispute resolution: Use and outcomes**

A significant aspect of the 2006 reforms was the introduction of mandatory FDR (with exceptions) when parents were in dispute over arrangements for their children. The LSSF data addressed key research questions regarding the use of FDR, immediate and medium-term outcomes, and the profile of the clientele.

A little under a third of fathers and a little over a quarter of mothers of the total Wave 1 sample reported at interview that they and their former partner had “attempted FDR or mediation”. Among Wave 2 parents, use of FDR was a little less common—reported by about a quarter of fathers and a little over one in six mothers who had revised, recently developed or were still revising or developing their initial agreement.

Of the Wave 2 parents who had made use of FDR during the previous 12 months, 39% of fathers and 35% of mothers had also reported at the Wave 1 interviews that they had made use of FDR. For more than a third of these parents, therefore, it is clear that FDR is a process entered into on more than just one occasion and possibly for more than one set of issues.

Of the parents who attempted FDR at Wave 1, roughly two-fifths reached agreement about parenting arrangements at the time that FDR took place. About three-quarters of those who had reached agreement at this point went on to report at the Wave 1 interview that parenting arrangements continued to be sorted out. About a fifth reported
that they were currently in the process of sorting things out, while only 6% reported that nothing was sorted out.

Those who did not reach agreement as part of the FDR process were divided into two groups—parents who were given a section 60I certificate by an FDR practitioner (which under the legislation would enable them to take their dispute to a court); and parents who were not given a certificate. Only a fifth of FDR participants were given a certificate, and almost a third were not given a certificate even though they had not reached agreement.

A little over two-thirds of those who had not reached agreement at FDR but had not received a certificate, reported at the Wave 1 interview that arrangements regarding the children were now sorted out; a little under a quarter of these parents reported that they were still in the process of sorting things out, while the remaining 12% said that nothing had been sorted out. By way of contrast, while a little over a third of those who had received a certificate reported at the Wave 1 interview that arrangements for the children had been sorted out, almost half said that they were in the process of sorting arrangements out. The remaining 17% said that nothing had been sorted out.

Immediate outcomes for the Wave 2 sample were very similar with respect to agreement rates and non-agreement rates found in Wave 1. The difference, however, was that 31% of the non-agreement parents in this sample had been issued with a certificate (compared with 22% in Wave 1); while 23% had not been issued with a certificate (compared with 30% in Wave 1). Thus, a somewhat higher proportion of the FDR non-agreement cases between Waves 1 and 2 had been assessed to be cases that may need a court hearing or litigation-focused intervention.

About two-thirds of those who had reached agreement at FDR between Waves 1 and 2 reported at the Wave 2 interview that parenting arrangements were still sorted out (this compares with three-quarters of parents at Wave 1), and about a quarter were still in the process of sorting things out (compared to a fifth at Wave 1). Finally, close to one in ten said that nothing had been sorted out, compared to a little over one in twenty at Wave 1.

Of those who did not reach agreement but who did not receive a certificate at Wave 2, a considerably smaller proportion reported having sorted matters out than was the case at Wave 1. Conversely, a considerably greater proportion reported being in the process of sorting things out, and a somewhat higher proportion reported that nothing had been sorted out.

Finally, though a higher percentage of certificates had been issued at Wave 2, the profile of the certificate group in Waves 1 and 2 was quite similar, with only about a third having sorted out parenting issues, and a large minority still in the process of sorting things out.

In summary, despite initial FDR agreement rates being similar at both waves, the issue of certificates at Wave 2 was somewhat higher and the medium-term sustainability of agreement rates was somewhat lower. This suggests that FDR conducted during the second year of separation is likely to be dealing with greater complexity and/or higher levels of family dysfunction. It may also reflect a well-known observation among mediators that it is more difficult to resolve conflicts that have existed for longer periods of time and may have become chronic or entrenched.

**FDR and the experience and effects of family violence**

Under the 2006 legislation, a key exception to the requirement to attempt FDR, is the experience of violence. An important principle informing this exception is that for
mediation to be ethically defensible, both parents must feel sufficiently empowered to represent their own interests and the interests of their children. Of all Wave 1 parents, however, those who reported the experience of violence were much more likely to have attempted FDR (41% who experienced physical violence and 35% who experienced emotional abuse alone) than those for whom violence had not occurred (15%).

The data also suggest that the experience of family violence has a negative effect on some, though by no means all, outcomes. It was found, for example, that the highest rate of agreement reached as a direct result of the FDR process, occurred in cases in which there had been no reports of violence (48%), while the lowest rate occurred in cases in which there had been physical abuse (36%). Consistent with this finding, the highest proportion of s 60I certificates issued was in cases in which physical abuse had been reported (26%), while the lowest proportion (10%) occurred in cases in which there had been no reports of physical violence or emotional abuse.

Both fathers and mothers who had experienced emotional abuse or physical hurt were also more likely than other parents to report use of FDR between survey waves. Around a third of the fathers and a quarter of the mothers who said that they had experienced physical or emotional abuse reported that they had made use of FDR between survey waves. This was only reported by around 10% of parents who had not experienced either form of abuse. A large majority of these parents referred to this behaviour as emotional abuse only (usually humiliating insults), but 4–5% of fathers and mothers noted that the other parent had hurt them physically during this period.

In summary, the Wave 1 data on FDR suggest that although a little over half those parents who “attempted FDR or mediation” did not develop an agreement at the time that FDR took place, a majority of those who had participated in FDR had reached agreement by the time they were interviewed. Many of those who reached agreement sometime after the completion of FDR suggested that the main pathway towards these agreements consisted of discussions between themselves. These findings continued to hold for parents who had developed or revised their arrangements at Wave 2, lending support to the idea that FDR can be an important step in a complex set of formally facilitated as well as non-facilitated negotiations over parenting.

Finally, the data show that agreements about post-separation parenting are clearly linked to quality of relationships. Those with a history of abusive relationships are considerably less likely than those with no such history to reach agreements about their children and considerably more likely to make use of family relationship services such as FDR. Abusive relationships are also extremely common among those parents who nominate lawyers and courts as their main dispute resolution pathways.

At the time of writing, Wave 3 data tapping the experiences of parents who had been separated for approximately five years, had been analysed but not published. Broadly speaking, these data suggest that the management of most ongoing and entrenched post-separation parenting disputes must find ways of acknowledging and dealing with past and possibly ongoing abuse. Many such cases are likely to require a multifaceted approach, in which legal and family relationship interventions are supportive of each others’ endeavours.

The dignified divorce?
The titles of Swain’s (2012) account of the early years of the Family Court of Australia (Born in Hope) and of Star’s (1996) analysis of the first twenty years of the court (Counsel of Perfection) suggest that the bold experiment of Lionel Murphy and his colleagues
would inevitably fall somewhat short of its original aspirations. At the same time, data from the Longitudinal Study of Separated Families demonstrate that these aspirations were not entirely unrealistic. Importantly, they indicate that the majority of parents reported a capacity to manage their separation and ongoing relationship with each other and with their children, some notwithstanding a history of violence and abuse and/or a history of addiction and mental health difficulties. However, almost one in seven parents reported “lots of conflict” more than one year and two years after the separation had occurred, while almost one in twenty (the majority of whom were mothers) described their relationships with their former partners at these times as “fearful”.

Arriving at sustainable parenting arrangements in the face of such obstacles presents significant challenges. Notwithstanding the exceptions clauses with respect to mandatory FDR, it is perhaps not surprising that many parents who had experienced significant relationship difficulties opted for (or were advised to consider) FDR and/or some form of therapeutic intervention. When these proved to be insufficient or inappropriate, the data show that lawyers were increasingly sought to assist in negotiations or to support a client in seeking a judicial determination.

The data also suggest however, that even when the circumstances were complex and even when relationships may have been abusive, FDR, especially when supported by other therapeutic or advisory services, may at times have represented a pragmatic response by parents themselves or by their advisors. This may be because, though facilitated and therapeutic approaches need to be carefully monitored when power relationships are significantly imbalanced, it remains the case, as Star (1996) concluded, that “there are some areas of human experience that cannot be dealt with adequately by law” (p. 213). Star came to this conclusion at a time when separation-related family relationship services were thin on the ground and when modest progress (at best) had been made with respect to reconciling the competing philosophical underpinnings of the law and social sciences. Since that time, much has occurred to rectify the first of these deficits, most significantly the creation of 65 Family Relationship Centres as the centerpiece of the 2006 family law reforms (see Moloney, 2013; Moloney, Qu, Weston, & Hand, 2013; Parkinson, 2013; Pidgeon 2103).

The Operational Framework for Family Relationship Centres (Attorney-General's Department, 2007) specified that lawyers were not to accompany their clients to Family Relationship Centres. But in a post-reform environment, lawyers and community-based family relationship practitioners have found themselves working together with increased frequency. Encouragingly, in June 2009, the then Attorney-General announced the Better Partnerships Program, which aimed to assist separated or separating families “by providing access to early and targeted legal information and advice when attending Family Relationship Centres” (R. McClelland, 2009).

The AIFS evaluation of the program (Moloney, Kaspiew, De Maio, & Deblaquiere, 2013) reached the following conclusion:

The implementation of the Better Partnerships Program reflects a point in the evolution of the Australian family law system where constructions of the respective roles and functions of social science and legal professionals have continued to shift away from a paradigm based on competition to an understanding that collaboration and inter-disciplinarity are essential if the system is to meet the needs of families with complex dynamics. (pp. 265–266)
It has become increasingly clear that many individuals (including the children) from separated families in which the dynamics are complicated and/or abusive need access to a range of facilitated and relationship-focused services. The more vulnerable within such families (including the children) also need advocates who have time both to hear and represent their clients' concerns. For families such as this, the challenges for the family law system are both skills-based and systemic.

Though resources will always remain an issue, Australia has developed, for the first time, a network of registered family relationship practitioners skilled in addressing complex separation-related issues. And for the first time, a formal (albeit early) evaluation of an Australia-wide cooperative endeavour between key relationship practitioners and their legal counterparts has been completed and has yielded promising results. The results suggest that success in the more difficult cases tackled by these practitioners is linked to both individual practitioner skills and a willingness to continue to find ways of bridging the philosophical differences that come from traditions of individual advocacy on one hand and a whole-of-family focus on the other.

It needs to be acknowledged that the promotion of cooperative endeavours between legal and family relationship practitioners has also been central to the work of the Family Law Pathways Networks, which came into being as a result of recommendations made by the Family Law Pathways Advisory Group (2001). Until relatively recently, these “quiet achievers” in the family law system have lived with the tensions associated with the sort of attitudes towards legal processes noted above. More recently their mission to “foster collaboration and cooperation amongst service providers working within the family law system” (Attorney-General’s Department, 2011, p. 11), has been made easier as a result of recognising the potential benefits of formally supporting legal and family relationship practitioner cooperation.

**Conclusion**

It seems that Lionel Murphy’s dream of dignified divorce and his acknowledgment that, at its core, divorce in a modern Western democracy is a human relationships problem, has continued to find expression in the ongoing development of family law. In retrospect, it seems logical that if family relationship services are considered an appropriate forum for assisting many of the parents who find themselves in dispute about their children, then the bulk of those services would be better placed outside formal court structures. What has been missing in the model, however, just as it was missing in the original legal adversarial/Family Court counsellor model in 1975, has been focused attention on how the different starting points of legal and family relationship processes can work together in the service of families who are separating.

Such cooperative endeavours are by no means a panacea. But in a less adversarial climate (also an important aim of the 2006 reforms), family law processes and family relationship interventions are much better placed to find areas of common ground. And at the more investigative end of the spectrum, when issues of protection and possible rehabilitation must be to the fore, there is also considerable scope for lawyers and practitioners with both therapeutic and forensic skills in the social sciences to work cooperatively in ways that recognise that a mere “one-off” and externally imposed decision, especially one that emerges after a single climactic trial, is rarely an appropriate response for such families.

Unlike the days in which a new Family Law Act was being promoted, we now have data that tell us that simple and dignified procedures are indeed likely to be helpful to
those many separating couples who develop good post-separation relationships and who make little or no use of services to assist them in arriving at parenting arrangements. But the data also strongly suggest that from a practitioner’s point of view, “easy” family law cases are few and far between. It has become increasingly clear that many of the families who struggle to reach resolution after separation do so because they continue to carry a burden of dysfunctional relationships into the negotiations. These families require more than the mere ironing out of difficulties that Lionel Murphy had in mind. At the same time, there is little doubt that the cooperative approaches to legal and social services, increasingly apparent since the 2006 family law reforms, have brought Murphy’s dream of a dignified divorce for all a little closer.

References


