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# The Columbus Pilot

## Catalyst for an emerging model of an integrated Family Court system in Western Australia

PAUL MURPHY, PAUL KERIN AND LISBETH PIKE

In July 2001 the Family Court of Western Australia in Perth commenced an innovative pilot project to individually case manage matters involving allegations of spousal violence, child abuse or sexual abuse, and family violence where there were significant risk issues. The Columbus Pilot project has acted as a catalyst for a number of changes as both the judicial officers and counselling service staff developed new skills and knowledge in this very difficult area of family litigation and dispute resolution.

Over the past 18 months there has been a gradual integration of various external support services and the Columbus process, with the result that a potential model of an integrated Family Court system is beginning to emerge. This article provides an overview of some of these developments and presents some ideas for future developments.

### *What is Columbus?*

The Columbus Pilot project was developed by the Family Court of Western Australia to assist, enable, and encourage separated parents to acknowledge the debilitating effects of continuing conflict, violence or abusive behaviour, and to encourage couples to resolve their differences without recourse to prolonged litigation in the Family Court.

Columbus has extended the concept of differential case management inherent in the earlier Project Magellan (Brown, Sheehan, Frederico and Hewitt 2001). Magellan focused on matters involving child abuse and child sexual abuse whereas Columbus also includes cases where there have been allegations of domestic violence and family violence where there are risk issues in respect of the children.

All matters involving such allegations were referred to the Director of Family Court Counselling for assessment of the presenting risk factors and other selection criteria (for instance, the Columbus Pilot was limited to couples living in the Perth metropolitan area where the various support services were available, and to those who had not been engaged in previous litigation). In order to meet the criteria for early intervention, the ability to schedule a Columbus Conference within three weeks of the first court event was also a selection criteria: matters not included in the Pilot continued to be monitored as the "Control Group".

Other distinctive features of Columbus are:

- cases are individually managed (not just fast tracked) through a series of family conferences which are jointly chaired by a designated Registrar and a Family Court Counsellor until either a stable, safe contact regime is established or the matter is progressed through the general court system;
- the inclusion of referrals to therapeutic services and education programs as part of the conference process;
- the proceedings of conferences are confidential from the Court and so are not admissible in evidence, thereby providing the potential to explore issues (especially disclosures of violence or abuse) and to discuss options for managing the situation in both the short and longer term without prejudice to either party; and
- the presiding Columbus Conference Registrar is disqualified from involvement in a Columbus matter that is subsequently referred back to the Family Court process.

## ***The adversarial context***

In its advice to the Australian Federal Parliament in 1974 on the ramifications of establishing a separate Family Court in Australia, the Standing Committee on Constitutional and Legal Affairs conceived the new system with its integral counselling services as a “helping court” (SCCLA 1974: 56). Despite the original intention that the Family Court should operate “without undue formality”, proceedings have tended to become increasingly formalised, not only as a way of dealing with the intense emotion that is so often present but also to imbue an air of authority (Fogarty 2001: 97).

There has been increasing acknowledgement that the adversarial framework so familiar to the legal profession (and which has developed over the past 25 years in the Family Court in Australia) is not conducive to cooperative post-separation parenting relationships, and thus not in the child’s best interests (Attorney General’s Department 2001; FLPAG 2001).

An alternative view advocates a broader and more comprehensive approach to the administration of family law. Such an approach involves the use of the “social sciences” (sociologists, psychiatrists, social workers, psychologists, marriage and family counsellors) to examine the impact of legislation, legal procedure, and the influence that legal actors (judges, magistrates, registrars, child separate representatives, and legal practitioners) have on the mental and physical health of the people whom they purport to represent or assist (Cooper 1998; Tesler 1999; Winick 1997).

This collaborative approach and its inherent healing effects is conceptualised as “therapeutic jurisprudence” whereby the legal (Family Court) system itself becomes part of the healing and personal growth process required to counter the disillusionment and bewilderment which are common outcomes of relationship breakdown (Allan 2001). Therapeutic jurisprudence represents a return to the original idealised concept of the “helping court” advocated during the formation of the Family Court.

Notwithstanding the changes in terminology of the Family Law Reform Act 1995, the emotion and potential for conflict remain as parents adjust to their new post-separation roles and responsibilities (Funder and Smyth 1996; Harrison 1999). The Reform Act also envisaged a degree of cooperation and communication between separated or divorced parents which, if it had existed, would possibly not have resulted in the parents separating in the first place (Campbell and Pike 1998; Harrison 1999).

It is this continuing parental conflict and inability to communicate which is often expressed in repeated reliance on the Family Court to adjudicate on seemingly simple parenting or administrative issues (such as variations in contact times, or liability to provide transport for contact visits). These factors are complicated when there is evidence, or allegations, of spousal (domestic) violence, child abuse, child sexual abuse, or family violence that raise concerns for the safety of children.

A long-term outcome of the Columbus project may be an improved ability for the parents either to negotiate the myriad of changes and issues which will inevitably arise as the children grow and mature, or at

least to know how to seek assistance. This approach, together with relevant alternative avenues for dispute resolution, and an emerging suite of support and education programs, is consistent with the notion that the Family Court system can become an agent for therapeutic jurisprudence.

## ***An emerging model of an integrated system***

As a result of the development of Columbus, the various sectors of the family law system in Western Australia are now working more closely together.

The concept of an integrated Family Court system is not new and many jurisdictions have struggled with the inherent complexities and implications of moving too far from the procedures which have developed over the past 25 years (Oregon Judicial Department 2002; Rhoades 2002; Williams 2002). However, writers such as Geraghty and Mlyniec (2002) have also urged that enthusiasm for change must be tempered with caution.

Experience in Perth over the two years of the Columbus project confirms both of these views but also highlights the possibilities for positive change when the Family Court is able to access a range of external services in direct support of its aim to provide better services to separating parents and better outcomes for their children.

There are three components in the Family Court system that is emerging in Perth. These are: the Family Court of Western Australia, including the Columbus Pilot project (described above); the Legal Aid Commission and their Alternative Dispute Resolution program; and various government and non-government support and education programs, and family law networks.

### ***Family Court of Western Australia***

The first component of an integrated system is the Family Court of Western Australia. This was established in 1976 as an independent State-based Family Court with its own legislative framework, the Family Court Act, that mirrors the Family Law Act that applies to the rest of the country.

The only court Registry is in Perth. There are 13 judicial officers – five Judges and seven Magistrates who are also appointed as Registrars. The judiciary are supported by 40 administrative staff and 11 Court Counsellors. The jurisdiction covers an area almost five times the size of France, and a population of about two million people. At least one judicial officer and a counsellor are “on circuit” to one of six regional centres throughout the year.

The Court opens about 7,000 new files annually. About 3,500 applications and responses are filed annually for various Orders in respect of children’s issues (primarily contact and residency). Most of these litigants are also seen by the Family Court Counselling Service, many on the day of their first Court appearance (FCCS 2002).

### ***Legal Aid Commission***

The second component of an integrated Family Court system is the Legal Aid Commission of Western Australia.

There are two aspects to the Legal Aid Commission’s position in the model. The first aspect is that the Director of Legal Aid undertook to provide a Separate

(Child) Representative for each case allocated to the Columbus Pilot. A total of 150 Child Representatives, of whom about one third were Columbus cases, were appointed to Family Court matters in the past 12 months.

The Child Representative has become an increasingly important participant in the Columbus conferencing process to the extent that they are often acting as the “broker” in arranging referrals to support services. The Legal Aid Commission is also responsible for funding the appointment of Court Experts to report on family dynamics as requested by the Court. Preliminary data in the cost/outcome analysis in Stage II of the evaluation suggest that, despite the apparent intensive input from the Commission, the Columbus cases are proving to be about 15 per cent cheaper than the Control Group matters.

The second aspect has been the development of a comprehensive Alternative Dispute Resolution (ADR) service. In an endeavour to assist people seeking Legal Aid to identify their needs at the earliest possible opportunity, and to assist a broader range of them to resolve their family law disputes in a fair and durable way without resorting to litigation, Legal Aid WA introduced a greatly expanded ADR program in January 2002 (Brown and Larkin 2001).

The four levels of this service (creatively named ADR 1, 2, 3 and 4) deal with increasingly more complex issues. The ADR 1 conferences are chaired by a trained mediator and deal with “simple” contact and residency matters. The other three levels (which address increasingly more complex issues and provide for parties to be legally represented) are chaired by experienced legal practitioners. There is provision for Heads of Agreement negotiated during a conference to be endorsed as Court Orders.

This program has been in operation for 12 months and appears to be achieving positive outcomes in a high proportion of matters considered in each of the four streams. The Alternative Dispute Resolution program has recently received a State West Achievement Award for excellence in the public sector.

### **Support and education programs**

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

#### *Government agency*

The Department for Community Development is the statutory authority for investigating and reporting on allegations of child abuse. Detailed protocols have been established to enable notifications of suspected child abuse to be expeditiously investigated and reported. In some cases, the Department Investigating Officer has attended the Columbus Conference to report on the outcome of the inquiry and to assist the conference in recommending appropriate action and/or interventions.

#### *Non-government agencies*

An integral element of the Pilot is the ability of the conferences to refer parents to a variety of support services (such as the Indigenous Conflict Resolution Service), therapeutic services (such as personal counselling or behaviour modification groups), education programs (such as WA Anglicare’s “Mums and Dads Forever”, also

reported at the recent Australian Institute of Family Studies Conference), and supervised contact services provided by agencies such as Anglicare, Relationships Australia, and Mother Hen.

Protocols are being developed to allow for some information sharing between agencies and the Family Court with the over-riding aim of facilitating safe, stable contact regimes for children and their parents.

The Columbus Pilot program (and to some degree the general court process) makes extensive use of these services and many of them are now regarded as essential elements of the emerging integrated model. However, the support services depend on a variety of funding sources that are not necessarily linked to court-based outcomes. This absence of dedicated funding is proving increasingly problematic as agencies tailor services to meet the needs of the court without any certainty over continuity of supply. It may be that consideration should be given to having court-linked services funded from a suitably increased Family Court budget which would ensure continuity, subject to the programs continuing to meet the requirements of the Court.

#### *Family law networks*

In addition to the agencies noted above, the Family Court in Western Australia also has an extensive support network represented by the Law Society, the Family Law Practitioners’ Association, Community Legal Centres, and legal practitioners generally. The President of the Practitioners’ Association also sits as a member of the Columbus Reference Group.

### **Consultation, collaboration, and coordination**

The Columbus Pilot has acted as a catalyst for the emergence of new roles and responsibilities, most notably the Principal Registrar and the Director of Family Court Counselling Services. The Director of Counselling was instrumental in establishing the initial network of agencies and support services, and developing the information-sharing Protocols. However, it became evident that, together with the Director of Counselling, the Principal Registrar has had a central role in promoting and sustaining the changes that were beginning to occur.

Some of these roles were:

- co-chairing the Columbus Reference Group and receiving critical feedback about the program and inherent court processes;
- convening a research interest group to co-ordinate the research activity within the Court, to advise on ethical and procedural issues, and to liaise with agencies seeking to develop court-linked research initiatives;
- involving social and legal researchers in the development of new initiatives so that any new program is not only evidence-based but incorporates an evaluation framework from the preliminary planning stages;
- developing evaluation strategies and designs for other court processes;
- supporting funding applications initiated by the Court itself and also with external collaborative partners;

- convening joint “professional training” seminars for judicial officers and counselling staff;
- convening an academic advisory committee to liaise with relevant institutions and have an input into course content in both legal and social science faculties;
- promoting community and professional education initiatives through agencies, professional associations (such as the Family Law Practitioners’ Association), and academic institutions; and
- presenting conference papers discussing the changes that were occurring.

All of these new roles require extensive consultation and collaboration in order to establish working relationships at a variety of levels. They also mean that the Principal Registrar and the Director of the Family Court Counselling Service have become more accessible to, and very visible in, the “family court sector”.

As noted above, a significant impact of Columbus has been the new working relationships that have developed between the judicial officers and counselling staff as they jointly manage the Columbus Conferences. All Registrars in the Family Court of Western Australia now chair conferences with a designated counsellor. All available Columbus staff meet regularly to review processes and techniques, share experiences, and to develop joint approaches aimed at achieving the best possible outcomes for the clients and their children. This cross-fertilisation of experience and expertise has led to greater awareness, understanding, and collegial support among Columbus staff, and to better practice in other spheres of the work of both professions.

### **Columbus evaluated**

An extensive four-stage evaluation of the Columbus Pilot has been developed by an inter-disciplinary, inter-university research team. The research design was developed and the efficacy of the evaluation methodology tested in Stage I, which was completed in June 2002. The evaluation proper includes longitudinal cost/outcome analysis of matters assigned to both the Columbus Pilot and Control Groups (Stage II), as well as follow-up interviews with samples of parents and their children – Stage III (Columbus Pilot) and Stage IV (Control Group). All four stages of the evaluation include feedback from legal representatives, court personnel, separate child representatives, court experts, and support agency staff.

Preliminary results of Stage I suggested that Columbus was achieving its benchmark indicators of early intervention and timeframes, and is producing some encouraging results in terms of costs and outcomes. Registrars and Family Court Counselling Service staff have agreed that joint case conferencing will continue

as an optional case management procedure in the Family Court of Western Australia. (A separate paper at the Australian Institute of Family Studies Conference reported some of the early findings from the evaluation. Full reports on Stages II and III are due in December 2003.)

Integral to the Columbus Pilot has been the work of the Columbus Reference Group which is chaired jointly by the Director of Family Court Counselling and the Principal Registrar. This group of professionals from both government and non-government agencies in the “Family Court sector” meets quarterly to review the progress of the Pilot project, suggest avenues for improvement or modification in the program, provide input into the development of inter-agency collaborative Protocols, and provide guidance to the evaluation team.

Members of the Reference Group have also been instrumental in promoting wider community support together

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with an awareness of the pressures on the general Family Court system through the Family Law Foundation.

### **Conclusion**

The Columbus Pilot project has acted as a catalyst for change in a number of areas of the Family Court system in Perth. Registrars and counsellors have agreed to extend the Columbus process on a trial basis to explore matters involving allegations of drug and other substance abuse. This new development began in March 2003 with all judicial officers and counselling service staff undertaking a training program with staff from the Drug Court and other agencies that support that jurisdiction. Consideration is being given to this becoming a new pilot program within the Family Court of Western Australia, incorporating a range of potential new initiatives.

The Columbus Pilot project has led to the Family Court becoming the centre of a number of inter-disciplinary research and professional education initiatives involving social scientists, legal academics, and practitioners. These changes have led to practitioners in many areas (registrars, lawyers, counsellors, and agency staff) developing a greater understanding of the Family Court and its processes, and promoting new collaborative working relationships.

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

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**Dr Paul Murphy** is seconded to the Family Court of Western Australia from the Department of Social Work and Social Policy at The University of Western Australia to evaluate the Columbus Pilot. **Paul Kerin**, who was instrumental in developing and implementing the Columbus Pilot, is the Acting Director of the Family Court Counselling Service in the Family Court of Western Australia. **Associate Professor Lisbeth Pike** is Head of the School of Psychology at Edith Cowan University (Joondalup Campus). The authors acknowledge the assistance of Mr Stephen Thackray, Principal Registrar of the Family Court of Western Australia, in providing feedback on this article.

This article is based on papers presented at the Eighth Australian Institute of Family Studies Conference, held in Melbourne on 12-14 February 2003.

## REVIEW

# Sociology of childhood research

Wendy Stone

Australian approaches to poverty-related research typically focus on the relationships of adults to labour market and/or welfare systems. In these analyses, family relationships feature prominently, often as factors that help to explain an individual's relationship either to work or to income support.

Where children are included, the research usually maintains its adult perspective, discussing children as, for example, a barrier to paid work, or, say, as future adults. Most Australian research concerning children adopts a psychology framework, focusing on children's attributes, resilience and vulnerability rather than on the *culture* of childhood and the ways this is mediated by poverty. With some few but significant exceptions (notably, the Brotherhood of St Laurence's *Life Chances* study), very little is heard from people themselves as they experience poverty, least of all the views or experiences of children.

*Enter Childhood Poverty and Social Exclusion: From a Child's Perspective*, authored by Dr Tess Ridge, from the Department of Social and Policy Sciences at the University of Bath in the United Kingdom.

By example, this book lays down the gauntlet to policy makers, researchers, educators and service providers to change the way they do business, by asking them to take a child-centred approach and seeing where they end up. Specifically, it encourages readers to look through the eyes of children to see how well the needs of children, as *defined* by children, are being met. Ridge's work complements psychological studies of children at risk, but marks a point of departure from them, by delivering a policy analysis grounded in sociology of childhood research to respond to children's needs.

Beginning with an historical overview of policies targeting poor children and their families in the United Kingdom, Ridge frames her work in terms of the current Blair Government's commitment to alleviate child poverty. Recent estimates by Bradbury and Jantí (2001) rank Britain as having the third highest percentage of children in poverty in the "developed" world (based on 50 per cent of overall median income).

To put the size of the problem into perspective, these estimates indicate that more than one-fifth of British children are in poverty at any given time. (Australia, ranked fifth, with 17 per cent of all Australian children estimated to be in poverty, is not far behind.)