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Nick Smith

Nick Smith: Family Court must be open to public scrutiny

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COMMENT

The momentum for family law reform is growing. The system suffers from long delays, huge costs, excessive secrecy and a lack of respect for parents' rights and responsibilities. As evidenced by our appalling child welfare statistics, we must do better.

I first incurred the wrath of the Family Court in 1993 for publicly criticising the case of a Nelson couple who had left the Exclusive Brethren Church and were blocked out of their children's lives for nearly four years.

It highlighted the problems of ex-parte orders being granted for quite spurious reasons, long delays and a lack of rights for competent parents once entangled in the Family Court bureaucracy.

The more recent case, involving a Nelson Maori family, highlighted similar concerns. I have no regrets for highlighting this family's plight despite being found in contempt of court. In a free and open society, the state cannot take children off competent parents without question.

In the course of this case I have been contacted by hundreds of people who have deep emotional scars from their experiences with the Family Court.

The first substantial reform I want advanced is an opening of the Family Court to public scrutiny. The secrecy of the Family Court is an example of the pendulum of privacy swinging too far.

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The Department of Child, Youth and Family's chief social worker, Shannon Pakura, has expressed concern about opening the court, saying the public would be horrified at what adults inflict on one another and their children. She is wrong. Problems hidden are problems ignored.

It is also quite dangerous constitutionally for judges and lawyers to have a monopoly on the information required to access the court's performance. We risk the court losing sight of the interests and values of the community it serves.

A more open court will, in fact, help the court's work. If people can see how the system works and the likely outcome in their own case, they are more likely to settle without the trauma, expense and delay of a court hearing. Justice will also be better served by a wider group of people being able to witness the process.

In difficult custody cases, it is good for the wider family to hear the other side of the story and see justice being administered over a treasured child.

We do need to be careful that the pendulum does not swing too much the other way. The court, like any other, should be open and the decisions be publicly available, but the names and identities of the parties should be suppressed.

My second goal is to strengthen the rights and responsibilities of parents. I have always assumed that competent parents have the right and responsibility to care for their children. The Family Court is secret, so we have no idea if this assumption is true or not.

The law governing child custody is too vague; it simply requires the court to act "in the best interests of the child". Parliament has given the Family Court a blank cheque. The judge in the controversial Nelson case stated: "There is no presumption in favour of the natural parents, or any onus on the substitute parents to prove them unfit."

This view is legally correct but highlights the need for change. It is contrary to the United Nations Convention on the Rights of the Child that says children should be separated from their parents only in cases of neglect or abuse or where the parents live separately.

That is why I am sympathetic to the pleas of tens of thousands of parents not living with their children (generally fathers) who want their legal rights to have access to their children strengthened. Their case is supported by the increasing body of social research showing that boys and girls need male role models.

The Care of Children Bill before Parliament increases the powers of social workers, psychologists, judges, step-parents and whanau while further eroding the rights of the parents. Government ministers have been quite open in stating that they want to move away from parents' rights.

I worry about the increased emphasis on child rights in the

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bill regardless of age. Children are so open to manipulation it can create quite perverse incentives to restrict access and spoil a child.

A further concern in the bill is the emphasis on diverse family arrangements. This is despite research increasingly confirming to us what common sense has long been saying: some living arrangements carry greater risks for children; to pretend otherwise does our children a disservice.

The problem with this whole approach to children is that we keep treating them in isolation to their parents. The best way to advance children's interests is laws that support long-term, stable families.

The Care of Children Bill, alongside the civil union and defacto relationship bills, just adds to the programme of social engineering that undermines the very institutions that will give children the best start in life.

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