

Fathers and Anti-male Bias in the Family Court

Disrupted Fatherhood: A summary of perceptions of anti-male bias in the areas of custody and access

A Research Report presented in partial fulfillment of the Masters of Social
Work (Applied) degree at Massey University

10,651 words

Donald Thomas Pettitt

December, 2000

Please e-mail feedback to: dontpet@paradise.net.nz

Abstract

A significant shift in gender roles and family dynamics has occurred in New Zealand in the last twenty years, transforming the context of custody and access issues. The legislation and practices of the New Zealand Family Court in addressing custody and access decisions have lagged behind these shifting cultural norms.

Many fathers are indicating a desire to maintain more intimate relationships with their children upon break-up of the family and are pressing for either more contact or varying degrees of custody of their children.

This report finds that many of the fathers who approach the Family Court hoping to achieve the above feel inequitably treated. The Family Court, the District Court, the Police, WINZ, and the primary and secondary educational systems are all cited by the respondents of this report as presenting barriers to fathers who are attempting to maintain a significant day-to-day role in their children's lives.

This report is based on data collected from three community workers who are involved with fathers who have had or are having dealings with the New Zealand Family Court. This small sample presented a comprehensive picture of the perceptions of many fathers on this issue. A comparative, qualitative analysis of this data is performed to establish the patterns of claimed anti-male bias.

Table of Contents

Preface	v
Acknowledgements	vi
Glossary of Terms	vii
Chapter 1- Introduction and Literature Review	1
The Literature	2
Custody and Power	3
Mechanisms of Bias	4
Spousal Violence by Women	6
Blocks to Information.....	7
Alternatives.....	8
Why change the status quo?.....	8
Men’s Health.....	10
Chapter 2- Methodology	12
Sampling.....	12
Ethics Proposal.....	13
Method of Data Collection.....	13
The Questionnaires.....	13
Data Analysis	14
Limitations of the Study.....	14
Profiles of the Respondents	14
Chapter 3- Research Results	16
How would you describe ‘perceived bias’?	16
Custody and patterns of perceived anti-male bias.....	16
Access and patterns of perceived anti-male bias.....	17

Access arrangements and perceived patterns of anti-male bias.....	18
Other mechanisms supporting perceived anti-male bias against fathers in the Family	
Court process.....	20
The broad impact of the Family Court process	22
Particular groups of men perceived to be more vulnerable to anti-male bias	23
Anti-male bias by comparison	24
The impact of the perception of the experience of anti-male bias on fathers.....	25
Do men focus on anti-male bias when it has had a minimal influence?	26
The effect of the separation on the fathers.....	26
The response of fathers to the perceived power imbalance.....	27
Personal Sexism.....	28
Cultural Sexism	30
Institutional Sexism	31
Men’s Health.....	32
The Alternatives to Sole Custody	33
Legislation:.....	34
Chapter 5- Conclusions and Recommendations _____	35
Bibliography _____	39
Appendices _____	42
Appendix 1-- Massey Ethics Proposal	42
Appendix 2 – Interview Information Sheet	48
Appendix 3 – Interview Consent Form	50
Appendix 4 - General Interview Guide for Ethics Review.....	51

Preface

My interest in New Zealand men's issues is driven by my personal exploration over the past decade. I have been a regular member of men's groups and attend the occasional weekend workshop for men in the hopes of understanding myself more as a human being.

I am also a social worker working with youth in both the youth justice and care and protection environment. This has left me profoundly aware of the disconnection many young people feel from positive male role models.

These experiences have prompted me to question approaches on a broad social level to address the needs of fathers and children. I believe that more unity between fathers and their children can do much to address the sharp edge of dislocation felt by both groups.

With many other countries already leading the way, I believe that this is a pivotal time in New Zealand history to address this issue. In particular the current Ministry of Justice review of the Guardianship Act 1968 suggests the need for constructive criticism of the existing system.

I believe that the time is ripe for more men to move from caring for their children to caregiving, in partnership with both their past and present partners, supported by father-positive legislation and social practice.

Acknowledgements

I am extremely grateful to the following people;

My partner, Laura, and our new daughter, Phoebe, both of whom are teaching me many lessons and have been kind enough to open the door to fatherhood for me;

My friends and colleagues who have shared their stories when hearing of my research;

The men who have shared their stories with me at the many gatherings I have attended;

The men who I regularly met with in my Nelson men's group who have all been a brother, father and son to me in their different ways;

My supervisor, Mike Garland, who has been a supportive cheerleader and coach while I organised my too-full life to complete this research;

And most importantly, the respondents of this research, who opened their experience up to me. May what I have created be of use to you in your good work.

Glossary of Terms

Access order- A legal order issued by the New Zealand Family Court defining the time, duration, frequency and nature of contact allocated to an access parent.

Access parent- A parent who is denied the right of custody of their children but has visiting rights allocated by the Family Court.

Anti-male bias- Discrimination based on the gender of the person being male.

Counsel for Child (CFC)- The lawyer assigned by the Family Court to represent the child(ren) in the event of disputes regarding custody and access.

Custodial parent- A parent assigned custody of a child by the New Zealand Family Court. They have the right to decide the day-to-day activities of the child in their care.

Cultural sexism- Gender bias practised in the context of entrenched philosophies and beliefs that results in privilege or punishment being given to a person dependant on their gender.

District Court- The New Zealand court that hears breaches of the criminal code by adults, as well as those young persons who are referred from the Youth Court.

Department of Child Youth and Family Services (DCYFS)- The New Zealand government social work agency that investigates allegations of child abuse/neglect and also prepares, when asked, reports for the Family Court.

Domestic Purposes Benefit (DPB)- Government financial support scheme for solo parents without significant income.

Ex-parte protection order- A protection order issued by the New Zealand Family Court, which bypasses an opportunity for the respondent to challenge the order until a future date.

Family Court- The court that hears all matters relating to custody and access in accordance with the New Zealand Guardianship Act (1968).

Institutional sexism- A bias in social and administrative institutions that automatically benefits one gender.

Parental alienation syndrome (PAS)- The process of a parent (usually custodial) undermining a child's expressed desire to see the other parent. Often this is done with the use of fear.

Personal sexism- Discrimination based on the gender of the person.

Supervised access- Access allowed by the court under the direction of an agency or person considered fit to protect the child.

Work and Income New Zealand (WINZ)- The New Zealand government organisation responsible for administering welfare benefits, including the Domestic Purposes Benefit.

Chapter 1- Introduction and Literature Review

The laws governing guardianship are currently under review in New Zealand. This report attempts to explore the performance of the Family Court as the principal administrator of the Guardianship Act 1968. In particular this study focuses on perceived patterns of anti-male bias directed at fathers involved in the process of obtaining/sustaining custody and/or access to their children.

This report seeks to identify patterns in the alleged bias in such a way that it will be useful to all that are concerned with the existing process. In particular it is hoped that this research will help inform those drafting the proposed legislation to optimise the opportunity to affect change.

This report was inspired by the stories of fathers I have encountered who have been isolated from regular contact with their children under the Family Court process. Many of these men have expressed frustration, sadness and anger with a process they interpret as being anti-father / pro-mother and have charged the existing system with the breakdown or muted connection they have with their children.

In most cases of separation, the father is the non-custodial parent and the mother holds custody as a result of Family Court counselling processes. The respondents generally assumed this to be the case in their examples and subsequent discussion of the issues. This report maintains this convention unless stated otherwise.

The Literature

Many Western countries are experiencing a shift towards greater flexibility in the area of gender roles in the family context (Ludbrook, 1999). Despite this, men in New Zealand (and abroad) are still typically acting in the role of provider and women in the role of nurturer in a family context. An example of this in the New Zealand context is that in one study 81.6% of fathers appearing before the Family Court were in full-time employment, compared with 26.3% of mothers (Lee, 1991, p.23).

Ludbrook (1999) comments on social change in the context of the Family Court. He observes that before the 1970's Family Court disputes focussed on who was responsible for the marriage breakdown. Children did not enter the picture as the woman was assumed to receive the children.

Ludbrook (1999) notes this is followed by a shift in recent years towards a focus of separating couples contending for the position of most capable parent. Such a contest turns what was most likely an assumption that both parents were adequate, into a battle to portray the opposing parent in the worst light, and oneself in the best, in order to achieve the desired end; that is custody of the child(ren).

Many fathers perceive anti-male bias to exist in the Family Court (see below). This means that a significant proportion of participants in this potentially conflict-laden process believe that they are at an unfair disadvantage in appealing to the court. As portrayed in the results below, this perception of inequity is a passionate issue for many fathers (and their supporters), particularly for those who believe they have suffered from it.

What does society at large think of this issue? Julian (1999, p.18) in a random sample of New Zealanders found a common societal belief that the Family Court discriminates against fathers, with 41% of the respondents agreeing that this was the case. The researcher notes that those who do not have children or are past the child-rearing age

were less likely to agree with this statement and that males were significantly more likely to agree with it.

In 1991, the Family Court initiated research into the operations of the court resulting in a series of eight reports. At this time, there was only peripheral investigation into the public perception of bias against fathers by the Family Court. An example would be the one-line statement citing 8 respondents to the study claiming that ‘The system is biased towards the mother’ (Lee, 1991, p.36) followed by no further dialogue on this issue.

Custody and Power

Much of the dialogue by the respondents about anti-male bias is focussed on the granting of sole custody to mothers. It can be argued that the granting of sole custody creates an extreme power advantage in a mother’s favour. One aspect of this power is that she is left in a position in which she can unduly influence the child(ren)’s desire to see their father through overt and/or covert coercion. This situation has been defined as *parental alienation syndrome (PAS)* (Burgess, 1997).

There is reason to believe that under the existing regime of sole custody, many New Zealanders are affected by PAS. Research by the Family Court found that the response to the line ‘Children being influenced against you by your ex-spouse’ (Lee, 1991, p.52) is indicated by 31.3% of non-custodial parents. This is contradicted by the custodial parent belief that they do this in only a small percentage of cases (3.0%). Overseas, Burgess (1997) cites an American study, which found that approximately half of the mothers in a study of access blocked visitation out of spite at least once. Further study in the New Zealand context could be warranted in this regard.

In New Zealand, custodial parents indicate an awareness of how to best encourage successful (or unsuccessful) access arrangements. The top three responses given by custodial parents for achieving this were ‘willingness for the children to see your ex-spouse’, ‘not influencing the children against your ex-spouse’ and ‘both you and your ex-

spouse agreeing to the arrangements' (Lee, 1991, p.52). The mechanism for sabotaging access should one wish to, is clearly understood by those who are placed to perform it.

A mother also exercises significant control over any access arrangements that a father tries to maintain (Burgess 1997). The respondents of this study believed that a mother could deny access with relative impunity.

Mechanisms of Bias

A variety of mechanisms are found to be restrictive in the area of access and custody for men. Many fathers claim that false allegations of sexual or physical abuse occur during the initial period of separation with the claim that mothers use this as a means of distancing the men from the children, cementing the mother's role as the primary caregiver.

For example:

When allegations of sexual abuse are made during a custody dispute between separated parents (and the accusing parent has considerable motive to hurt or exclude a hated ex-spouse) there is a greatly increased likelihood that the allegations are false.

(Goodyear-Smith, 1999, p.102)

However, Kelly and Vincent (1995, p.7) contradict this, citing research that indicates that 'there was no greater incidence of false allegations (of sexual abuse) in the context of custody and access disputes compared to allegations in general'.

Goodyear-Smith (1999) indicates that inaccurate claims by mothers, of fathers sexually abusing against their child(ren) is damaging to the child. As such, prompting false claims from a child constitutes a form of abuse. Goodyear-Smith (1999) also cites the growing number of cases where children who have not been abused have made false allegations.

The awareness by the Family Court 'Counsel for Child' and Report Writers of the use of false sexual abuse allegations were mentioned by only three of the 67 participants in the 1991 study (Hong, 1991, p.150). The questions associated with this report are open and would allow for a respondent to explore the issue of false reporting. This could be construed as demonstrating a lack of awareness of this issue by professionals involved in the court process.

Physical abuse of children is equally common to both sexes. 'Mothers and fathers appear in the statistics to be pretty evenly matched as perpetrators and, surprisingly, the most serious acts of physical abuse are more often committed by mothers than fathers' (Burgess, 1997, p.211).

An interesting experiment illustrating the use of protection orders against fathers was presented in England in 1995. In this case, a television program hired an actress to go to 4 lawyers for legal advice.

She said she had been career-minded and that her partner had taken the greater responsibility as a parent. She also 'confessed' that she had had an extra-marital affair. Simultaneously, an actor posing as a worried dad was visiting four different solicitors. His story was that, although both he and his wife had been employed, he had been the more involved parent, collecting his son every evening from the minder, for example. He also said that he had remained sexually faithful, while his wife had had an affair. All the lawyers advised the woman to go for sole residence (custody), and she was advised that she would get the child. It was suggested that she play the 'violence card', although she insisted there had been no violence. The man, on the other hand, was told he didn't have a chance of keeping his son.

(Burgess, 1997, p.197)

The existence of perceptions of bias against fathers before the Family Court was not addressed in the 1990 Department of Justice studies despite the perceptions of bias by the public (Lee, 1990).

Spousal Violence by Women

Spousal violence by either partner is recognised as abusive of the child(ren) (Burgess, 1997) and as such, the neglect of spousal abuse of men by the police and courts is supporting child abuse.

In this study there are many anecdotes by the respondents of cases where a father's claim of abuse by his partner is ignored or minimised by Family Court and others. In New Zealand, Goodyear-Smith and Laidlaw (1999, p.287) cite Gelles and Loseke (1993) to claim that women 'engage in a greater rate and a higher degree of partner violence than men'. At the same time they note that men suffer fewer injuries.

Figures for police and treatment intervention as cited in Goodyear-Smith et.al. (1999) regarding the Hamilton Abuse Intervention Pilot Project indicate that the female partners are not challenged in this violence. ' In the years 1991 and 1992, approximately 900 men were identified as offenders by HAIPP, but only two women' (Goodyear-Smith et.al., 1999, p.298). This is despite the figures indicating significant degrees of spousal abuse by women.

The minimisation of the violence by women against men can be partially founded on the belief that it is much more difficult for a woman, in general, to harm a man. Research overseas (Goodyear-Smith, 1999) however indicates that women are as likely as men to murder their partner, and that when they do attack they are more likely to use weapons.

In the event of a man claiming that an ex-partner has been physically violent, in general this indicates a greater level of violence by the ex-partner due to men's tendency to minimise the violence of women (Goodyear-Smith, 1999).

Considering all of the above it is likely that many of the women who appear before the Family Court and have allegations of spousal abuse alleged against them by their ex-partners have actually been perpetrators. In effect, fathers are statistically more likely than mothers to be justified in applying for a protection order if they have not previously been charged with assault against the mother. This is due to the likelihood that violence by fathers would more likely have been noted by the current criminal justice system.

Blocks to Information

The confidentiality of the Family Court process is one of the blocks to change cited by a respondent in this study. The limited capacity to analyse the results and affects of the Family Court process has left those who are agents for change scrambling for data overseas or relying on that published by the Family Court itself. As noted earlier, the Family Court has failed to respond to the question of anti-male bias with open dialogue.

The court maintains confidentiality on the basis that ‘the proceedings are essentially private family matters involving children and young people and there does not seem to be any wider public interest in the dispute’ (Ministry of Justice, 2000).

However, the respondents indicate that there is wider public interest in the results of the Family Court. One of the respondents in particular argues that the restriction on information has in effect supported the continuation of the alleged anti-male bias.

In addition to the limitations of research in this regard, Rowland cites Jorm (1999) to claim that ‘in studies of the effects of parents on the mental health of their children, 51 percent examined the effect of both parents, 48 percent examined the effects of only the mother and only 1 percent the father’ (1999, p.1).

The minimal inclusion of fatherhood as an issue for research leaves fathers vulnerable to sexist stereotypes as they have limited data to challenge perceptions. The existence of such an imbalance in itself could be construed as sexist.

Alternatives

Rowlands (1999) cites Taylor (1998, p.41) in discussing the core of a philosophy underpinning alternative approaches to custody after dissolution of a family unit. The following philosophical approach is more inclusive of the father, and provides for the optimal wellbeing of the child.

If the question is ‘who is the better parent?’ remains the test of custody determination, then by definition one parent must win and the other must lose. If, however, the question is “what is the best possible parenting arrangements that both parents can make for their child?” we are then able to take a non-adversarial approach to custody dispute resolution, in which, except in the most unusual circumstances, both parents win because each has something to contribute to the wellbeing of his or her child.

Shared parenting models are put forward by the respondents of this study and have been tried overseas to varying affect (Ministry of Justice, 2000). This issue is, however, beyond the scope of this report.

Why change the status quo?

The wellbeing of children generally suffers significantly when fathers stop having regular contact with them (Rowland, 1999). Research by the Family Court into father’s and mother’s impressions of the wellbeing of the child indicate their belief that it is important for both parents to maintain contact with the children after separation. Parents value this highly with 77.9% of men and 59.8% of women considering this to be ‘very important’ (Lee, 1991, p.72).

There is the recognition of the need for positive involvement of fathers with children. Rowlands (1999, p.15) cites the New Zealand School Trustees survey finding that 37 out of 41 youth offenders in school had no meaningful relationship with their fathers. One could argue that changes to the existing Family Court approach that lead to greater involvement of the father in children's lives in most cases, would improve the wellbeing of the young person.

The Family Court research contradicts the view that children are better served by more inclusion of their fathers. One survey indicated that 50.4% of mothers were much more likely to believe that their children were better off after the separation compared with only 13.9% of men (Lee, 1991, p.72). The reason given for this was largely based on the reduction in tension between the parents, rather than the absence of the father.

Despite this disagreement on a measure of the child's wellbeing, this measure does not indicate whether the optimal result was created for the child. Many of the researchers (Rowland, 1999) who are recommending a change to the existing situation are calling for a shift towards both parents (in most cases) having significant on-going involvement in the day-to-day life of the child. The different perceptions of mothers and fathers on the improvement for the child's wellbeing reflect the current approach to custody and access; not the potential associated with shared custody approaches.

A shared parenting approach does require the involved parties to resolve their differences to a certain degree in the best interest of the child. The point is made that shared parenting after divorce can result in the parental focus being more on the practical day-to-day issues of managing the child rather than that of contending for custody and that such an environment encourages parents to resolve their differences (Burgess, 1997).

Men's Health

Though the wellbeing of the child is the primary focus of the Family Court, there is reason to have concern for the displaced father under the current system. Many men suffer significantly in being separated from their children. Health statistics for men are cited by two of the respondents of this study as reasons for addressing the current situation.

Evidence to support this contention is readily available. Men's physical health suffers significantly more than that of women due to stress-related factors. For example, the probability of men/boys dying each year is consistently higher than that for girls/women. This is claimed to be due to their enhanced risk-taking behaviour, dangerous work environments, and stress related diseases (Weidenfield & Nicolson, 2000).

In the area of mental health, Lynch and Kilmarton (1999) cite male socialisation as a major factor in limiting men's ability to grieve after relationship break-ups. It is possible to contend that the impact of the additional stress of separation from their children combined with the grief of separation could lead to a decrease in a father's mental health such that they appear less credible before the Family Court in any application for custody or access.

Lynch et.al. (1999) say that the depressive patterns of men are more of a destructive nature due to men's general dissociation from feelings such as grief. In effect, men are left more vulnerable than women to the grief of separation, and are more likely to act out in violent and self-destructive ways than women.

As argued above, separating fathers from their children and imposing severe restrictions on their involvement in their children's day-to-day life, compromises both their mental and physical health. With men's health statistics already pointing to elevated

susceptibility to stress-related diseases, the disruption in fatherhood could be an additive factor in ill health.

The following chapter describes the methodology utilised in this study and provides profiles of the respondents in this study.

Chapter 2- Methodology

The purpose of this study is to gather the experience of men who work with fathers who have been and/or are before the Family Court. This is with the intent of establishing the validity of any allegations of discrimination against fathers on the basis of their gender.

A qualitative basic research method has been chosen for this study (Patton, 1990). A basic research approach has been selected because of the belief that the experience of anti-male bias is an area neglected by researchers. As such, the intent of this research has been to understand and explain the phenomena in the context of New Zealand culture.

Sampling

Critical case and politically important sampling has been used in order to gather the most information-rich cases for this research (Patton 1990). The respondents were selected through investigation of the local area men's support networks. The workers were contacted by phone and targeted based on their claimed experience and interest in the area of this study. Copies of the information sheet, consent forms and questionnaires were sent to the respondents prior to engaging in interviews (see Appendices 2, 3 and 4). Three respondents were interviewed in total.

Critical case sampling is reflected in the selection of respondents who work with fathers who have had difficulty adjusting to the decisions of the Family Court. The exceptions that they take to the rulings of the court and the negative experiences that they have had while on the journey to and through the court, all provide rich material for exploring the issue of anti-male bias.

The use of politically important sampling (Patton 1990) is reflected in the selection of workers who work with the two major father's support networks in the Christchurch area.

The intention of this is to make this research more relevant to those of the Christchurch area.

Ethics Proposal

The ethics proposal for this study was submitted to a peer review process by the Massey University Human Ethics Committee. Ethical concerns identified included concerns regarding the possibility of protecting the confidentiality of the respondents in such a select field. This was addressed by asking the respondents to allow themselves to be identified in this report. A copy of the human ethics proposal is attached to this report in Appendix 1. All of the respondents agreed to be named in this study and signed the consent form included in Appendix 3. The interviews were recorded on audiotape and later transcribed by myself.

Method of Data Collection

The data collection involved one in-depth interview with each of the respondents of between one to one and one half-hours in length. Two of the respondents were interviewed in their offices and one was interviewed, at their preference, in their own home. All of the respondents gave written consent after they had addressed any questions resulting from the information sheet a copy of which is included in Appendix 2.

The Questionnaires

An interview guide approach (Patton, 1990) was selected for this research and a copy of this, as included in Appendix 4 of this report, was given to the respondents at the interview for guidance. This approach was chosen to create a structure for conversational dialogue while still allowing the respondents the freedom to pursue items of personal interest in the area of custody and access for fathers.

Data Analysis

The interview guide was used to provide a format for analysis. Quotes from the respondents were used and identified as approved by the respondents. Emergent themes are explored and expanded upon in the Discussion Section.

Limitations of the Study

This study has maintained a limited scope due to resource constraints (Patton 1990). As a result, the use of other perspectives of mothers, judges and other professionals was not included. Though such information would have been useful in completing the picture of the issues covered in this report the current respondents provided sufficient information to sensitise the reader to issues from the separated father's perspective. As noted earlier in the literature review, there is a limited amount of research into fathers in the region of Australasia and the intention of this report is to address this to a small degree.

Profiles of the Respondents

The respondents all agreed to be identified in this study and have supported the following profiles based on the results of their interviews.

Brent Gardiner is a degree counsellor with the Home and Family Society. He is 46 years old with a Masters in Education (Counselling). He is currently undertaking training in the area of parental training. He provides counselling to families, many of whom have been involved with the Family Court. He usually works with youth struggling with parental separation. The Family Court does not directly employ him. Brent has not personally been involved with the Family Court but has experienced parenting challenges as the result of a separation.

Don Rowlands is a Family counsellor with the Home and Family Society. He is 51 years old, has counselling training and has a background as a school counsellor. Don helped train Menzline counsellors before he came to work with the Home and Family Society in 1994. He is the co-ordinator of the Caring Fathers Group. This monthly group contains approximately 150 recently separated fathers who work with the support of trained facilitators. Don is currently training in Imago therapy, a form of relationship counselling based on the work of Harville Hendrix. Don has been personally involved with the Family Court.

Aaron Williamson is a 29-year-old community worker and administrator who works for the Father and Child Trust. He is largely self-taught in this field and has read psychology extensively, with particular interest in the work of Carl Jung. The Father and Child Trust is a charitable trust set up to promote positive fathering involvement through provision of postnatal and prenatal education. As a community worker he provides support to men who are involved in the Family Court process, as well as to those who have agreements formed outside the Family Court. Aaron has had personal experience of involvement in the New Zealand Family Court process.

The following chapter describes the results of the interviews with the above respondents. These have been presented in themes following the basic structure of the Interview Guide included in the Appendix 2.

Chapter 3- Research Results

The results below are presented in a thematic manner. The structure chosen to present it follows the pattern of the general interview guide with some additions resulting from the interviews. The material gathered for these results is based on three interviews conducted with people who work with men in the area of custody and access. Profiles of the respondents are provided at the end of the previous chapter.

How would you describe ‘perceived bias’?

The respondents all interpreted this question as a request for a description of the bias they have perceived in the Family Court process. The responses given indicated that the issue of anti-male bias in the Family Court was one they frequently thought about and that they had given thought to this matter prior to the interview.

There was a shared understanding of the meaning of the word bias, demonstrated by the tack they took in responding to the above opening question. ‘My experience is that men are saying that they have to ...[get across] far more hurdles to get acknowledged as custodial parent than a woman would’ (Don). Don opened his discussion with a clear assertion of different treatment under the current system based solely on gender.

Don demonstrated a theoretical knowledge of the modes of bias in referring to institutional bias, ‘My perception is that it is not so much perhaps as blatant discrimination as institutional bias. So it’s perhaps in the interpretation and assumptions about our gender roles’ (Don).

Custody and patterns of perceived anti-male bias

All of the respondents identified patterns of perceived anti-male bias regarding custody for men involved with the Family Court. The workers with the Home and

Family Society focussed more on the effect of current gender roles providing the basis for father's perceptions of bias as demonstrated in the following;

The parent in the provider role is often disadvantaged because the criterion that is established in the legislation is [that the court] will take the best interests of the child. And often ... the person with the greatest psychological bond with the child at the time will be the one who is doing the caretaker role. And I see that as disadvantaging men, and sometimes, disadvantaging children because they are [sometimes] not getting access to the best parent. (Don)

The Father and Child worker (Aaron) provided more consistently emotive/personalised examples of perceived anti-male bias by the Family Court reflecting his role as an advocate for fathers. Examples are cited in the report though due to space limitations this will not be further elaborated upon here.

Access and patterns of perceived anti-male bias

The three respondents shared the perception that the assignment of access involved significant delays for fathers. 'The system is set out to operate very slowly as far as awarding access. Three, four or five months is standard' (Aaron).

Pursuing access can be expensive as well as frustrating if the mother decides to challenge it. It's been the experience of some men that after an expensive process through the Family Courts to gain access, the court decides that it's safe and appropriate to have that access; It might take a couple of years. (Don)

Don points out that the process of access assignment has been sped up in the case of fathers denied access through the use of a protection order. 'There's some consciousness of those delaying tactics in the Family Court now. There's been an effort to bring cases that involve children to a faster conclusion but you're still looking at 10 weeks' (Don).

There are ways to delay and/or limit access through the use of protection orders or allegations of abuse. In the event that a protection order is awarded to a custodial parent, the respondents claim a non-custodial parent is likely to be given supervised access at best.

Protection orders... can be used to limit contact with the other parent. Which may not be a problem, but it's also linked to what's called 15b of the Guardianship Act which means that for the protection orders to be upheld the child is only to be given supervised access. The custodial parent pretty much has the say on whether that occurs. ... A very small amount of verbal or psychological abuse can be a very effective way by uncooperative and unfriendly parents of restraining access. (Don)

Access arrangements and perceived patterns of anti-male bias

The respondents note that fathers attempting to enforce the existing access arrangement may unwittingly be 'asking for' further trouble.

Many men have found that [in] going back to court to enforce a warrant, ... the police are unwilling to do that at short notice and that the courts may often, when they see the warrants, reopen the custody and access case which may have been going for years and years. So the male ends up in a worse condition going to court. In the meantime they are often without access at all. (Don)

Often I think men feel very disempowered by that and they know that if any conflict happens, that if they stand up on some issues they're likely to be used as sources of conflict and reasons to block any shared or substantial access. (Don)

All of the respondents expressed the belief that it was easy for a mother to not honour an access order.

(Access orders are) very rarely enforced. I don't see them enforced. I had one client who went to court, as he wanted to see his children and he was having access at an access training day through the [Father and Child] Trust. The mother would come here and drop the child off and I had the Counsel for Child here. [The father] would come and pick them up 15 minutes later, [for an] overnight. [The mother] might come down two consecutive weekends, then we'd have to [go] back to court and reapply. This went on for a couple of years before the Counsel for Child said he would initiate proceedings against the mother. (Aaron)

One of the respondents challenged the belief that fathers experience discrimination in the enforcing of access stating 'I think that maybe women would be treated the same as ... men. But it's generally men that have the access orders and it's generally men that are obstructed in access orders by women (Brent).

The period of separation can serve to both destroy the bond between the child and the father and entrench the custodial parent's position as primary caregiver;

Parental alienation is much more common than is acknowledged. It can be very subtle, it can be the custodial parent saying the child is ill today, or the child doesn't want to see you today. And it's a subtle weakening of that relationship. That is very difficult for an access parent once they lose, if they've got a loss of contact. If they lose that it becomes difficult to maintain the relationship. It compounds itself (Don).

Other mechanisms supporting perceived anti-male bias against fathers in the Family Court process

The District Court is perceived to protect women from being challenged about their violence towards their male partner. A common theme for all three respondents was stories of spousal abuse by women that were discounted or ignored by the Family or District Court;

I had a case of a client who actually had videotape of, they actually happened to be videoing a family occasion and his partner, his ex-partner arrived to pick up a child after an access visit and the videocamera switched to her beating him about the head and the judge wouldn't even hear the case when he tried to bring the case to court. He was applying for a protection order. ... I can't say definitely that if it was a woman that had the video and was being beaten up that they wouldn't have done the same, but you'd have to wonder. (Don)

The police appear to share this attitude in their response to reports of domestic violence by women;

(A) fellow I've been seeing recently, he used to get beatings on a fairly regular basis from his wife. And the police had been called out on quite a few occasions. And they never arrested her but they arrested him several times. But he was bleeding and she had no visible marks on her. (Aaron)

The belief was also expressed that the police are less likely to respond in the event of violence by a woman on her male partner;

I've heard stories from guys who have phoned up the police to charge their wife with assault and had the police laugh at them. [A friend] has a friend on the police

force and he says that if a male has been assaulted by a female they won't actually go out and respond, they will maybe 15-25% of the time. Female allegations for a response they go out every time. (Aaron)

Perceived anti-male bias by administrators and others involved with the Family Court process is anecdotally evident with examples being cited by the respondents of admissions by judges, counsellors, lawyers, and social workers. 'There's one judge in particular. The lawyers would say you've got a good case. If you get that judge you're f**ked. They will not give that father custody or access unless they absolutely have to' (Name suppressed). In addition, 'I've seen CYPS social workers make some very biased remarks to the fathers in FGCs' (Aaron).

In particular, anti-male bias is noted as having a powerful affect on the interpretation of a father's use of the Family Court process.

Men who don't back down are considered (by social workers) to be controlling and manipulative. It's ironic that (for) men who actually pursue custody, it's a no-win situation. If you back out you're irresponsible, a bludger deadbeat dad, where if you pursue it, you are controlling, dominating, manipulative (Don).

The respondents agreed that the court has responded somewhat to the concerns fathers have about the process and that in recent years proceedings are not as overtly anti-male.

(I've observed improvements) both in talking to the guys who're coming through the Family Court system and talking to Family Court lawyers who've come to talk to those guys. There is more understanding by Family Court judges about the issues that fathers and men face in the Family Court. There has been research done for example where sexual abuse is used as a false allegation... (many) more of them are proved to be false than in the other instances (Brent).

Other organisations such as schools and WINZ were cited as producing environments that discriminated against separated men. One worker at WINZ demonstrated standard role expectations of a father who was caring for his 3-year-old daughter. ‘He was at WINZ, I don’t remember why and they said to him, “when are you going to sort your life out” and stop going to [WINZ] for family assistance, and to “stand on [your] own two feet” ’(Aaron).

This respondent clearly believed that such a degree of financial independence would not have been expected of a mother in the same situation.

Another clear example of perceived bias occurs with schools and the way they exercise the Guardianship Act. ‘If there is any indication of conflict, if the one parent doesn’t want info going to the other parent, they’ll just say to the access parent “sorry, there’s a custodial conflict we don’t want you here”’ (Aaron). As men are significantly more likely to be in the role of access parent this alleged practice becomes a gender issue.

The broad impact of the Family Court process

The respondents shared the belief that the Family Court affects far more than those who appear before it.

It’s like saying that the traffic laws aren’t relevant because only 5% of the population get a ticket. It’s a valid analogy. The reality is that everyone else is influenced in their behaviour by what the laws are so you don’t speed, so you don’t seek custody, you don’t try for shared parenting because it’s not an idea that is supported by the system. And the lawyers say, well you’d want every second weekend wouldn’t you, because you’re the father. That’s what the culture is and that’s the pattern. That’s what the judges are likely to suggest or promote. (Don)

An acceptance of the status quo is perpetuated by the lawyers and judges involved in the Family Court process. Lawyers for fathers are said to think ‘He’s not going to get

custody he's only going to get access so I'll only put a half hearted effort in' (Aaron). Two of the three respondents spoke at length about the status quo having a momentum of its own. This was claimed to be due to the fear of judges to challenge it and lawyers not bothering to press more often for shared custody.

A recognition of the status quo even affects those who provide advocacy and support for men entering the Family Court arena. One respondent indicates that his practical advice to fathers separated from their children includes the following;

Basically (I) talk to them and try and identify their issues and whether they want to go to the Family Court. And if their relationship is within the realms of the norm I'll try and talk them out of it. I give them examples of people that have been through court and it usually shocks them. (Aaron)

Such advice recognises the limitations of the situation for fathers but in doing so may perpetuate the existence of such a system. In effect, the advocates for men can potentially be a channel for the continuation of a system they believe to be discriminatory.

Particular groups of men perceived to be more vulnerable to anti-male bias

Rural men can experience longer delays in the court 'For ex-parte orders, Christchurch attempts to get into court now after ten weeks, while in the past they've been up to 6 months and some rural areas go beyond that' (Don). These additional delays further undermine the relationship fathers have with their children causing significant impact on the wellbeing of the child.

Middle class men in the non-custodial role find themselves in a potentially punitive position.

Partly it's the child support tax. It's the marginal tax they face. Keith Rankin (Rankin, 1999) studied it, of 60 to 70% with child support. ...unless you earn well

over the average wage your ability to have a second home is strictly limited.

(Don)

One respondent pointed out that in many cases the mother was living off of the Domestic Purposes Benefit and as such was entitled to free or very cheap legal services. If the father is earning money and must supply their own funds for a lawyer this can leave him in a vulnerable position when court battles come up. The father may have to choose between assuming the costs and possible ensuing debt or lose access to the children.

Unemployed and working men are more vulnerable in access. They can find themselves in a position where they cannot afford the access and degree of custody they wish.

The reality is that they if they are an access parent they may be having the children up to 40% of the time, two nights [and] three days. It's still below that 40% threshold for care and they are paying substantial amounts.... They pay full child support and pay double (as) they pay for the children while they have them. The reality is that for unemployed and low-income men that may not be possible. They cannot afford to have their children overnight. (Don)

Fathers with pre-school children are in weaker positions 'There is a (belief) pattern about pre-school children, that they need their mothers, that they are better in the care of their mothers than their fathers in most cases. That is a cultural assumption' (Don). This assumption based on gender again discriminates against the man. Delays in access affect younger children more, 'you're looking at a threshold of separation for a child that's under two years, that's a major trauma' (Don).

Anti-male bias by comparison

Many of the examples of anti-male bias were illustrated by anecdotes where a mother was placed in the less common role of being the non-custodial parent. 'I have seen

women in that situation, they are having access and they are just stunned by what's going on. I see this all the time. It is life for a man' (Don).

Often it is demonstrated by the use of comparison stories;

I see on a regular basis fathers become the (respondent) of a protection order. These are on subjective grounds. "I feel threatened, he's been abusive to me, my doctor has given me Prozac because I'm under stress". The court says "we'll err on the side of caution and give you a protection order. You're protected from the father; he's not allowed anywhere around you or the children. He's not allowed to phone, he's not allowed to send presents". And fathers do get arrested for sending Xmas cards. On the other hand, I've been to court and seen a father, who was subject to violence, and there were police witnesses. Police officers on the scene gave evidence that the mother assaulted the father with a pot of boiling water. The judge said this is terrible She denied it. She had two officers giving evidence against her. She had his family [testifying against her]. The judge said the evidence is compelling, you're guilty, but I won't give you a conviction because that might interfere with custody and access with the children. [Interviewer: If it were a man that would have been done differently?] Absolutely. (Aaron)

Sometimes it was generalised; 'I've seen how hard it is for guys to get full custody if they think ... the children are at risk with their mother. Normally if the mother is not... particularly safe with them the court will try and go more towards joint custody' (Aaron).

The impact of the perception of the experience of anti-male bias on fathers

The respondents agreed that men in the Family Court process perceived themselves to experience anti-male bias. Anger was a common theme;

A lot of the initial anger we see is based on the gender bias in the court system. But there's a lot of other stuff going on with guys close to separation that is likely

to generate some of that anger and frustration. And a lot of it has a lot to do with conflict with the ex-partner, which a fair hearing or an unfair hearing in the Family Court only exacerbates. Because there is this battleground and the battleground is seen to be not quite fair (Brent).

Do men focus on anti-male bias when it has had a minimal influence?

Sometimes focus goes onto the bias. There are ‘definitely guys that do that... because they don’t want to acknowledge their faults’ (Aaron).

There was, however, general agreement that men are more focussed on protecting the children and gaining/sustaining access. They see anti-male bias as an obstruction to obtaining this. In addition, often the focus is on on-going conflict with the ex-partner

They (fathers) are not blaming everything on some little incident. I think the focus tends... right or wrongly, to be focussed on the ex-partner and their on-going attempts to do things that are aggravating. (This is regardless of) whether that affects the children’s wellbeing and [the father’s] attempts to get on with them. (Brent)

The effect of the separation on the fathers

The emotional impact on fathers is claimed to be significant by the respondents. ‘Regardless of whether the wellbeing of the child is served by men being excluded there is still the emotional impact on men. This is one of the many factors in society resulting in men’s horrible health statistics’ (Aaron).

The end result is too often that men give up and abandon further contact. ‘It seems that the lack of enforcement [of access] destroys the credibility of the courts. A lot of men will often at that point walk away and they’ll often be blamed for that. “This is costing me, and it’s not helping my children. I need to get on with my life”’ (Don).

The response of fathers to the perceived power imbalance

In New Zealand, as in overseas, men have organised to challenge the existing Family Court processes. 'Men are getting together and doing lobbying to try to change things. They've moved on to try to effect changes, to help men in the future not have to experience what they experienced' (Brent).

The perceptions of these respondents are considered further in the following chapter.

Chapter 4- Discussion

This section will analyse and discuss the results of the interviews with the respondents in relation to the literature reviewed earlier in this report. Limited available research into the Family Court in New Zealand has made validation of the respondents' allegations difficult. However, research from overseas and the 1990 series of studies of the Family Court has been used to validate or challenge the claims of the respondents.

There is a clear indication by the respondents that many non-custodial (and custodial) fathers feel there is a tendency towards anti-male bias in the Family Court. The Ministry of Justice also notes that there is some public perception that the Family Court is biased towards mothers (Lee, 1991), though does not appear to explore the issue in any depth.

One of the respondents to this research suggested that the issue of anti-male bias has more to do with 'institutional bias'. As such, this chapter begins with an exploration of anti-male bias under the headings of cultural, personal, and institutional sexism, and follows with an exploration of further issues related to this research.

Personal Sexism

Personal sexism against the men described in this study was demonstrated in the respondents' anecdotes regarding the police handling of incidences of domestic violence. The research referred to by Goodyear-Smith (1999) in the New Zealand context is particularly relevant in validating this perception. These figures indicate that women are roughly equal to men in acts of domestic violence though generally women are more likely to suffer physical injuries. The studies referred to also indicate that women are not likely to be charged, or to reach a place of being forced to receive treatment for such offending. As such, these conditions could do much to support the following claims made by the respondents;

1. That fathers who call the police with claims of physical abuse for the most part are dismissed.
2. That fathers are colluding with dismissing the violence by their partners against themselves, therefore minimising the abuse, or hiding with shame, the affects of it.
3. That the judiciaries of the District and Family Courts both discount the violence of the female partner.
4. That the failure of the legal system to address spousal violence by women leaves a father without evidence when he is applying for custody and access in the Family Court.

Not addressing such violence conflicts with the welfare of the child. Goodyear-Smith (1999) cites Kalmus (1984) to state that children witnessing violence between their parents are more likely to practice domestic violence as an adult, either as an aggressor or a victim. The discounting of such violence by mothers against fathers is therefore harmful for children.

There is the possibility that an elevated proportion of cases before the Family Court involves mothers that have a history of violence towards their children and/or towards their partner. The belief stated by one of the respondents, is that men will challenge the mother for custody in the Family Court when they feel they need to protect their children. The fact that the father will no longer be present in the family home to fill this role means that the children are vulnerable to abuse. The father is prompted to finally make allegations of spousal violence. However it is much too late.

The belief was also stated by the respondents that the only way to gain custody if the mother was contesting it was by proving that the mother was neglectful or abusive with the children. One respondent indicated that, in such an event the courts would generally consider shared custody, being hesitant to exclude the mother. There are no studies published by the Family Court addressing this issue.

Domestic violence by women is a side issue to the broader issue of access and custody in New Zealand, though it does provide material for comparison in making the argument for an existing pattern of anti-male bias. The tolerance a violent woman receives for her behaviour against her partner contrasts with the response by the legal system in the event of allegations by a woman (Goodyear-Smith et.al., 1999).

The pattern of personal sexism portrayed in respondents' anecdotes about the police were also described in stories about all those professions who deal with the Family Court process. The Family Court counsellors, the judges of both the District Court and the Family Court, lawyers (both the mother's and the father's), the Counsel for Child, WINZ social workers, and the school system all stand accused of it. Examples of these were presented in the Results Chapter above.

Cultural Sexism

In this study, cultural sexism, sometimes overt, and sometimes covert, is demonstrated by the respondents' claims of encounters with the belief that fathers are not as capable of caring for a child as a mother is. It is easy to contend that this belief underpins much of the bias in access and custody in the Family Court, and that it has greatly affected the fathers indirectly dealt with in this research.

A point made by two of the respondents is that, prior to separation, fathers generally find themselves in the role of provider, and mothers in the role of nurturer. This belief is supported by the Family Court's research (Lee, 1991). Upon separation, the person more proven as the caregiver is the mother. However, as pointed out by one of the respondents, she may not be the best parent. The father who is willing to fill the provider role knows that they will not be in a place to provide the consistent care a child requires. This does not mean that they don't provide it when they come home, or that they aren't capable of assuming that responsibility more fully after the relationship with their female partner has ended.

One of the respondents questioned the societal assumption of mothers (as opposed to fathers) being more capable of providing on-going care for children. This assumption reflects many of modern New Zealand's suppositions about the needs of the child and is challenged in some literature (Rowland, 1999). It also indicates the degree to which a father's input is valued by society as largely that of provider.

Claims of anti-male bias in the Family Court and the resulting weak position of fathers in the area of custody and access contradicts the assumption expressed in much feminist literature placing men in a greater position of power in society than women (Eaton, 1986). There are however some who challenge this assumption (Burgess, 1997 and Farrell, 1994). This contradiction could be a reflection of society's gender role expectations, with each maintaining dominance in the area of their traditional role assignment, the domestic arena to women, and the non-domestic arena to men.

There appears to be sufficient reason in the above analysis to justify saying that there are patterns of cultural sexism operating in the current Family Court environment, and that such bias is entrenched in the cultural expectations of its administrators.

Institutional Sexism

Institutional sexism is the mode that strikes most clearly at the core of the experience of fathers described in this report, largely through the prominence of one institution, the Family Court, in the way that it prescribes limits to a father's involvement with their children upon separation. Institutional sexism is defined for this research as a bias in our social and administrative institutions that automatically benefits one gender.

In the area of the family, current social norms and the institutions that support them mean that most separations result in the father assuming the role of access parent. Institutional bias is exhibited through an inequitable treatment for persons in the role of access parent. Access denied by the custodial parent and not effectively challenged by the court process could leave fathers vulnerable to the whim of the child(ren)'s mother,

creating a power imbalance in the relationship. The respondents clearly believe that fathers are at a disadvantage in this regard and are vulnerable to the abuse of this power imbalance through the mother's capacity to deny access despite a court order to do so.

A case can be made that denying continuing access of the father in most cases harms the children. Goodyear-Smith (1999) cites Gelles (1988) in claiming that children are at greater risk of abuse by their mothers when they have no input by their fathers.

The concept of parental alienation is referred to by one of the respondents and is described in literature (Burgess, 1997). Parental alienation involves the use of overt and covert coercion toward the child by the custodial parent with the intent of altering the child's desire to be with the access parent. Creating a situation of access/custody provides a forum for such abuse.

The claims by the respondents of the significant use of unwarranted protection orders by mothers (though not confirmed or challenged by figures published by the Family Courts), is an indication that the Family Court is sympathetic to the custodial parent to the point of creating inequities against fathers. Once again the Family Court does not appear to have published studies into this issue.

The examples of Personal, Cultural, and Institutional sexism related by the respondents of this report can leave the impression that in the sphere of the Family Court, fathers are not given the same opportunity as mothers, and they are judged more harshly. There is significant anecdotal evidence to suggest that, before the Family Court, fathers are **not** the dominant culture, they are the dominated.

Men's Health

The respondents refer to fathers as a group suffering ill health due to the stress related to separation from their children. There are significant indications that men suffer most in the grieving over separation from their partners and there is reason to believe that

separation from their children has a similar negative affect on men's health (Lynch et.al., 1999).

Lynch et.al.(1999) expand on this, claiming that men are less capable of confronting the issues of loss, and that the depression that they suffer in such instances is less likely to be recognised as such by current health professionals as it does not 'fit' with the current measures of depression.

The physical wellbeing of fathers is affected not only by the negative affects of stress on stress-related illness, but also by the patterns of self-harm (and harm to others) that men are more inclined to inflict when overwhelmed by grief.

There is significant reason to believe that the health of fathers could be profoundly affected when prevented from more frequent contact with their children through the Family Court process.

The Alternatives to Sole Custody

The respondents to this research believe that there is an assumption currently held in the Family Court that sole custody is the best option for the wellbeing of the child. They claim that shared custody is not considered to be a viable option, except in the case where a mother is incompetent, violent or neglectful with the children in their care. Figures released by the Family Court provide some evidence to support this belief, indicating that shared custody is the exception to the norm of sole custody (Lee, 1991).

Various approaches have been tried overseas to improve social justice and protect the interests of the child (Ministry of Justice, 2000). There are three general approaches to the issue of the responsibility for children after separation; joint custody, primary caretaker, and parenting plans. These are all options capable of prompting fathers to include themselves more fully in the lives of their children after separation.

The Guardianship Act 1968 is currently under review by the Ministry of Justice (Ministry of Justice, 2000) and it has released a discussion document for comment by the public. It acknowledges the need to review the legislation to address social change, and outlines some approaches under consideration.

Legislation:

The respondents were very clear in their claim of the existence of anti-male bias in Family Court. At the same time they demonstrated minimal concern about the actual existing legislation. They appear to believe that bias is not so much enshrined in the current legislation but rather that the existing legislation allows society's sexism to operate with only limited challenge. Similarly, the other factors that have been alleged in this report to support anti-male bias against fathers are governed by legislation that has allowed this bias to occur.

This report contends that any legislation that hopes to address the issues held by many access fathers, will be hobbled without addressing the underlying cause of the injustice, that is societal gender bias. Fathers require New Zealand society (and most likely including themselves) to experience a period of significant change in order to reach a place of equity when allocating the responsibility and the right to care for children after separation.

The following chapter presents the conclusions from this research.

Chapter 5- Conclusions and Recommendations

This report has summarised the experience of three men who work with fathers having dealings before the Family Court. Each of them also has personal experience of separation from their children for some period due to partnership relationships ending. They were all passionate participants in this research and demonstrated supportive interest in discussion around the topics covered in this report.

The information they have given on the subject of their perceptions of anti-male bias in the Family Court process has been unanimous in tone if not in exact detail. They share the belief that there are inequitable exchanges happening in the Family Court process that discriminate against fathers. Such discrimination is not in the interests of the child, the father, or society and they indicate issues that need to be addressed.

One of the most startling aspects of this research is the pervasiveness of the alleged bias. It is perceived as being supported by the actions of all categories of professionals involved with the Family Court and many outside agencies as well. The Family Court is obliged to not consider gender when assigning custody and access, and it has no legal mandate to practice positive discrimination in the hope of addressing some of the disadvantages that women experience in society. Though positive discrimination is not the intent, it is apparently the result.

The denial and minimisation of alleged female spousal abuse by the police and the courts (and in some cases the fathers themselves) is a potent example of the bias that is exposed by the Family Court process. It comes to light at the time of separation because it is often at this time that a father will choose to speak about the abuse they endured in the hope of protecting their children. It is far too late to claim abuse at that time. However, from the accounts of the respondents, the existence of profound bias against fathers limits them from having opportunity to have the police and District Court prosecute prior to the separation.

As the intention of this research was more to explore the pathways of the claimed anti-male bias, not much focus has gone into the question of alternative approaches to dissolution in the Family Court. There is however significant experience and research being conducted in other countries of similar culture to New Zealand. Great Britain, Australia, and many of the state legal systems within the United States are practising legislation that is more supportive of the inclusion of fathers (Ministry of Justice, 2000).

This report finds that a change in legislation is only part of what is required to address underlying anti-male bias. To create an environment that respects fathers in the role of caregiver (and conversely, mothers as providers) fathers in large numbers need to assume more of that role before a family breakdown.

They need to be perceived as caregivers, both by their children and by broader society so it is a normal thing for fathers to be appearing at pre-school with their children, dressing their children, to be seen wiping their children's tears and to be seen to shed them themselves over their children.

This report recognises the need for change in the Family Court process and fortunately this belief is currently shared by the Ministry of Justice as evidenced by their current review of the Guardianship Act 1968 (Ministry of Justice, 2000). The respondents generally agree that things have been improving in the Family Courts for fathers (and their children). Overt sexism is not as clearly stated as it once was, ex-parte protection orders are not given as freely as they once were, and the length of time from the application of an ex-parte order to the father having his day in court has been reduced.

In line with the findings of this research the following recommendations are offered;

?? That more training be provided in child development issues for the Counsel for Child with the hope of further helping them to understand the importance of input by the father, and the mechanisms of parental alienation syndrome.

- ?? That research supporting and challenging the practice of shared parenting overseas be gathered for Family Court judges and other professionals involved in the Family Court with the aim of informing them on this approach.
- ?? That research on fathers and their relationships with their children in the New Zealand context be carried out to address the comparative gap in knowledge that exists between fathers and mothers in this regard.
- ?? That the Ministry of Education and WINZ conduct a review of their policies and behaviours around fathers who are separated from their partners.
- ?? That the Ministry of Justice review the current arrest pattern of police in the event of domestic violence. This would be with the intention of addressing the discrepancy between research documenting offending by female partners and their resultant arrest/treatment rates.
- ?? That publicity of the issue of domestic violence by women against male partners occurs with the intention of heightening public awareness of this issue. Education of men is critical to achieving this and support systems such as domestic violence hotlines for men would need to be established to support change.

The review of the Guardianship Act (1968) provides an excellent opportunity to push for father (and child) friendly legislation. In particular this report recommends the following;

- ?? That the Family Court's approach to privacy issues be reviewed recognising that the results of Family Court cases are of public interest, and that privacy has blocked public interest by making outside reviews of its operations difficult.

?? That the current review of the Guardianship Act 1968 consider 'friendly parent provisions' where custody or preferential conditions go to the parent who is likely to promote access and good relations. This would be with the intent to support co-operation between the separated parents.

?? That the review continue with its tack of considering the approaches used overseas in England, Australia and the United States to create a system that is more equitable for the parents and provides the maximum benefit for the welfare of the child.

This report also recognises the responsibility of fathers in general to become more involved in the care of their children, to be shared parenting in the home before the family break-up. This will challenge the stereotyping of fathers as principally resource providers, and could quite possibly, result in a reduction in the number of separated families.

Bibliography

Burgess, A. (1997). *Fatherhood Reclaimed: The Making of the Modern Father*, Great Britain: Mackays of Chatham Plc.

Eaton, M.(1986). *Justice for Women? Family; Court and Social Control*, Philadelphia: Open University Press

Farrell, W.(1994). *The Myth of Male Power*, New South Wales: Random House

Gelles, R.J. (1988). Child Abuse and Violence in Single Parent families: Parent Absence and Economic Deprivation. *American Journal of Orthopsychiatry*, 9(4), 492-501 (Oct 1988)

Gelles, R.J., & Loseke, D.R. (eds.)(1993). *Current Controversies on Family Violence*. Newbury Park: Sage

Goodyear-Smith, F.A., and Laidlaw, T.M.(1999) Aggressive Acts and Assaults in Intimate Relationships: Towards an Understanding of the Literature, *Behavioural Sciences and the Law* Vol.7, pp.285-304

Hong, B.(1991). *Family Court Custody and Access Research, Report 3: The Views of Counsel for the Child, Specialist Report Writers and Department of Social Welfare Report Writers*, Wellington: Department of Justice

Jorm, A.F.(1999). *Effects of Fathers on the Mental Health of Their Children*, Canberra: Social Psychiatry Research Unit

Julian, R.(1999). *Fathers Who Care, Partners in Parenting: Fathering in the New Millennium*, Wellington: Office of the Commission for Children

Kalmus, D. (1984). The Intergenerational Transmission of Marital Aggression. *Journal of Marriage and the Family*, p 11-19 (1984, February)

Kelly, W. and Vincent, P. (1995). *How do we know there is a risk? Issues in the assessment of young child sexual abuse victims: a background paper*, in Family Violence Conference 1995, Wellington: New Zealand Children and Young Persons Service

Lee, A. (1991). *Family Court Custody and Access Research, Report 2: A Survey of Parents Who Have Obtained a Dissolution*, Wellington: Department of Justice

Ludbrook, R. (1999). Putting Children in the Forefront of Custody and Access Disputes, in Birks S. and Callister, P. (eds.), *Perspectives on Fathering II: Issues Paper No.6*, Palmerston North: Centre for Public Policy Evaluation, pp. 43-50

Lynch, J. and Kilmartin, C.(1999). *The Pain Behind the Mask: Overcoming Masculine Depression*, New York: The Haworth Press

Ministry of Justice, (2000). *Responsibility for Children, Especially When Parents Part: The Laws about Guardianship Custody and Access*, Wellington: Ministry of Justice

Patton, M.Q.(1990). *Qualitative Evaluation and Research Methods*. Newbury Park: Sage Publications

Rankin, K.(1999). Fiscal and Welfare Barriers to Effective Fatherhood in Birks S. and Callister, P. (eds.), *Perspectives on Fathering II: Issues Paper No.4*, Palmerston North: Centre for Public Policy Evaluation, pp. 81-92

Rowland, D.(1999). *Fathering the Future*. Christchurch: Not Published

Taylor, N. J. (1998). *Family Law Association in New Zealand and Australia*, June 1998,
Otago: Children's Issues Centre

Weidenfield & Nicholson as cited in *New Scientist* No.2249, July 2000, pp. 73,
Chatswood: Reed Publishing

Appendices

Appendix 1- Massey Ethics Proposal

<p><i>(Revised 16 February 2000)</i></p>	<p>PN/ALB Protocol</p>
<p>MASSEY UNIVERSITY HUMAN ETHICS COMMITTEE</p>	
<p>To: Ethics Secretary OR Committee Secretary Please send/deliver this original Human Ethics Committee Human Ethics Committee plus 12 copies (PN) OR Room 2.02, Main Building Principal's Office plus 8 copies (Albany) Turitea, Palmerston North Albany</p>	
<p>APPLICATION FOR APPROVAL OF PROPOSED TEACHING/RESEARCH PROCEDURES INVOLVING HUMAN SUBJECTS</p>	
<p>APPLICANT(S):</p>	<p>Name: Donald Pettitt</p> <p>Department: School of Social Policy and Social Work</p> <p>Contact Email/Number: dontpet@paradise.net.nz, ph 03-388-3171</p> <p>Status: Masterate Student</p> <p><i>(e.g. lecturer, PhD/masterate student)</i></p> <p>Name of Employer: Child Youth and Families Services</p>
<p>PROJECT:</p>	<p>Title: Youth Care Social Worker</p> <p>.....</p> <p>Status: Masterate</p> <p><i>(e.g. staff research, doctorate/masterate)</i></p> <p>Funding Source: None</p> <p>Clinical Trial Status: No</p>
<p>ATTACHMENTS:</p>	<p>Information Sheet, Consent Form, Questionnaire</p> <p>.....</p>
<p>SUPERVISOR(S):</p>	<p>Name: Mike Garland</p> <p>Department: School of Social Policy and Social Work</p>
<p>SIGNATURE(S):</p>	<p>Applicant(s):</p> <p>Supervisor(s):</p> <p><i>(required for all projects involving student research, implies satisfaction with application)</i></p>
<p>DATE:</p>	<p>.....</p>
<p>OFFICE USE ONLY</p>	
<p>Received:</p>	<p>Decision:</p>

Massey Ethics Proposal: PERCEIVED ANTI-MALE BIAS IN THE FAMILY COURT

1. DESCRIPTION

1.1. Justification

The Family Courts have a significant role in administering the legislation that governs the relationships between ex-partners and their children. This researcher has heard anecdotal evidence of men experiencing anti-male bias in the Family Court process and believes that an institution such as the Family Courts needs to be perceived to be operating in a just manner to ensure an equitable society.

This research is intended to add to the growing body of opinion and literature focussed on the perception of anti-male bias in the Family Court by producing a qualitative analysis of the experience's of 3 or 4 facilitators in men's organisations dealing with the issues of custody and access.

1.2. Objectives

This study will examine the perceptions of 3 or 4 people who regularly work with men that have felt unequally treated by the Family Court process based on their gender. In particular it will focus on the areas of custody and access arrangements.

It will ask the question:

What is it that many men find so anti-male about the current Family Court processes in the areas of custody and access?

In so doing it will explore the opinions of facilitators who have accumulated a large variety of stories of men who identify themselves as having experienced bias and identify the patterns of sexism. It will ask them to identify the mechanism by which they perceive this bias operating; whether through the legislation, the court policy, through administrator's personal bias or through other means.

This study will also ask the participants to summarise the impact that the perceived inequitable situation have had on the lives of their clients.

This research will be qualitative in nature. It is hoped that it will produce a document that can be useful to other men in interpreting their own experience in the Family Court process and sensitise other interested parties who haven't experienced this process.

1.3. Procedures for Recruiting Participants and Obtaining Informed Consent

Participants in this study will be facilitators of two local men's support networks; The Home and Family Trust, and The Father and Child Trust.

Following approval by the Massey ethics peer review process the researcher will approach participants in person at which time they will be given an information sheet and consent form (attached).

1.4. Procedures in which Research Participants will be involved

Participants will be involved in one in-depth interview of one to one and one-half hours duration in which they will be asked a series of questions regarding their role and their interpretation of bias in the court process. They will be asked to describe the experiences of men whom they have facilitated who they believe have experienced anti-male bias. Interviews will be conducted in the participant's office facilities or in a mutually agreed venue. Participants will be informed that they have a right to terminate the interview or withdraw from the research at any time.

1.5. Procedures for handling information and material produced in the course of the research including raw data and final research report(s)

Interviews will be taped and then transcribed selectively. The tape recorder will be stopped at the participants request. I anticipate transcribing these tapes myself. If I use another person to transcribe notes, that person will sign a confidentiality agreement. Notes will be taken during interviews.

1.6. Procedures for sharing information with Research Participants

Participants will be sent a transcript of the material from their interview, which it is intended will be used in the final report. They will be invited to make changes to this information prior to it being used in the final report.

1.7. Arrangements for storage and security, return, disposal or destruction of data

Tapes, notes and transcripts will be kept in a locked box in my home office. Word processing will be performed on my personal computer, which is not connected to any network.

Following the examination of the report interview tapes, notes and transcripts will be destroyed or returned to the interviewees if so requested. Results will be utilised in the final report in a summarised and thematic form thereby minimising the risk of breach of confidentiality.

2. ETHICAL CONCERNS

2.1. Access to Participants

The facilitators of the Christchurch Father and Child Trust and the Family and Home Trust will be approached to participate in the study. If willing they will be sent the information sheet and interview consent form.

These men will contact me through my place of work and after initial dialogue I will deliver the information sheet and the consent forms to them prior to the actual interview.

2.2. Informed Consent

Full information regarding the aims and nature of the study will be conveyed in writing to the participants. The information sheet and the consent forms will be delivered to the

participants prior to the interview (copies attached). Verbal discussion will be had with the participants prior to delivery of the information sheet and consent form and after delivery such that any questions or concerns can be addressed at these times.

At the interview we will review the participants right to stop the tape recorder at any time and also to withdraw from the research at any time.

2.3. Anonymity and Confidentiality

Where confidentiality is requested, every effort will be made to enhance this. However, anonymity cannot be guaranteed in the case of a small population centre such as Christchurch.

The participants will be invited to be named in the study. It is anticipated that the participants will be spokespersons in regard to male issues bias in the Family Court and as such will be enthusiastic about making their views known to a broader forum. Efforts will be made by the researcher to maintain confidentiality through non-identification of the participants and through the use of summarised and thematic presentation of findings in the report. Where a respondent raises issues from a particular case, all identifying characteristics will be disguised, in order to protect their clients confidentiality.

2.4. Potential Harm to Participants

None anticipated

2.5. Potential Harm to Researcher(s)

None anticipated

2.6. Potential Harm to the University

None anticipated.

2.7. Participant's Right to Decline to Take Part

The participants will be asked to volunteer in this process. It will be made clear to them through the information sheets and at the interview that they can decline to take part in this study or withdraw at any time. They will also be told that I will turn off the tape recorder during the interview if requested.

2.8. Uses of the Information

It is anticipated that the report will be made available to the two organisations cited for their use as a resource material. The results may also be made available for wider dissemination through publication unless participants oppose this.

2.9. Conflict of Interest/Conflict of Roles

None identified

2.10. Other Ethical Concerns

None identified

3. LEGAL CONCERNS

3.1. Legislation

3.1.1. Intellectual Property legislation

Not applicable

3.1.2. Human Rights Act 1993

Not applicable

3.1.3. Privacy Act 1993

Not applicable

3.1.4. Health and Safety in Employment Act 1992

Not applicable

3.1.5. Accident Insurance Act 1998

Not applicable

3.1.6. Employment Contracts Act 1991

Not applicable

3.2. Other Legal Issues

Not applicable

4. CULTURAL CONCERNS

This research will involve Pakeha interviewees who will not be asked directly to comment on other cultures experience of sexism in the Family Courts.

5. OTHER ETHICAL BODIES RELEVANT TO THIS RESEARCH

None identified

5.1. Ethics Committees

None identified

5.2. Professional Codes

None identified

6. OTHER RELEVANT ISSUES

None identified

Appendix 2 – Interview Information Sheet

Perception of Anti-male Bias in The Family Court

Information Sheet

The Researcher: Donald Pettitt

Contact: Child Youth and Family Services
7 Winston Ave, Papanui, Christchurch
PO Box 5334, Papanui, Christchurch
Phone (03) 963-2150

Supervisor: Mike Garland, Lecturer
School of Social Policy and Social Work
Massey University
Private Bag 11222, Palmerston North
Phone (06) 350-5799 Ext.2818

The Project:

This study seeks to gain further understanding of the challenges confronting men in the Family Court process. In particular it explores the issue of perceived anti-male bias in the Family Court process in the areas of custody and access.

The equitable treatment of all parties in the Family Court process is critical in the maintenance of a just society. A significant number of men who have been through the Family Court process have indicated that they believe they did not receive equitable treatment because of their gender. It is the intention of this research to explore claims of anti-male bias in the hope that such information can be useful to men in interpreting their own experience of such perceived bias and to sensitize and inform others involved in the Family Court process.

This report seeks to explore the claims of the existence of anti-male bias and attempts through the use of qualitative research to identify the patterns of any perceived bias. It aims to consider the vector through which such perceived bias occurs by considering the practice, legislation, and Family Court personnel's approach to gender issues. It also briefly explores the impact on the men who perceive themselves to experience anti-male bias. In order to do this several facilitators who have provided support to men who are, or have been involved with, the Family Court process will be approached to share their impressions of the phenomenon in question.

Most of the information for this study will be gathered through the interviews, which will last, from one to one and one half-hours with each participant. These interviews will be

recorded on audiotape and notes will be taken. The tapes and notes will be destroyed or returned to the interviewee after Massey acceptance of the report.

The interviewees will have the right to terminate an interview or request that the tape recorder be turned off at any time. Referrals to further counseling will be available.

If you do agree to participate it will be on the understanding that what you say in interview is completely confidential in the event you choose not to be named. You have the right to view the transcript material prior to it being used in the final report.

The presentation of findings in the report of this research will be arranged thematically rather than by individual interviewee's statements. This presentation will make it difficult to identify the interviewee optimizing confidentiality. Brief direct quotations from interviews will only be included in the report with the consent of the participants concerned.

My conducting this research will be kept separate from my employment as a social worker. No information in any identifiable form will be given to the Department of Child Youth and Family Services.

This report may be made available to the local organisations associated with those participating in this study and will be made available for publishing unless the participants express strong disagreement.

As a participant you have the right to;

- ?? Refuse to answer any particular question, or to request that the tape recorder be turned off at any time during the interview
- ?? To conclude an interview or to withdraw from the study at any time
- ?? Ask any further questions about the study that arise during your participation
- ?? Provide information on the understanding that it will be completely confidential to the researcher and his supervisor
- ?? Be given access to a summary of the findings of this study when it is concluded

Appendix 3 – Interview Consent Form

Perceived Anti-male Bias in The Family Court

CONSENT FORM

I have read the Information sheet and have had the details of the study explained to me. My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I understand I have the right to withdraw from the study at any time and to decline to answer any particular questions.

I agree to provide information to the researchers in the understanding that my name will not be used without my permission.

I consent to my name being used with identifying quotes in the final report.

I agree to the interview being audio taped.

I also understand that I have the right to ask for the audiotape to be turned off at any time during the interview.

I agree to participate in this study under the conditions set out in the Information Sheet.

Signed: _____

Name: _____

Date: _____

Appendix 4 - General Interview Guide for Ethics Review

Who is this person?

How old are you?

What is your training background?

Are you currently training in any way?

What is your role in the area of men and the Family Courts?

In what areas have they perceived anti-male bias in the Family Court?

How would you describe perceived bias?

Focussing on custody what patterns of perceived anti-male bias have you recognised?

Focussing on the assignment of access what patterns of perceived anti-male bias have you recognised?

Focussing on on-going access arrangements what perceived patterns of anti-male bias have you recognised?

In each of these patterns where would you identify the cause of the perceived bias lying; legislation, court policy, Family Court administrator's personal bias (judge, police, counsellor, other) or any other general area of anti-male bias?

Are there any particular groups of men whom you perceive to suffer from heightened anti-male bias?

Men in particular situations?

What is the impact of the perception of the experience of anti-male bias on the men?

Are the men who experience perceived bias aware of it and to what degree? What is their initial response?

In your estimation do men sometimes focus on anti-male bias when it has had a minimal influence in the process of assigning custody and access?

How would you say men are affected in the long term by the instances in which they experience anti-male bias in the Family Court? How does this affect those around them?