

## Chapter 34

### Evidence from Other Jurisdictions

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Although cultural and ethnic differences are vitally important and to be respected, what men and women and children have in common in relation to family breakdown fully justifies the growing international co-operation in the development of family law ... with sincerity and humility we must continue to search for improved ways of supporting families and protecting children when marriages fail.<sup>1</sup>

The trends in marriage and divorce which have caused concern in England and Wales have been experienced in most western countries, many of which began to reform their divorce legislation some years ago. In English-speaking jurisdictions (Australia, Canada, New Zealand and the USA) and in most Western European and Scandinavian countries, there has been a consistent move towards no-fault legislation, together with an increased focus on the use of mediation. More recently, several countries have introduced parenting programmes in order to promote continuing contact between parents and children after divorce, and to encourage parents to reduce the conflict between themselves and work co-operatively for the best interests of their children.

Divorce legislation in most other countries reflects principles similar to those enshrined in the Family Law Act in respect of promoting conciliatory divorce, encouraging continuity in parenting, and protecting family members from violence. In all cases, the best interests of children are paramount. What divorce legislation in most countries does not seek to do in any major way is to save marriages. In this respect the FLA is more complex in its construction than the majority of other legislation. This does not imply that the other countries do not share concerns about the ending of marriages, but most have not attempted to address these concerns through legislation which is designed to deal with the consequences of marriage breakdown, primarily because most legislators have no confidence that commitment to marriage can be reinforced through divorce law. Some countries in Europe (e.g. Belgium, France, Iceland, Italy and Switzerland) have requirements for the couple to attempt reconciliation before they can proceed to divorce. There is no evidence that these mechanisms are effective, however, and in most jurisdictions attempts at encouraging reconciliation are accorded little real effort or prominence. The view in many jurisdictions is that rendering divorce apparently more difficult (through an excessive focus on saving marriages) might result in fewer people getting married, a risk to which Cretney and Masson refer in respect of the FLA.<sup>2</sup>

It has never been part of our remit to consider the ground for divorce, and we do not presume to comment on the wider question of the future of divorce law itself. As Rebecca Bailey-Harris has rightly commented,<sup>3</sup> our research brief was confined to examining how best to implement Section 8 of the FLA. Nevertheless, as she points out, the evaluation has revealed the complexity of the issues involved in information meetings. Furthermore,

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<sup>1</sup> Walker, J. and Hornick, J.P. (eds), *Communication in Marriage and Divorce: A Consultation on Family Law*, BT Forum (1996), p. 69.

<sup>2</sup> Cretney, S.M. and Masson, J.M., *Principles of Family Law* (6<sup>th</sup> edn), Sweet & Maxwell (1997).

<sup>3</sup> Bailey-Harris, R., 'Information meetings and divorce reform', *Family Law*, vol. 30 (May 2000).

it has brought the challenges of supporting the Principles in Part I into sharp relief. Hence the value in looking at how other jurisdictions have tackled similar matters. When considering the steps taken elsewhere, however, it is important to bear in mind that the provisions are almost always enacted within a framework which does not revolve around fault. California was the first state in the USA to introduce no-fault divorce legislation in 1969, and the other states followed over the next twenty years, although some have continued to operate a system with both fault and no-fault grounds available. Some countries, such as Australia, Finland, Germany, The Netherlands and Sweden, operate no-fault procedures while others, such as Canada, and many European countries, operate a mixed system. In reality, however, it seems that, unlike in England and Wales, fault-based grounds are rarely used because they offer no obvious advantage to the parties since they do not speed up the process of divorce, and there is a general recognition that alleging fault can escalate conflict and hostility. Most countries rely on a period of separation as evidence of irretrievable breakdown. We simply note the fact that whatever the criticisms of Part II of the FLA, there has been virtually universal agreement among divorce-associated practitioners here that no-fault divorce should be introduced as a matter of urgency in order to support the principles and philosophy of the Act.<sup>4</sup>

Acknowledging, then, that it is not sensible to take ideas from other countries without understanding the context and culture in which they operate, we believe that experience elsewhere can shed light on the findings of our evaluation, and that there are lessons to be learned from the ways in which other jurisdictions have attempted to change the culture and practice of divorce process. We review the most pertinent of them here as they relate to the provision of information, and to the promotion of conciliatory divorce and co-operative post-divorce parenting.

### **Information Sessions in Australia**

Although there was no blueprint for individual information meetings, Australia provided the blueprint for the provision of information to groups of people, and this experience influenced the proposal for a group information session put forward in the White Paper and the Family Law Bill.<sup>5</sup> The Family Law Act 1975 established the Family Courts and the court counselling service in Australia. Information sessions were an initiative adopted by the Family Court of Australia in May 1992 following a visit to the United States by Chief Justice Alastair Nicholson where he saw similar sessions in operation. Attendance at a group information session is required for all those making an application to the Family Court for ancillary matters. Attendance may be ordered later, usually at the first Directions Hearing. In Australia, dissolution applications are heard separately from ancillary applications, which predominantly involve disputes over children and property disputes. Significantly, attendance records are not kept, but it is thought that at least one partner from about 50 per cent of all divorces or cohabitations that are ending attends a session, which lasts about an hour. These sessions are open to anyone who wishes to attend irrespective of whether they are making an application to the Family Court. Indeed, prospective parties are encouraged to attend an information session prior to filing an application.

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<sup>4</sup> Lady Justice Hale DBE, 'The way forward', in The Rt Hon. Lord Justice Thorpe and E. Clarke (eds), *No Fault or Flaw: The Future of the Family Law Act 1996*, Family Law (2000).

<sup>5</sup> We are grateful to Margaret Harrison of the Family Court of Australia for the description of how the Australian system operates.

Until recently, two presenters, usually a court registrar and a court counsellor, have used a standard presentation kit, which consists of a series of overhead projector slides and points that should be made during the meeting. A number of topics have been covered, many of which are similar to those covered in the pilot information meetings here. Attendees without children can leave the meeting before information relating to children and parenting is presented. The messages that have been given are that the Family Court encourages people to reach their own settlements and provides services to facilitate and support this. A significant part of the session is devoted to giving information about when it might or might not be appropriate to use solicitors and the costs of using them. Attendees are told that it is not normally appropriate to use solicitors for negotiations with the other spouse. They are told which things they can realistically do for themselves without legal intervention, thereby enabling them to save costs. Attendees are encouraged to take a friend with them when they see a solicitor. We note that some of those who responded to the UK Government's Green Paper objected to parties being given general information about the relative costs of different services, expressing concern that this would be misleading and might tempt people to choose the cheaper course of action without being certain that such a course was the right one for them.<sup>6</sup> In the information meeting pilots, however, attendees were given indications of the cost of mediation and counselling, which led some of them to regard these services as too expensive. By contrast, they were not given an indication of the cost of using solicitors. It is almost certainly not helpful to give partial information about costs. In Australia, the information on costs for each of the options is given unashamedly in the meetings, and is publicly available on the Family Court website.

The other notable feature of the Australian meetings has been the significant amount of time spent on talking about emotional processes relating to separation and divorce, and on considering the needs of children. Participants are invited to ask general questions, but if they ask for information specific to their own case they are invited to make an appointment to see a court counsellor. Typically, attendees do ask questions, which often result in the presenters elaborating on the information given. At the end of the session, a standard set of leaflets and handouts is given to each attendee.

Between ten and thirty people may attend an information meeting in the large registries, although there are fewer attendees in smaller registries where sessions are not held on a daily basis. We have observed these meetings to be friendly, but businesslike. Special arrangements are made to protect people who feel at risk of domestic violence. Such arrangements are felt to be easy to impose since most meetings take place in court buildings (or other multi-purpose public buildings in rural areas). Recently, the Family Court has successfully piloted and is now implementing a new information session run by an administrative staff member who is specifically trained to deliver the sessions. New scripts have been produced which give less emphasis to procedural matters and more emphasis to emotional issues. All those who attend a session take away the following publications: the *Family Court Book*; *Costs of Family Law Proceedings*; *Questions and Answers about Separation for Children*; *Children and Separation: a Guide for Parents*; a *Service Charter*; and a *Resources Directory*. The *Family Court Book* has been developed to replace most of the individual publications previously produced by the court. The simple message is that litigation is not the way to go.

In Australia, a flexible approach is adopted to the provision of information, such that if people find it difficult to attend court officers will provide the information (and counselling) over the telephone, or at counters in the courts, and the leaflets are mailed

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<sup>6</sup> The White Paper, *op. cit.*, p. 58.

out. Information is also available on the Family Court website. Many of the publications are available through solicitors and other sources. The Family Court also produces videos as supplementary to the information session, and these are also available through a variety of outlets. The material provided by the Court is available in many languages, usually the 23 languages which are offered on a free national interpreter telephone service. Audio tapes in minority languages are also available as many minority language groups have high levels of illiteracy within their own languages. The Australian model offers information provision to both married and unmarried parents (as did the group presentations offered in the information meeting pilots), because the Family Law Act gives the Family Court jurisdiction to hear and determine disputes involving ex-nuptial children. No legal distinction is made between children born to married or unmarried parents. The needs of non-married parents were raised on many occasions during the pilots, and concerns were expressed that they are not provided for by the FLA.

There has been no extensive independent evaluation of the Australian information sessions, but they have been subject to internal reviews on a number of occasions. The Family Court monitors the sessions and updates the information material through a working group consisting of counsellors, registrars, public affairs and publication staff. The current view is that in the past too much material was included in the sessions and attendees could not absorb all the information that was presented, hence the recent shift to a simpler meeting given by a single presenter. All registries will deliver information sessions in this way in the near future. The problems associated with trying to cover too much material were also experienced in the group presentations here, and we have noted that there was often too little time, or no time at all, for attendees to ask questions. Plans are under way to use a multi-media approach in information sessions to support the presenter's script, including video, overheads and computer graphics. Take-away printed materials are seen as essential and are continually being revised and updated. The move in Australia to a more focused presentation is in line with our proposal for a new information meeting model, albeit on an individual basis, which we discuss later, in the next chapter.

In June 1996 a number of important changes to the Family Law Act 1975 came into operation in Australia. These were embodied in the Family Law Reform Act 1995 and are intended to alter the ways in which parents think about and make arrangements for children following parental separation, by reducing disputes and promoting co-operative parenting. The reforms were significantly influenced by the Children Act 1989. Other changes were aimed at promoting ongoing relationships between parents and children and ensuring that these do not expose children and their carers to family violence. Parents are encouraged to reach private agreements and mediation and counselling services are promoted as the primary dispute-resolution mechanisms. The new Act also provides for the registration of parenting plans which can be converted into court orders, although the court can refuse to register a plan not considered to be in a child's best interests. Under the new law, parents have responsibilities and children have rights. At the time of its implementation, some commentators were sceptical about the capacity of the reforms to affect behaviour.<sup>7</sup> Others predicted positive changes, believing that fathers may play a greater role in post-divorce parenting.<sup>8</sup> Concerns were also expressed that the right to contact and the principles of shared parenting would result in women having to agree

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<sup>7</sup> Ingleby, R., 'The Family Law Reform Act – a practitioner's perspective', *Australian Journal of Family Law* 48, vol. 10 (1996), p. 49.

<sup>8</sup> Arndt, B., 'Parents should move on without relocating', *The Age* (21 March 1997).

contact arrangements that would place them at risk.<sup>9</sup> These concerns are similar to many that have been raised in England and Wales during the pilots.

A research project has been tracking the changes since 1997, during which time more rigorous legal aid guidelines have been introduced and supervised contact centres have been established in some areas. Some of the findings of the study are particularly relevant to our discussion of information meetings.<sup>10</sup> Solicitors, for example, were generally more cynical than other divorce-related professionals about the reforms, and these different views have been played out in the advice the various professional groups give to parents and the explanations they provide about parental responsibility. The research shows that personal views impact on professional responses:

By and large, the legal profession has not embraced mediation or private agreements to any greater extent than before the reforms, and indeed, some solicitors were delighted with the increased opportunities for dispute that had been provided by the changes.<sup>11</sup>

The researchers have found that litigation has increased, and there is little evidence that the shared parenting presumption is reflected in how families exercise parental responsibilities after divorce. Moreover, the concept of the right to contact sits uneasily with the principle of protection from domestic violence. The overriding flaw in the new Act is described as being the assumption of a particular, idealistic model of parenting which does not take into account the complexities and diversities in post-divorcing living arrangements.

The expectations that people will behave in prescribed ways if the legal framework tries to influence behaviour are being shown to be unrealistic, and in this sense the outcomes of reforms in Australia do not match up any more closely to government expectations there than they do to expectations held about the Family Law Act here. The overwhelming message from the Australian study is that it takes more than new legislation to change the ways in which families manage divorce and organise parenting responsibilities.

In May 2000 the Attorney-General and the Minister for Family and Community Services established an advisory group to find ways of improving the pathways for families through the family law system. The Australian Government

recognises that when families begin to breakdown, they need access to clear information and support as soon as possible ... it is clear we need to develop a more coordinated approach to helping families in distress.<sup>12</sup>

The advisory group is tasked with formulating recommendations on how to :

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<sup>9</sup> Behrens, J., 'Ending the silence, but ... family violence under the Family Law Reform Act 1995', *10 Australian Journal of Family Law* 35 (1996); Nygh, P., 'The new Part VII – an overview', *10 Australian Journal of Family Law* 4 (1996).

<sup>10</sup> Rhoades, H., Graycar, R. and Harrison, M., *The Family Law Reform Act 1995: Can Changing Legislation Change Legal Culture, Legal Practice and Community Expectations?*, interim report, Family Court of Australia (1989); Rhoades, H., 'Child law reforms in Australia – a shifting landscape', *Child and Family Law Quarterly*, vol. 12, no. 2 (2000), pp. 117–33.

<sup>11</sup> *ibid.*, p. 132.

<sup>12</sup> Attorney-General and Minister for Family and Community Services, Joint News Release, Family Law Pathways Advisory Group, 17 May 2000.

- provide stronger and clearer pathways to early assistance
- help families minimise conflict and manage change more successfully
- improve the co-ordination and accessibility of client-focused information and support for families during transition
- better co-ordinate delivery of a range of services

It is expected to report to the Government at the end of the year 2000.

### **Private Ordering In New Zealand**

The New Zealand Family Proceedings Act 1980 introduced no-fault divorce and was designed to decrease adversarial procedures and strengthen reconciliation and mediation processes. The Act provided mechanisms which allowed for early intervention in a troubled marriage. Thus couples, both married and cohabiting, can apply for help through the Family Court and gain access to free counselling and mediation services. Proceedings relating to separation, custody and access are commenced by a simple application, intended to provide basic information for the court. A major objective of the whole process is to facilitate resolution by the parties of their own disputes and keep them in control of their lives.<sup>13</sup>

Under the Family Proceedings Act both legal advisors and the courts have a duty to promote reconciliation and family mediation. When divorce proceedings are commenced, the parties are referred to counselling unless there has been a history of violence. Counsellors assist with reconciliation if there is a chance that the marriage might be saved, or mediate disputes if the couple are proceeding through divorce. There is, therefore, a considerable degree of flexibility in the service offered.<sup>14</sup> Early research<sup>15</sup> found that it was important to get both parties to see the counsellor, and to arrange the first appointment as quickly as possible. Reconciliation was achieved by about half of those for whom it appeared possible; and counselling undoubtedly contributed to the ability of those who stayed together to repair the relationship. When couples were destined for divorce, access arrangements were made during counselling in about 20 per cent of cases, and general agreement was reached in about half the cases when issues relating to property were discussed.<sup>16</sup> The research has indicated that counselling appears to be most effective in assisting with access issues, in moving parties towards custody agreements, and in dealing with personal psychological issues.

The 1980 legislation created a new ethos around the dissolution of marriage in New Zealand. The Family Court system assists people to resolve disputes through a variety of different services which can be tailored to the diverse needs of the people using the Family Court. New Zealand has, it seems, successfully developed a client-focused

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<sup>13</sup> Judge Patrick Mahoney, 'Family law provisions and outcomes: an overview from three countries', in Walker and Hornick (eds), *Communication in Marriage and Divorce*, BT Forum (1996).

<sup>14</sup> Renouf, J., in Walker and Hornick (eds) (1996), *op. cit.*

<sup>15</sup> Maxwell, G.M., *Family Court Counselling Research Report 1: Family Court Counselling Services and the Changing New Zealand Family*, Department of Justice (1989).

<sup>16</sup> Maxwell, G.M. and Robertson, J.P., *Moving Apart: A Study of the Role of Family Court Counselling Services – An Overview of the Findings and their Policy Implications*, Department of Justice (1993).

approach which avoids bureaucratic procedures.<sup>17</sup> Free access to counselling and mediation has put an emphasis on early intervention. The focus has been on supporting parents primarily, and thereby supporting children indirectly. The focus is now shifting on to the needs of children themselves, and to offering them direct support.

## Parenting and Separation in Canada

The Divorce Act 1985 introduced marriage breakdown as the single ground for divorce in Canada, based most often on a separation period of at least a year (fault-based grounds still exist in the legislation but are rarely used), and 1985 is recognised as the beginning of no-fault divorces in Canada. The Act requires lawyers to enquire as to the possibility of reconciliation and to advise clients of marriage counselling services. Moreover, lawyers are under a legal obligation to inform their clients about the advisability of negotiation and of using mediation services. There is not, however, any obligation on the part of lawyers actively to refer clients with disputes to mediation.

Rising public concern about the economic, social and emotional consequences of divorce for children led to the development in 1997 of a Special Joint Committee on Child Custody and Access to examine arrangements for children, with a special emphasis on how to meet their needs and best interests following parental divorce. The Joint Committee reported in 1998<sup>18</sup> and made wide-ranging recommendations for amendments to the Divorce Act. One of these was that

all parents seeking parenting orders, unless there is agreement between them on the terms of such an order, be required to participate in an education program to help them become aware of the post-separation reaction of parents and children, children's developmental needs at different ages, the benefits of cooperative parenting after divorce, parental rights and responsibilities, and the availability and benefits of mediation and other forms of dispute resolution, providing such programs are available.<sup>19</sup>

It was recommended that attendees would require a Certificate of Attendance before they could proceed with their application. The Committee further recommended that divorcing parents be encouraged to attend at least one mediation session to develop a parenting plan for their children. Family courts would be encouraged to provide a range of support services, including family and child counselling, public legal education, parenting assessment and mediation services, an office responsible for hearing and supporting children experiencing difficulties after parental separation and divorce, and case management services. The Canadian Government published its response to the report in May 1999.<sup>20</sup> It proposes a strategy for reform rooted in four key principles:

1. The child's perspective must be at the forefront of reforms, which must themselves be child-centred.

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<sup>17</sup> Judge Patrick Mahoney, *op. cit.*

<sup>18</sup> The Hon. Landon Pearson and Gallaway, R. (joint chairs), *For the Sake of the Children*, Report of the Special Joint Committee on Child Custody and Access, Parliament of Canada (December 1998).

<sup>19</sup> *ibid.*, p. 30.

<sup>20</sup> Justice Canada. Government of Canada's Response to the Report of the Special Joint Committee on Child Custody and Access (May 1999).

2. Governments (Federal, Provincial and Territorial) must work together to co-ordinate projects (including parent education and mediation).
3. A holistic approach to family law reform must include a broad range of measures to support families and promote conflict-free co-operative parenting.
4. One size does not fit all, and the unique characteristics of families mean that reforms must allow flexibility to meet the best interests of children. This principle recognises that no one model of post-separation parenting will be ideal for all children.

The Government has shown itself to be supportive of many of the recommendations of the Special Joint Committee, including that parents be encouraged to develop parenting plans, but believes that further study is needed as to how they should be incorporated into the family justice system. Furthermore, the Government is committed to developing a range of interventions including parenting education programmes and mediation, both at government level and involving non-governmental organisations.

#### *Parenting after separation in Alberta*

Parenting education programmes are proliferating across Canada. Some 140 were documented by the Special Committee, but most are local, voluntary programmes. Some, however, have become mandatory, and it is these which are relevant to consideration of our findings on information provision. The Province of Alberta took the lead in developing the first Parenting After Separation Seminar (PASS) course in Canada, and in making attendance mandatory, after a period in which attendance was voluntary. The mandatory programme was piloted in one city for a year before it was extended across the Province. The objectives of the programme are:<sup>21</sup>

1. To provide information regarding:
  - (a) the stages and experiences of separation and their effects on parents;
  - (b) the effects of separation on children;
  - (c) changes in family relationships;
  - (d) ways of communicating more effectively;
  - (e) the legal aspects of separation and divorce when there are children involved (e.g. custody/access and support);
  - (f) parenting plans – how they are formed, what is included, the benefits;

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<sup>21</sup> Sieppert, J.D., Lybarger, D.S., Bertrand, L.D. and Hornick, J.P., 'An evaluation of Alberta's parenting after separation seminars', *Canadian Research Institute for Law and the Family* (December 1999).

- (g) mediation – how it works, who goes, why, and what resources are available;
  - (h) child support guidelines.
2. To encourage parenting plans as a means of resolving disputes between the parents over how their children are to be cared for, including:
    - (a) contact with children;
    - (b) decision-making;
    - (c) where the children will live;
    - (d) any other issues that relate to the children.
  3. To promote mediation as a way of helping parents to resolve the parenting issues in dispute between them and develop a parenting plan.

Any parent who wishes to bring an application before the Court of Queen’s Bench in a divorce action where there is an issue concerning child support, custody or access must, by order of a Judicial Practice Note, have a Certificate of Completion for the PASS course. Most petitioners in a divorce case that includes children are told by their lawyers that they must attend prior to receiving a court order or final divorce. The Provincial Family Court also refers people to the seminars. People may be exempt from mandatory attendance prior to a court order, as in requests for an interim custody order where there is domestic violence, or in cases of kidnapping or unilateral changes in *de facto* custody. However, these people must attend within a month of obtaining a court order. The defendant in a divorce action must attend a seminar within two months of receiving a notice of mandatory attendance at a seminar or face the possibility of being refused the right to make submissions to the court. Other persons, such as a new partner, family members or interpreters, can attend voluntarily. The course is recommended to people involved in other family proceedings. It is mandatory only in divorce cases.

The PASS is six hours in length, and may be experienced in one sitting on a Saturday or in two three-hour evening sessions on weekdays. The seminars are held in courts or other public buildings, and participants sign in and are given their participants’ manual and other handouts. A security guard is on duty at all seminars, and spouses are discouraged from attending the same seminar. The seminar, which we have observed in its entirety, is a mix of lecture-style presentation, personal exercises and videos. Opportunities are given throughout the meeting for participants to ask questions both in the group or individually in breaks. At the end of the six hours, Certificates of completion are given out to the attendees by the presenters, of whom there are two, usually a lawyer together with a psychologist, family therapist, mediator or social worker. One presenter is male, the other female. Although presenters must be experienced in their field, very little formal training is given, and quality assurance is variable. Each presenter is paid between £135 and £180 per six-hour seminar.

The seminar is highly structured in content, but our observation of it suggests that presenters modify the scripts to fit their own preferred style of delivery, and improvise to

bring the material alive, often illustrating it with cases drawn from their own professional experience. Up to around sixty people may attend a seminar, but the average attendance is 20–30 people. The cost of delivering 203 seminars in 1998–9 was calculated to be about £20 per participant. About 7,530 people across Alberta attend each year.

The PASS programme was evaluated during 1999<sup>22</sup> and the research methodology was developed in conjunction with us, enabling useful comparisons to be made. The researchers were limited, as we were, in not having a control group, but they had the advantage of being able to monitor a mandatory provision. The study involved 1,179 attendees, 56 per cent of whom were mothers and 44 per cent fathers.

The findings are consistent with many of those relating to our evaluation of information meetings. Overall, participants were positive about the programme, valued it highly, and found the information provided both relevant and useful. Even though not all had wanted to attend the majority found the experience helpful. There appears to have been little resistance to the fact that attendance is mandatory – people attend because they are referred, usually by their lawyers. The levels of satisfaction are very similar to those of volunteer attendees at the pilot information meetings here. Eighty per cent of PASS participants agreed that the information would help them deal with their children better and would help them co-parent in the future, and 87 per cent believed that the programme should remain mandatory. One of the most highly rated information areas was that on the topic of mediation. People felt more knowledgeable across a range of topics, however, much as did attendees in the information meeting pilots.

When we consider the extent to which PASS meets its other objectives, however, we can observe some more key parallels. Very few parents (12%) reported using parenting plans although they like the idea of the plan. Most participants (72.5%) said they would be willing to consider using mediation services, although only 10 per cent actually went to mediation. By contrast, 81 per cent had consulted a lawyer since attending PASS. The majority of those who had not used mediation indicated that they did not need it, or that ongoing conflict (including violence) precluded it as an option. Participants felt more able to limit conflict and that they were coping better than before they had gone to the seminar. In general, participants felt more satisfied with child support arrangements, although women were less satisfied than men.

The researchers have concluded that parenting plans and mediation may prove to be helpful in particular situations, but not in others. They recommend that less emphasis should be given to outcome measures such as the increased use of parenting plans and mediation as indicators of the effectiveness of PASS:

At present the workshop is presented with a colossal challenge. This challenge is to directly alter the behaviour of separating/divorcing parents through a six-hour workshop, in a period when conflicts, tensions, frustration and legal issues can be intense. More realistic objectives might focus on providing information about parenting plans and mediation to participants, and then to focus on how the strategies and techniques of parenting plans and mediation can be used on a more informal basis between parents. This would not preclude encouraging parents to use parenting plans or seek mediation. These would become secondary objectives – an extra benefit to an already solid program.<sup>23</sup>

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<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*, p. 69.

This is a most significant recommendation in the light of our findings in respect of the use of mediation and parenting plans. If an intensive six-hour programme does not significantly change behaviour, even less should be expected of a one-hour information meeting.

There is no doubt from our observation that participants were receptive to the information provided, and that they were encouraged to ask questions. Many did so, and only rarely did presenters indicate that they could not provide answers because they were not able to give legal advice. One of the critical elements in the seminar is that devoted to child support issues. The new Canadian Child Support Guidelines are explained and participants are helped to work through tables in order to see how the guidelines might work for them. The importance of non-resident parents paying child support is linked to messages about responsible parenting, and there is some evidence that compliance may be increased. This would be a particularly important topic in information meetings when new child support measures are introduced in England and Wales during 2001.

Participants frequently chatted among themselves, and confidentiality and privacy did not appear to be problematic issues. We also note that some of them had travelled a very long way to attend the seminar, although people in remote rural parts of the Province can have the information sent by post. There seems to be support for PASS among all professional groups and the innovation is considered to be a success. There are few exemptions to attendance. Those that there are relate to people who are very ill, who are in hospital long-term, or have no understanding of the country's main languages.

#### *Parent education in Manitoba*

In 1995 a pilot programme on parent education for separating and divorcing parents was established in Manitoba together with an evaluation project.<sup>24</sup> Attendance is voluntary, but parents wishing to use mediation which is publicly funded must take the programme as the first step in the process. There are two mediation options: the first is affiliated to the family court and deals with access and custody issues; the second offers all-issues mediation and is offered by lawyers and social workers in co-mediation. Mediation is provided free on completion of the parent education seminar, and around eight sessions are provided over a few months. Divorcing parents are not obliged to attend the parent education seminar if they do not wish to go on to mediation, but couples in high conflict are often advised to attend by lawyers and judges. The original programme lasted three hours, during which parents received information on children's reactions to separation and divorce and how parental behaviours can affect the adjustment and well-being of children. The stress was on co-operative parenting and the reduction of conflict. In line with attendees at information meetings here, parents opting to attend the programme were likely to have younger children (41% had pre-school children and 43% had children aged 6–12). The focus of the programme was on children, and unlike in Alberta, limited information was given on legal and financial issues. As elsewhere, a lecture-style presentation has been used (originally with one presenter) employing a range of materials, including a video. The attendance rate after registration was 77 per cent in the first year, and 52 per cent of attendees were fathers.

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<sup>24</sup> McKenzie, B. and Guberman, I., 'For the sake of the children: a parent education program for separating and divorcing parents', *Final Report*, University of Manitoba, study series no. 12,648 (December 1996).

The initial evaluation<sup>25</sup> indicated that 95 per cent of participants were glad they had attended, while 95 per cent regarded the content as relevant and 96 per cent regarded the programme as well-organised and easy to understand. Most parents felt they could use the information to deal more effectively with their children and with the other parent. Almost all the participants indicated that they would recommend the programme to others. There was also some evidence to suggest that an increased level of knowledge about post-separation issues is associated with a lower level of conflict between parents and that parents were more satisfied with access and child support arrangements. Mediation referrals increased in the first year and there was some evidence that those who received mediation in addition to attending the programme benefited the most, with increased satisfaction relating to custody and access and more positive co-parenting. The evaluation also suggested that parents who attended the programme within the first six months of separation gained more than those who attended much later in the divorce process. A high number of participants (92%) supported the programme becoming mandatory. McKenzie and Guberman considered that the research supported the mandatory option, but felt that a random control trial might be helpful to assess the impact of a mandatory programme. Such an experiment has not been conducted. The researchers also recommended the expansion of the programme to two sessions. Although the pilot evaluation had found some evidence of small positive changes in the level of conflict among co-parents some three months after they had attended a seminar, it was suggested that a more intensive programme which provided additional opportunities for more highly conflicted parents to develop a better understanding of the effects of conflict on their children, and to develop skills and strategies to deal with these conflicts, might be beneficial. This suggestion was taken up.

The new programme involves the provision of two three-hour seminars, the first one being similar to that originally piloted and evaluated. Financial issues are now covered in the first session, including a focus on the new Canadian child support guidelines. It remains a requirement for all parents who wish to access mediation services in respect of custody and access issues.<sup>26</sup> The second three-hour session has two options: one deals with co-operative parenting (low-conflict cases); the other deals with parallel parenting (high-conflict cases). At the end of the first session parents complete a short questionnaire to guide their decision as to which of the two groups to attend for the second session. The high-conflict option is recommended for people who have experienced violence in their relationship. It provides more explicit discussion of domestic violence, how to avoid confrontation with the other parent, and how to manage parenting when the level of co-operation is low. Within each group there is an emphasis on skill-building for the purposes of working more constructively with the other parent. Parents who wish to access mediation are not required to attend for the six hours, but only for the first three-hour session. Participants register separately for each of the two sessions.

Between October 1997 and February 1998, 82 per cent of the 553 applicants for the first session attended. A much smaller number registered for the second session (253 over the same time period), of whom 75.7 per cent attended. Registration and attendance at parallel parenting seminars exceeded that at co-operative parenting seminars by 2 to 1. Women represent 53 per cent of the attendees at the first seminar; men are more likely to register for the co-operative parenting seminar; and women are more likely to register for the parallel parenting seminar.

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<sup>25</sup> *ibid.*

<sup>26</sup> McKenzie, G. and Guberman, I., 'For the sake of the children: an evaluation of Phase II', *Interim Report*, University of Manitoba (March 1998).

About 15 to 20 per cent of attendees go into government-funded mediation. The overall view is that the programme works well as a prerequisite to mediation, with some modest increase in uptakes, and that parents use the information and are 'more amenable with each other'.<sup>27</sup> The research evaluation of the two-part programme is expected to be published shortly.

### *Other programmes in Canada*

The perceived success of the programmes in Alberta and Manitoba has led to increased interest across Canada. Currently, programmes are operating in seven provinces, but are mandatory in only two (Alberta and Nova Scotia). British Columbia is running a pilot for a mandatory programme. In all locations, judges may require parents to take a parenting programme as a condition of custody and access proceedings. Most programmes take between three and six hours. All the programmes focus on children, communication between parents, legal and financial issues, and information about services such as mediation. Presenters are primarily lawyers and other divorce-associated professionals and court services staff.

A special programme for children (for three age groups from 6 to 16) has been launched in Saskatchewan, and this addresses the legal process of divorce and separation as well as the emotional experiences and changes in family relationships. Videos have been produced for each of the three age groups. These are widely available in libraries, health agencies and young offender institutions and through social welfare agencies.<sup>28</sup>

A review of the programmes in Canada is due to be published at the end of 2000, but the preliminary feedback suggests that it is not necessary to use a lawyer-social worker team, that the use of videos is seen as extremely effective, that presenters need to be selected and trained and quality-control mechanisms developed, and that compliance with child support guidelines is better, although this is not solely linked to the impact of parent education programmes.

### **Parenting Education in the USA**

Divorce education programmes have burgeoned in the USA in recent years, many of them connected to the courts. The overarching goal is to help parents and children cope with divorce, although some are focused on promoting specific outcomes. Research has suggested that skills-oriented classes are more likely to impact on parental behaviour than passive teaching strategies through lectures and written materials.<sup>29</sup> The majority of programmes are mandatory and most last between two and four hours. Some of the mandatory programmes charge a fee. A number of studies have documented the programmes,<sup>30</sup> but evaluating effectiveness has been difficult since it is almost impossible to organise control groups. Most researchers have adopted a formative evaluation

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<sup>27</sup> Private communication with Dr Brad McKenzie, May 2000.

<sup>28</sup> *ibid.*

<sup>29</sup> Arbuthnot, J. and Gordon, D., 'Does mandatory divorce education work?: a six-month outcome evaluation', *Family and Conciliation Courts Review*, vol. 34, pp. 60–81.

<sup>30</sup> See Blaisure, K.R. and Geasler, M.J., 'Results of a survey of court-connect parent education programs in US courts', *Family and Conciliation Courts Review*, vol. 34 (1996), pp. 23–40; Braver, S.L., Salem, P., Pearson, J. and Deluse, S.R., 'The content of divorce education programs: results of a survey', *Family Conciliation Courts Review*, vol. 34 (1996), pp. 41–59.

approach (as in our study of information meetings), and there is some evidence of positive improvements in parental communication.<sup>31</sup> An interesting finding, which accords with ours, is that the timing of attendance may influence the effectiveness of the programme. The sooner parents participate in divorce education the less entrenched conflictual parental communication becomes. Learning and using co-parenting skills have been shown to reduce the possibility of putting children in the middle of parental conflict. It has been noted, however, that co-operative parenting is an impossible goal for some parents in high-conflict or abusive relationships, and other strategies for constructive parenting need to be taught.

Our observation of some of these programmes has shown that they tend to be more dynamic than the group presentations piloted here, with a much clearer focus on conveying strong messages about what children need and how parents should respond to these needs. The presenters are often hard-hitting in the way they encourage parents to review their own behaviour, pointing to the damage they might be doing to their children. They convey a preferred picture of what post-divorce parenting should be like and underline the responsibilities of parents to meet the expectations required of them. The mandatoriness of the programmes is justified by the belief that many of the parents who most need the parenting education would be least likely to attend if it were a voluntary option. The detrimental impact of parental divorce on children is sufficient rationale in many states for parenting education to be provided as a compulsory programme. There is also a belief that if parents can focus on their children's needs the costs of litigation will be reduced. As yet, however, there has been limited systematic evaluation of their longer-term impacts. Nevertheless, resentment at the compulsory nature of the meetings has been relatively low: for example, in Utah, although 82 per cent of the first 7,000 participants indicated that they resented having to attend (they are also required to pay a fee), only 7 per cent felt that the course should not be mandatory. Geasler and Blaisure<sup>32</sup> found, in their survey of court-connect programmes (over 1,500 in total), that mandatory programmes did not report big problems in getting parents to attend, and the final decree might be delayed or withheld until parents attended a programme, or the parent might be held to be in contempt of court.

### **Focusing on Parenting**

The distinctive features of information provision in the USA and Canada are the focus on parenting and the overtly directive messages about what is good and bad for children and what constitutes good and bad parenting. Those programmes which have tried to promote the use of services such as mediation have not been particularly successful in meeting these kinds of objectives. The majority, however, are much more concerned to educate parents about parenting post-divorce, with a focus on reducing conflict and promoting positive parenting behaviours. In this respect they appear to have an impact, and parents have no excuse for not knowing what they should be doing to conform to the ideal types. Development work is going on in some locations (e.g. British Columbia) to design programmes which are culturally specific, and to present the parent education material in culturally sensitive forms and deliver it in community-based settings. This appears to be a most important initiative, particularly because it has been widely acknowledged that one

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<sup>31</sup> Geasler, M.J. and Blaisure, K.R., 'A review of divorce education materials', *Family Relations*, vol. 47, no. 2 (1998), pp. 67–175.

<sup>32</sup> Geasler, M.J. and Blaisure, K.R., 'Nationwide survey of court-connected divorce education programs', *Family and Conciliation Courts Review* (January 1999).

size does not fit all and flexibility is essential. As Finch has argued, the aim of policies should be

to facilitate flexibility in family life, rather than shape it into a particular form ... to ensure that people have maximum opportunity to work out their own relationships as they wish to suit the circumstances of their own lives. It is not the proper role of governments to presume that certain outcomes would be more desirable than others.<sup>33</sup>

The objectives of parent education programmes in North America are to achieve this by supporting parents through a difficult transition. There is still a danger, however, that expectations of the extent to which parents can and will modify their behaviour are set too high.

### **Information and Mediation in Europe**

Parenting education is in its infancy in Europe, although there has been a developing interest in family counselling and family mediation in several Scandinavian countries. During the past three years we have been able to visit the initiatives in Scandinavia, France and Ireland. In Norway the Norwegian Marriage Act 1991 introduced compulsory mediation for couples applying for separation and divorce where there are children under 16.<sup>34</sup> The purpose is for the parents to reach agreement on parental responsibility, residence and contact arrangements. Norway is extremely unusual in making mediation compulsory within the legal (administrative) framework for divorce. Information is provided to parents in brightly coloured leaflets, and up to four hours' mediation for each couple is provided by the state. A certificate of attendance is provided when agreements are made, or after three hours of mediation, and these are valid for six months. Most mediators have therapy or psychology backgrounds and work within state-funded family counselling services. In about 20 per cent of cases, children are included in the mediation.

Research in Norway<sup>35</sup> between 1993 and 1996 found that 80 per cent of cases reached agreement in mediation. The conclusions reached are that mediation is helpful in about 40 per cent of cases; it is unnecessary in another 40 per cent of cases; and for 10 to 20 per cent it is inappropriate because conflict between the parties is too high and intense. The indications are that the number of contested cases has declined. However, it would appear that a mandatory provision is primarily useful for only about 40 per cent of the attendees. It is described as 'a kind of prophylactic medicine', which has met with no resistance from parents. In reality, only one parent may attend, and the focus is then less on mediation and more on education and information about the impact of divorce on children.

A similar focus characterises mediation in Finland<sup>36</sup> (which is not mandatory), the first stage of which consists of discussions about divorce, the position of children and helping parents to communicate. This may result in reconciliation as well as in conciliatory

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<sup>33</sup> Finch, J., 'The state of the family', lecture to inaugurate the Institute of International Social Sciences, University of Edinburgh, 30 October 1996.

<sup>34</sup> Information about Norway was kindly provided by Birgitte Gulbrandsen, Royal Ministry of Children and Family Affairs, Norway.

<sup>35</sup> Ekeland, T.J. and Myklebust, V., 'Foreldremekling: Brukarperspektivet', Forskningsrapport nr. 23, Moreforskning Volda (1997).

<sup>36</sup> Information kindly provided by the Espoo Family Counselling Centre, Finland.

divorce. There is clearly some fluidity between mediation, therapy and counselling in the Finnish programme.

In Denmark,<sup>37</sup> both parties must attend (although not necessarily together) a meeting with an administrator (who is always a lawyer) at the County Governor's Office (divorce is granted administratively), where arrangements for the future have to be presented. The administrator must give the attendees information about the impacts of divorce, and a leaflet about children. Counselling is available for parents if required. Rarely do parties appoint legal advisors, and only a few go on to counselling.

Information provision in Europe is much less formalised than in Australia, Canada and the USA, and no provisions exist which reflect the focus given to information in the FLA. There may be little to learn from Europe with respect to the evaluation of Section 8, but the focus in the FLA on conciliatory approaches to divorce is in step with that of most European countries,<sup>38</sup> many of which have adopted an administrative/welfarist approach to the dissolution of marriage. A recent study of divorce process in Northern Ireland<sup>39</sup> has suggested that an information service modelled on FLA lines might be a useful resource, but not as a compulsory first step in the divorce process. It is seen as having the potential to play an important educational role in informing the public about separation and divorce, and could be located, it is suggested, in solicitors' offices, court buildings or within the voluntary sector. The information service is viewed as being able to provide a gateway into mediation. It remains to be seen whether these recommendations will be taken up in Northern Ireland.

### **Drawing the Evidence Together**

There are a number of lessons to be taken from other jurisdictions which can inform discussions about divorce reform in England and Wales. These are as follows:

1. There is a general consensus that saving marriages at the point of divorce is not particularly effective. Even those jurisdictions that would like to encourage couples to attempt reconciliation before proceeding to divorce have not found positive mechanisms for achieving this within divorce legislation. Early intervention is considered to be essential.
2. Mandatory information provision in other jurisdictions requires attendance at group meetings. Information is not provided on a one-to-one basis.

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<sup>37</sup> Information kindly provided by Svend Danielson, High Court, Copenhagen, and the Civil Directorate.

<sup>38</sup> See Council of Europe (Committee of Experts in Family Law), *Preliminary Report on Family Mediation Prepared for the Working Party on Mediation and Other Dispute Resolution Process* (1997).

<sup>39</sup> Archbold, C., White, C., McKee, P., Spence, L., Murtagh, B. and McWilliams, M., 'Divorce in Northern Ireland: unravelling the system', report to the Office of Law Reform, The Stationery Office (1999).

3. The mandatory programmes in North America and in some European countries are targeted at parents of dependent children. The primary focus in most of them is on giving information about the needs of children during separation and divorce and on promoting co-operative parenting. Most of those programmes are described as being educational.
4. The use of mediation is encouraged in most jurisdictions, but there is little evidence that the take-up rate is greatly increased as a result.
5. In the majority of jurisdictions (except in Australia) it is anticipated that the majority of spouses will want (and need) to consult lawyers.
6. There is growing evidence that effecting behavioural change requires more than the mere provision of information and knowledge. The programmes which are having the greatest impact on changing the ways in which parents approach divorce are those that help parents build skills in negotiation and in handling their children. In other words, they create a learning environment in which parents work on improving their parenting, and on conflict resolution skills.
7. Although some people resent having to attend a mandatory programme, the majority appreciate the experience and get something positive from it when it has a clear focus (such as on parenting).
8. Most parents regard parenting plans as a good idea, but there are barriers to using them, and making them a legal requirement may be a dubious route to take. Many parents have difficulty planning for the longer term and want to retain flexibility in their arrangements.

Family law faces difficult challenges wherever family life is undergoing structural change. Other jurisdictions have taken steps already, some over 25 years ago, to respond to the consequences of marital dissolution and to create calmer, more conciliatory approaches to the legal process. All jurisdictions have acknowledged that the law cannot achieve a different culture in the process of divorce without other social supports being integral to it, but in most jurisdictions there have been tensions between legal remedies and social welfare interventions similar to those we have witnessed in England and Wales. At least four common themes can be identified from the experiences in Australia, New Zealand and Canada.<sup>40</sup> First, these countries have attempted to make divorce more humane and less adversarial, primarily through eliminating fault-based grounds for divorce. Secondly, these countries have recognised that access to counselling and mediation services needs to be facilitated. Thirdly, recognition of the best interests of the child has led to increased support for parents through information provision, the development of parenting plans and parent education. All these mechanisms place

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<sup>40</sup> Walker and Hornick (1996), *op. cit.*

emphasis on parental responsibility as a key factor in minimising trauma for children.<sup>41</sup> Finally, the use of research in the development and evaluation of family policy and legislation is evident in all these jurisdictions. Good research information is considered essential in the search for effective remedies in family matters.

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<sup>41</sup> See Edgar, D.E., *Marriage, the Family and Family Law in Australia*, discussion paper no. 13, Australian Institute for Family Studies (1986).