Book Reviews

THE VOICE OF A CHILD IN FAMILY LAW DISPUTES

Patrick Parkinson and Judy Cashmore
Oxford University Press, London, UK, 2008, 238 pp.

One of my distinct memories from a less than memorable year of articles of clerkship, undertaken shortly before the passage of the 1975 Australian *Family Law Act*, was waiting for an appearance in a local Magistrates' Court and observing the final stages of a claim for months of arrears of what was then termed 'child maintenance'. Having been ordered to pay the outstanding amount and costs, the ex-husband left the Court, pausing only long enough to announce loudly to his ex-wife (and everyone else in earshot) 'Well, you won that round ... but I'm not paying a penny ... so I guess I'll see you in court again in six months or so.' The recognition and enforcement of rights, even those supposedly enshrined in legislation, required the use (and often repeated use) of a legal process and environment that for many can be perceived as alien, unsympathetic, costly and cumbersome. Who *wins* and who *loses*, and where do children's rights fit, in such a process?

The 1975 *Family Law Act* heralded the possibility of a new era in the resolution of family law matters, ushering in essentially 'no fault' divorce (though the previous Australian divorce legislation did allow no fault divorce, albeit on limited grounds and extensive separation periods), and the hope that the most anguished of relationship difficulties could be managed in a better way for all concerned. Yet, almost two decades after the *1975 Act*, it was commented that:

> ... if anyone tried to design a system of dispute resolution in the area of family relationships that is slow, costly, cumbersome and inflammatory it would be hard to beat our present adversary system ... (Findlay 1993).

The difficulty is how to make a system set up to assist in the making of what are often painful decisions, work better for all ... but especially for those most vulnerable and least capable of engaging with and understanding it – the children of separating and divorcing parents.

Patrick Parkinson and Judy Cashmore, in their examination of the workings of the Family Court, have drawn on the views of legal personnel, judges, counsellors, parents and children. Based on an Australian Research Council funded, cross-disciplinary examination of the views of 42 lawyers, 41 mediators, 20 judicial officers, 90 parents and 47 children, *The Voice of a Child in Family Law Disputes* includes chapters which present the views of each of these participant groups as to the contemporary family law system in Australia and its utility regarding children's views, and develops a series of recommendations as to how the child's voice could be better and more clearly heard. The authors note that children's views are variously presented to the Family Court via mediation, family reports, direct evidence, independent representation and (though often not well received and, the study concluded, to be used with caution) judicial interviewing of the children concerned. Despite increased understanding of children's development, there has often been a binary view of their capabilities, so that the capacity to meaningfully participate and contribute is reduced to categorisations based on the child's age or supposed stage of development, which overlooks the reality that '[children's] development is dynamic, interactional and profoundly affected by their relationships and experiences with those who are significant in their lives ...' (p. 4).

The Australian research is that only about 6% of Family Court matters actually come before the Court for resolution (p.216) – though of course, an unknown proportion of the remainder that are 'settled' by the parties may nonetheless involve decisions accepted by one party because of inability to participate, fear of the consequences, financial limitations, exhaustion from the process, or myriad other reasons which belie the easy assumption that a 'settlement' necessarily implies mutual participation and agreement with the outcome. But what do those involved in the small proportion of family disputes that come to the Court for adjudication want in relation to children's participation? There are strengths and limitations associated with listening to children in such difficult and contested family matters. The authors note that children can find themselves caught in the middle of parental conflicts, charged with making a decision (or perceiving that they will do so) that their parents cannot or will not make, and so ascribing them undue influence and allowing parents to avoid making what may be hard decisions. Parkinson and Cashmore clearly demonstrate that the majority of those involved in their study – parents and children, mediators and report writers, lawyers and judicial personnel – do want children to have a say in decision-making, but that they should not carry the burden of that decision-making when parents are unable to agree on parenting arrangements – they should, as Parkinson and Cashmore conclude, have 'voice' but not 'choice'. Parents and children generally do not want children to be put in the position of making decisions about their care arrangements post-separation, but do want children to be involved in the decision-making and want children's views to be heard and taken seriously. The significance accorded to the age and maturity of the child needs to be redefined – participation cannot rest solely on their age and capacity to make

decisions for themselves, but rather needs to be variously tailored to reflect their emerging autonomy. It is their *perspectives* on the proposed or possible care arrangements – not their *wishes* about them – that need to be considered.

This is a critical book examining an important and immensely difficult – for *everyone* involved – area of socio-legal practice. It presents succinct and well-supported findings and recommendations, and the use of extensive participant quotes adds to the richness of the arguments presented here – in this book itself, as with the subject matter of the research, the 'voices' of the participants are at the forefront. *The Voice of a Child in Family Law Disputes* should be of interest and relevance to the several disciplines and practitioners who deal with the Family Court and family law matters, and to those involved in policy and legislative reform. The nature of family law disputes is that some will never be able to be adjudicated without anguish for those involved – the fracturing of some relationships necessarily involves distress. However, as the authors conclude (p.219), perhaps the way forward in family law disputes is to abandon the idea that children and their best interests need to be protected *from* participation, and to develop ways to protect them *in* participation.

REFERENCE

Findlay, H.A. (1993) 'Family mediation and the adversary process', Australian Journal of Family Law, 7(1), 63-83.

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REFORMING CHILD PROTECTION

B. Lonne, N. Parton, J. Thomson & M. Harries
Taylor and Francis, London, 2008, 213 pp.

This is an important and, in our view, a praiseworthy book. It is primarily, but not exclusively, written by Australian social work academics and is probably the most important book on this topic for more than a decade. In the introductory chapter, the authors of the book introduce their central thesis. They state that:

> Fundamental to our analysis is the reality of the now well recognised systemic failure of the child protection systems that operate in Anglophone countries and their underlying paradigm (Lonne et al. 2008, p. 3).

Following this bold statement, the authors assemble the evidence in five chapters from both national and international perspectives, to support this claim. In Chapter 6, there is presentation of a Child and Family Reform Agenda, and in Chapter 7, a New Ethical Practice Framework is outlined. Chapters 8 and 9 of the book are about Effective Organisational and Service Delivery Models and Planning and Implementing Change. Finally, Chapter 10 of the book reflects on Change and the Future of Child and Family Well-being Practice.

The countries that they identify as Anglophone are the United States, Canada, the United Kingdom (now separately Northern Ireland, Scotland and Wales), Australia and New Zealand. The claim is that these countries have a more or less common approach to the protection of children which is characterised as follows:

- they tend to use the term 'child protection' services;
- most of them are highly forensic and focused primarily on assessment of risk to children by family and caregivers;
- services tend to be extremely managerialised structures and processes with priority given to risk-averse practices and highly legalised procedures;
- the referral portal tends to be one in which reports and referrals are for 'children at risk' rather than 'child or family need';
- most have mandatory reporting legislation (or its equivalent such as reporting protocols) that require the reporting to a statutory authority of any concern about harms or risks to children;
- prevention and family support are generally accepted in the policies of the statutory authority for child protection, but are secondary to the primary role of child protection.

(Lonne et al. 2008, pp. 3-4)

Against this background, these authors then identify what they see as the challenges, including:

- the need for a renewed focus on child and family well-being rather than on investigation and surveillance;
- a new ethical framework with a well-articulated value base;
- return to a relationship-based practice and genuine partnership with children and parents;
- professional and public health approaches that accept and manage risk;
- a renewed emphasis on the importance of working locally and assisting families;
- accessible and integrated programs and services that are embedded within neighbourhoods and communities;
- engagement between practice-informed management and front-line child and family-informed practice, and
- a long-term focus on outcomes for children, families, neighbourhoods and communities 'over time'.

(Lonne et al. 2008, p. 7)