



**Speech to Littlies Lobby
Grand Hall Parliament Buildings
Wednesday 1 September 7.30am**

“Our Children Must be Secure at Home”

Speech Notes of Principal Family Court Judge Peter Boshier

The Hon Deborah Morris, Members of Parliament, ladies and gentlemen.

Thank you for the invitation to speak to you this morning. It is a privilege to do so. I would like to share with you this morning some issues concerning the Family Court but I want to do it in relation to one of the Littlies Lobby’s key messages, and it is “me matua whakamau a tātou tamariki i te kainga”. “Children must be secure at home”.

Two weeks ago, the National Collective of Womens Refuges released a Report on how the Domestic Violence Act 1995 had fared and how the Family Court was seen to be implementing the Act. There are some important messages in the Report and I felt that today would be a useful time to talk about how we handle domestic violence, how we try to protect our very young and vulnerable children and how the Family Court works generally.

I am sensitive to the fact that just how open the Family Court should be is a political matter and is yet to be debated. However we clearly have consensus from both the Parliamentary and Executive arms of Government that the Family Court needs to be more open and so it is inevitable that there will be further moves in that direction.

One of the ways that we can monitor what is actually happening in New Zealand society is by having a clear window through which we can look and see how we as New Zealanders, conduct ourselves.

When the Family Court was created, it was felt that those who appeared before the Court needed to have the privacy and confidentiality with which to honestly approach their issues and endeavour to resolve them. It was not felt that the deeply personal issues of families and particularly children should be as open to public scrutiny as had been the case. Parliament, in 1980, drew a clear distinction between the Family Court and the other typically public Courts.

While that situation has permitted dignity and privacy to remain intact, it has not necessarily permitted a clear view to be obtained on how some of us conduct ourselves. The picture is not always so pretty.

I was appointed a Judge in 1988. Fairly shortly after my appointment I read an affidavit sworn by a South Auckland Police Officer. The case concerned a two-year-old child called Delcelia. I was being asked to make a custody order in relation to one of Delcelia's siblings. Delcelia was born on 28 December 1988 and died on 21 March 1991. The affidavit said this, in relation to her condition.

“12. When she was killed on or about the 21st of March 1991, her major injuries were:

- (a) Front teeth broken.*
- (b) Fractured jaw.*
- (c) Bruising, abrasions and cuts around the face and neck area. There was some fresh and old scars around the throat.*
- (d) Cigarette burns to the legs.*
- (e) Undernourished.*
- (f) Hair apparently physically pulled out.*

(g) *Massive scalding to the back, buttocks round to the stomach.*

(h) *Separate scalding on the left arm. Both these scaldings it is believed were deliberately caused.*

13. *It is believed that the death was caused from peritonitis from a burst bowel which resulted from a blow to the abdomen.*

14. *There was some swelling of the brain and around the ear.*

15. *It appears the child had been sexually violated”.*

That case concerned Delcelia Witika. Delcelia’s mother was charged with her murder.

Because that case also involved a criminal case, the public did share in some of the details and it is for this reason that I can share with you now that terrible affidavit evidence that I read, as a relatively new Judge.

There are many other cases, not necessarily as serious as this, which come before the Family Court and which at present, you do not know about. I regret that. I would like there to be a much clearer window through which we can all look to see what sort of domestic violence cases come before the Family Court. So that we can see the, at times, unbelievable things that New Zealanders do to other New Zealanders. If we are to make our children secure and stop them from forming part of a repeat violent cycle, we need to know the facts and we need to know to what extent, domestic violence is putting our young children at risk.

We can protect our children in one of two ways or both. The first of course is through care and protection proceedings that might be taken through the Department of Child Youth and Family Services. The second way in which we can protect our children is through the making of protection orders almost inevitably filed by adults but which if made, also protect children of families. I thought it might be helpful to share with you some statistics about the domestic violence work that we do.

Between July 2003 and June 2004, 4899 applications were made for protection orders. The Court made 3229 orders in the first instance, without notice to respondents. Taking into account temporary orders discharged or applications not proceeded with, a total of 2673 final protection orders were made.

These orders were all made in relation to situations in which Judges felt that domestic violence was occurring to such an extent that protection of victims was required. Many of these victims are children and many of them are very young. When we read, day after day, affidavits filed by applicants in support of these orders, I can say to you that we are often visibly moved by the unfairness and the injustice of young vulnerable children either witnessing severe violence or being subject to it themselves.

I am pleased that New Zealand has such a world leading approach to addressing domestic violence. There are few countries, as far as I know, which provide the Courts with such good ammunition to address domestic violence, as our Act of 1995.

Since June 1999 when statistics on the making of orders have been collected, there has been a decline in the number of orders applied for. The position looks like this.

Period June to June	1998	1999	2000	2001	2002	2003
	1999	2000	2001	2002	2003	2004
Total number of applications filed	6970	6076	5927	5649	5218	4899
Applications Filed on Notice	758	592	683	728	742	633
Applications Filed Without Notice	6212	5484	5244	4921	4476	4266
Temporary Orders	5247	4522	4107	3768	3430	3229

Made						
Final Orders Made	4322	3842	3625	3290	2981	2673

Is this falloff in applications being applied for, a worry? Are we protecting victims of violence less? Are we putting children more at risk?

I think there would need to be good empirical research before any of us were bold enough to draw instant conclusions. But one very obvious reason for the decline is because protection orders once applied for stay in place forever, unless they are discharged. It follows, that of the 4322 protection orders made in the year to June 1999, many of them, and possibly the majority, remain in force. Approached in this way, you will see that since July 1998, the Family Court has made a total of 20,733.

Can I venture a suggestion as to why there may have been a gradual decrease in the number of applications brought. A decrease may be natural and inevitable. Once protection orders are made, they endure. Those subsequently requiring new protection, may be less, over a period of time. It can't be assumed that the number of victims who obtain protection in one year should be replaced by an equal or even greater number seeking protection in the next.

Of concern however is the Refuge's Report that many women victims find the obtaining of protection orders too expensive, too difficult and not worthwhile. These perceptions are important to address and I think that the Family Court must constantly look at its processes to make sure that they are operating as Parliament would have expected when the Act was passed.

However I express the very careful and cautious view that the Family Court should not be seen as having an agenda of its own in the way that it goes about its business. To be sensitive yet robust is appropriate. However to enter into a public debate on whether the Domestic Violence Act is being properly used is I think, to place the Court in an unwise position.

I say this because although the National Collective of Women's Refuges has been critical of the Family Court's user-friendliness in the obtaining of orders, so also have men's groups been equally vociferous against what they perceive has been an over-willingness on the part of the Family Court to make protection orders. The fact that each lobby group attacks us may indicate that we might have the balance round about where it should be.

However, I do want to say, that domestic violence is a scourge and we must, to the very best of our ability, ensure that children must be secure at home. If this means that at times, we err on the side of being more protective than some would like, then I make no apology for it.

In talking about the openness of the Family Court, I would like to encourage access by all of you, but particularly those of you who are Members of Parliament, to the Family Court so that you can see how our work is undertaken. I warmly encourage visits to Family Courts by those with a genuine interest in looking at the cases that pass through it.

The newly launched Family Court website (www.justice.govt.nz/family) contains a raft of information about the Family Court and its processes and includes decisions of the Court that have been anonymised to protect the privacy of the parties.

A Member of Parliament who made a request of me, has sat in on one of my Court days to see what happens.

So far as domestic violence is concerned, can I share with you how we go about this work so that you have a view from the inside.

Most applicants for protection orders are women and many have consulted a Refuge, a Citizens Advice Bureau, a domestic violence centre, or a lawyer. The victim of violence files an application for a protection order in the nearest Court. If there is no Judge sitting in that Court that day, the Registry accepts

the documents and faxes them to the nearest appropriate Court. The Family Court website helps applicants to gain access to forms, and explains processes.

Some Courts have duty Judges available to deal with the many applications that come in, particularly in the afternoons, and Auckland, is an example. But in many other Courts in the country where there is just one Family Court Judge per Court, for instance Whangarei, Rotorua, New Plymouth, Wanganui, Nelson, Dunedin, Invercargill and so on, the Judge will deal with an application either during a lunchtime, a tea break, or at the end of the days work.

In the words of the Domestic Violence Act, for a victim to obtain a protection order **without notice** to the alleged perpetrator, the victim must satisfy the Court that there will be a risk of harm or undue hardship to the applicant or a child of the applicant's family or both.

The Judge has to make a snap decision on whether the interests of the victim outweigh the interests of the person against whom the order is sought. There are risks either way. If a protection order is granted too readily, there may be enduring bitterness by the person against whom the order is made. If the order is approached too cautiously and not made in the first instance, there is the risk of further harm. Littlies may not be secure at home.

If the protection order is made without notice, it is served on the respondent and the law says that it is then for the respondent to take steps to defend the application if they wish to. If the order is defended, it is set down before the Court and heard as a defended case. The Judge makes a decision in the usual way by hearing from each party and their witnesses and then deciding whether a final protection order is justified.

Sometimes it takes too long to get back to Court after the temporary protection order has been made and this delay can be destructive of relationships between children and their parents.

Recently, the Family Court Judges have tried to respond to the concerns of delay by creating an automatic review hearing within two weeks, after a temporary protection order has been made, and where the order also protects children. In these cases we are moving towards routinely appointing counsel for children so that the impact of protection orders on children's care arrangements can be quickly investigated and reported on. We are trying to achieve safety for children but also secure normal parenting arrangements.

I cannot stress enough that this is high risk work. But I doubt that my espousing this and saying how we approach our work is necessarily the best way of communicating how the Family Court operates. More openness of the Family Court and better access by those with a genuine interest in attending the Court to see what happens is to be encouraged because you get to see it all.

I want to conclude by talking just briefly, on the subject of families. Of all of the topics attracting political interest at present, the concept of family seems to be high on the list. Recent legislation in Parliament has greatly broadened the scope of the definition of families and more broadening of the definition is proposed. There is not only interest in the definition of a family but in exploring how better families can be assisted and of course the recently launched Families Commission with its substantial funding is indicative of that.

From my perspective as a Judge of the Family Court for sixteen years now, can I reflect on what seems to matter most, to me. It is to have a loving, nurturing home in which children can be brought up. If we can do anything to avoid families like the one in which poor Delcelia Witika was brought up in and perished in, then I would applaud it. Family Court Judges see too many conventional dysfunctional families in which repartnering by the adults has occurred to such an extent that a sense of nurturing, belonging and feeling secure, has been far too compromised.

If we can concentrate as a society, on providing love and security to our littlies, then I don't much mind how the family is constituted. Can we make that our prime focus?

Conclusion

I hope that some of these ideas and thoughts are helpful and informative. I hope I have been able to shed a little light on the importance that the Family Court attaches to domestic violence cases and resolving them within the law but sensitively and firmly. Most of all, I hope I have stressed that small children, our littlies, who cannot speak for themselves and who are particularly vulnerable, need the most attention of all.

There is room for improvement and for some reform. For instance I would like to see much greater emphasis given to ensuring that victims of violence are referred to meaningful and supportive programmes so that the ongoing cycle of violence can be better avoided. Of course it is much more difficult to refer small children to such programmes but we need to make real effort to get their parents to address the violence that has occurred and to understand the often-drastic consequences of it.

All of us can help by deploring domestic violence and by never regarding it as acceptable or excusable. Our children deserve no less.

I thank Plunket and congratulate the Littlies Lobby for what it does. I thank you all for coming and for showing an interest in the Family Court and the work that it does. Our Court is arguably one of the most significant in the country and it is certainly one that impacts on the lives of ordinary New Zealanders more than any other Court.

I look forward to further communication and further action in making sure that we provide a safe and secure environment for our young children.

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