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# PROCEDURAL INNOVATION IN THE NEW ZEALAND FAMILY COURTS: THE PARENTING HEARINGS PROGRAMME

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A thesis submitted in fulfillment  
of the requirements for the degree of  
Doctor of Philosophy  
The University of Auckland  
2009



# ABSTRACT

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Parenting disputes are the main source of litigation in the New Zealand Family Courts. Although ninety five per cent of the 13,000 cases filed annually are resolved in the “conciliatory arm” of the Court, the remaining five per cent require judicial determination. Of those, a large number return to court, showing that the outcomes in these difficult cases are of poor quality, despite their disproportional use of resources. It is often suggested that the root cause of quality and resourcing problems lies in the characteristics of adversarial litigation. A procedural innovation that addressed these issues was recently trialed.

The “Parenting Hearings Programme” (PHP) promises a less adversarial and more child focused process, achieved by changing the judge’s role. The judge, not the parties, determines the relevant issues and the scope and nature of the evidential process. Judges apply mediative and adjudicative interventions in a “hybrid” process with “inquisitorial” characteristics.

This thesis discusses the social and legal context of parenting disputes and evaluates the PHP from different perspectives, including comparative law, conflict theory, alternative dispute resolution (ADR) methodology, natural justice, and compliance with court rules. The empirical component includes the results from a survey of family lawyers.

While my findings confirm the potential disadvantages of adversarial litigation, the principles and procedures that constitute the PHP are not endorsed. Conflict- and ADR theory unearth serious shortcomings in the PHP concept. Comparison with a truly inquisitorial system suggests that changing the nature of some aspects of the court process has little prospect of sustained success. The innovation is arguably outside the rules and rule making powers of the Family Court, and it is doubted whether the PHP complies with fundamental tenets of the New Zealand justice system.

The pilot process is found to have been lacking in methodology and execution, and the PHP innovation has not achieved the required level of endorsement and support from the legal profession.

This study suggests a focus on improving the operational efficiency and resourcing of the Family Courts, rather than continued engagement in innovative experiments that ultimately fail to improve accessibility and quality of justice.

# ACKNOWLEDGMENTS

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I would like to express my immense gratitude to my supervisor, Associate Professor Pauline Tapp, for her inspiration and guidance, her never faltering enthusiasm for this project and her preparedness to discuss and debate any and all aspect of this thesis and the literally dozens of hardly related issues that I encountered and investigated along the way.

Dr Nicola Taylor acted as my advisory board and I wish to express my deep appreciation for her constant emphasis on clarity and focus and her zealous advocacy for consistent use of method and structure.

I am grateful to the hundreds of family lawyers who took the time to participate in my surveys and the senior lawyers and psychologists who gave their time for interviews and conversations.

My thanks go to the judges who made themselves available for interviews, and particularly to His Honour Peter Boshier, the Principal Family Court Judge who I had the pleasure of talking with on several occasions, and who helpfully granted permission to observe PHP hearings and to study and analyse PHP court files.

I thank the parties who gave consent to my presence during their court hearings, and the registry staff at the Auckland Family Court who facilitated my court observations. I also thank the registry staff in the Family Courts where I undertook my research of court files.

# CONTENTS

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Abstract	iii
Acknowledgments	iv
Contents	v
List of figures	vii
List of tables	vii

## **PART I INTRODUCTION AND RESEARCH PARAMETERS**

**1**

1	INTRODUCTION TO THIS RESEARCH PROJECT	1
2	THE BACKGROUND AND RELEVANCE OF THIS RESEARCH	3
3	METHODOLOGY AND RESEARCH QUESTIONS	4
4	ORGANISATION OF THE THESIS	7

## **PART II CONTEXT**

**9**

5	POST-SEPARATION PARENTING	9
	Statistics	11
	Is the decline of formal marriage a social pathology?	14
	The effects of divorce	31
6	THE FAMILY LAW SYSTEM IN NEW ZEALAND	44
	The statutory, judicial and legal environment	45
	Other professionals involved in family law	54
	Policy objectives	55
7	DISSATISFACTION WITH THE CURRENT LEGAL PROCESS	56
	The process does not achieve the policy objective	56
	The process is inefficient and inequitable	58
	The process does not provide “user satisfaction”	58
	The perceived cause of problems: adversarial process	60
	Adversarial process and the welfare principle	63
	Problems that arise as a consequence of litigation	72
8	REMEDYING THE ADVERSARIAL PROCESS	81
	Creating alternative processes	81
	Adjusting the periphery of the court process	86
	Changing the character of the court process	88
	Changing the users of the system	89
	The critical problem of delays	91
9	JUDICIAL LEADERSHIP IN THE FAMILY COURT	95

## **PART III A NEW APPROACH IN AUSTRALIA AND NEW ZEALAND**

**98**

10	AUSTRALIA	98
	The introduction of the Children’s Cases Program (CCP)	98
	The evaluation of the CCP pilot	102
	Features of the Less Adversarial Trial process	104
	The wider context of Australian family law reform	107
11	THE NEW ZEALAND PILOT	108
	Objectives of the PHP process and pilot	109
	Features of the PHP process	109
	The official evaluation of the PHP pilot	113
12	THE CCP AND PHP COMPARED	114
	Circumstances leading to CCP and PHP innovations	114
	The surrounding legal and social infrastructure	114
	The features of the programmes	115
	The features of the pilots	116

**PART IV THE PHP FROM DIFFERENT PERSPECTIVES****118**

13	CONFLICT THEORY	118
	The social function of conflict and resolution systems	118
	The core elements of conflict theory	122
	The role of power in conflict	130
	Conflict behaviour	131
	The role of information exchange in conflict	134
	Conflict – micro perspective	135
	Conflict – macro perspective	138
14	ADR: THEORY AND METHODOLOGY	139
	Alternative dispute resolution and the law	139
	ADR, Theoretical basis	140
	Parameters of dispute resolution paradigms	142
	The paradigms currently used in parenting matters	150
	A PHP hearing	160
15	INQUISITORIAL PROCESS: DUTCH CIVIL PROCEDURE	165
	Legal system	166
	Organisation of the court system	167
	Dutch Family Law	168
	Divorce procedure and parenting dispute	169
	The wider context of family law in the Netherlands	172
	Is inquisitorial intervention the solution?	173
16	CONSTITUTIONAL CONSIDERATIONS: NATURAL JUSTICE	175
17	THE PHP AS A SYSTEM OF RULES	181

**PART V EVALUATION****188**

18	THE EMPIRICAL COMPONENT OF THIS EVALUATION	188
19	EVALUATION OF THE PHP PILOT	192
	Criteria for the use of pilots in policy development	193
	The PHP pilot in the context of these criteria	195
20	EVALUATION OF THE PHP PROCESS	206
	The nature and sources of the PHP objectives	206
	Policy objectives	209
	Outcome objectives	223
	Process objectives	236

**PART VI CONCLUSIONS****250**

21	CONCLUDING DISCUSSION	250
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**BIBLIOGRAPHY, REFERENCES AND CASE LAW,****253**

	Bibliography and references	253
	Case Law	279

**APPENDICES****281**

	Tables of survey results	281
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## LIST OF FIGURES

Figure 1	Marriage rates 1994–2008	12
Figure 2	Declining popularity of marriage	12
Figure 3	Household Type Distribution	14
Figure 4	Median female wages/work area	29
Figure 5	Example of an Expression of Dissatisfaction	59
Figure 6	Flowchart for the PHP process	112
Figure 7	Flow Diagram for Differential Case Management	121
Figure 8	A Dynamic Model of Conflict	123
Figure 9	A Conflict Behaviour Model	132
Figure 10	Dispute Resolution Communication Models	141
Figure 11	A Dispute Resolution Model	141
Figure 12	Fathers' Protest in the Netherlands and New Zealand	172
Figure 13	Family Law Experience of Respondents	189
Figure 14	PHP Experience of Respondents	190
Figure 15	Parenting Issues / Respondents Workload	190
Figure 16	Respondents' Cases / Pilot Sites	191
Figure 17	Courts in which Respondents Acted	191
Figure 18	Respondents' Views about Pilot Projects and the PHP Pilot	195
Figure 19	Use of PHP Information Sources	202
Figure 20	Respondents' Views about Quality of Information about PHP and Pilot	204
Figure 21	Respondent's Views about the Assumptions underlying the PHP Process	214
Figure 22	Respondents' Views about the PHP Policy Objectives	221
Figure 23	Disposal Time of Parenting Cases	226
Figure 24	Respondent's Views about the Assertions in Respect of PHP Outcomes	234
Figure 25	Respondents' Views about Process Objectives	237

## LIST OF TABLES

Table 1:	Family law experience of the survey respondents.	281
Table 2:	Respondents' parenting issues work as percentage of total work.	281
Table 3:	Respondents' knowledge of the PHP process.	281
Table 4:	Sources of PHP information.	282
Table 5:	Sources of PHP information for those with/without PHP experience, as %	282
Table 6:	Experience in PHP cases, 2007, 2008 and combined.	282
Table 7:	Number of PHP cases / respondent, 2007, 2008 and combined.	283
Table 8:	Respondents' role in PHP cases, 2007, 2008 and combined.	283
Table 9:	Courts in which respondents acted in PHP cases.	283
Table 10:	Development in speed and quality as the pilot progressed.	284
Table 11:	Respondents views on whether the PHP process should be continued.	284
Table 12:	Quality of information about PHP, 2007, 2008 and combined results.	285
Table 13:	Assumptions underlying the PHP, 2007, 2008 and combined results.	286
Table 14:	Views about outcome objectives 2007, 2008 and combined.	287
Table 15:	Views about process objectives, 2007, 2008 and combined.	288
Table 16:	Respondents' views about PHP policy objectives, 2007, 2008 and combined.	289
Table 17:	Respondents' views about pilot projects, 2007, 2008 and combined.	289



