PO Box 15 Albany Village Ph (09) 415-0049 johnp@menz.org.nz ww.menz.org.nz

MEN'S CENTRE
NORTH SHORE

Submission on Laws about Guardianship, Custody and Access

in response to the discussion Paper "Responsibilities for Children - Especially When Parents Part"

Introducing Men's Centre North Shore Inc.

We are a volunteer organisation of men and women working to support men and their families. Although we are based in North Shore City, almost half of our members live elsewhere, and they include over a dozen men's groups throughout New Zealand.

We run free weekly Information and Resource Seminars offering support and information to men and women regarding relationship break-ups, court orders, child support, access and custody problems; and males experiencing female violence.

We receive regular referrals from Citizens Advice Bureaux, Mensline and other community agencies. Our meetings are currently attended by an average of 13 people each week.

We publish a monthly newsletter *MENZ Issues* (circulation 400 / 500 copies), and run a website: www.menz.org.nz

We also take an active part in networking with other New Zealand organisations which work towards improving the welfare of men and their families. We do not support any particular political or religious philosophy.

Objectives

2.1 The basic goals of our laws regarding children should be to ensure the best possible outcome for the child. This should be determined by mainstream scientific knowledge rather than specific ideologies and unrepresentative cultural perspectives.

Issues About the Current Law

4.1 The law should start with a presumption that parenting will be shared equally by the mother and father unless parents mutually agree to another arrangement.

4.2 The primary focus of the court should be on creating a viable parenting plan. There should be increased use of trained mediators so that litigation is minimised.

4.3 The terms "custody" and "access" should be removed from legislation, and be replaced by "time and place of residence". As Family Court judges have demonstrated no particular expertise in defining the best interests of children, a broader range of options is likely to create even more argument and negative outcomes. The default

position in the legislation should be a 50/50 split between parents to remove the current incentives to escalate disputes.

4.4 The experience of many New Zealand fathers is that the current Act focuses on the best interest of the mother rather than the children. The Court is widely perceived to be a "women's court", which undermines its legitimacy and standing in society. New legislation should include provision for ongoing data collection to ensure that the implementation of family law and outcomes of Court decisions are gender-neutral.

4.5 The current law does not uphold our obligations under UNCROC, particularly Article 9.3. New Zealand children are routinely denied the right to maintain meaningful contact with fathers on the basis of no more than unsubstantiated allegations of abuse by the mother. We do not accept that "the balance of probabilities" (see also 5.26) is a fair test in the context of removing a child's rights of contact with a parent.

4.6 Legislators should be extremely cautious about over-emphasising the views of children regarding with which parent they reside. Generally the law recognises that children are not competent to make decisions which may negatively impact on their future prospects (eg: contracting debts). Some children are easily manipulated by parents who wish to alienate their ex-partner, and the current system encourages and rewards this kind of psychological abuse.

4.7 The law should instruct the Court to work from a basis of 50/50 shared parenting, and where there is ongoing difficulty the primary residence should be with the party who has demonstrated the greatest willingness to facilitate access to the other parent.

4.8 Parental responsibility should specifically include the obligation to facilitate reasonable and regular access to both of the child's extended families. There should be disincentives for a parent to move to a new residence geographically distant from the former family home.

4.9 The rights of parents should be de-emphasised in future legislation, in favour of the rights of the child.

4.10 The law should encourage both parents to fulfil their on-going responsibilities towards their children by removing incentives and rewards for escalating disputes.

4.11 The use of "parenting plans" should be encouraged. These should not be formally sanctioned by the court in the first instance, because the plans should be able to be easily modified in response to changing circumstances. However provision should be made for the court to sanction and enforce these plans in the event of non co-operation by either parent.

4.12 The mother and father should retain the primary responsibility for negotiating the ongoing parenting of their children when they part. In the event of dispute however, the views of the extended family should be taken into account using the family group conference format. Information arising from the FGC should be made available to the court in the event that a judicial determination is necessary.

4.13 We submit that in this context the values and aspirations of Maori are broadly similar to those of other races living in New Zealand, and would be best incorporated in the Act by discontinuing the current practice of endorsing and supporting a parent's decision to alienate one half of a child's extended family.

4.14 The law should recognise and support the role played by the extended family in all racial groups equally.

4.15 Grandparents should have the right to apply to the Court for ongoing contact.

4.16 Others should be able to apply for contact only in circumstances where it can be shown to be in the child's best interest.

4.17 The best way to obtain the input of the extended family would be in a Family Group Conference, facilitated by trained mediators. CYFS should not normally have a role unless there are demonstrated care and protection issues.

Procedures in the Family Court

5.1 The Courts should only be used as a last resort when disputes are unable to be resolved by other means. Agencies such as Relationship Services, Banardos, Presbytarian Support should be contracted to provide professional mediation services.

5.2 The Court's role should be limited to weighing conflicting evidence and making decisions which are highly predictable so as to minimise the opportunity for vexatious disputes.

5.3 Judges and lawyers should promote reconciliation provided there is no evidence of abuse by either of the parties because this is in the best interest of the children.

5.4 Counselling should be rapidly phased out in favour of specialised dispute resolution and mediation services.

5.5 Counselling services should not be provided to children unless it can be scientifically demonstrated that the outcomes will be in their best interest. Children should be allowed to attend mediation conferences.

5.6 Mediation should take place initially between the two parents. If a satisfactory resolution is not achieved the next step should be a Family Group Conference which canvasses the views of the wider family.

5.7 Judges roles should be limited to determining matters of fact, upholding and enforcing the law.

5.8 The use of mediators and dispute resolution services independent of the Court should be encouraged. Funding should be made available for the ongoing monitoring of such services, and for research into their effectiveness.

5.9 In a large number of cases that we have been involved with, Court appointed psychologists misrepresent the limits of their expertise, and make recommendations that are not supported by scientific literature. Currently the Court relies far too heavily on psychological evidence, and considerable resources are wasted which could be better applied elsewhere. Because there is a "closed shop" situation in operation regarding the psychologists who get the Family Court work, colleagues who have other perspectives are systematically excluded from this area.

5.10 The views of children should be treated with caution (refer to comment 4.6). The experience of many of our members is that Counsel for Child often does more harm than good, and some seem more interested in advancing their own ideological objectives rather than genuinely representing the best interests of the child.

5.15 Family Court proceedings should be far more open. Justice that is not seen to be done is not justice. It should be noted that despite the current prohibition, an increasing number of New Zealand Family Court decisions are being published informally on the internet, and because they tend to be extreme examples of judicial bias and incompetence, the reputation of the Court is seriously undermined as a result.

5.16 It is reasonable to prohibit publication of details which identify participants in Family Court proceedings. All other aspects of Judges decisions and reasoning should be open to public scrutiny, and interested parties should be allowed to attend hearings.

5.17 Funding should be made available to collect statistical data on Family Court decisions, and research of representative samples of cases should be undertaken to determine whether in fact the best interests of children are being served. If the outcomes of Family Court decisions were fair, predictable and consistent, the need for expensive public relations exercises would be minimised.

5.18 A simple user-friendly pamphlet informing applicants that litigation is highly likely to result in an arbitrary 50/50 split would encourage many couples to sort matters out themselves. Professional mediators could also give this information.

5.19 The workload of the Family Court should be minimised by ensuring applicants have undergone a formal mediation process before accepting cases. If a 50/50 outcome was

relatively predictable it would not be worthwhile "having a go" as it is now. The Court should cease rewarding unsubstantiated allegations of abuse with custody, and should punish false accusations. A "do-it-yourself kit" may be useful for people who cannot afford lawyers, however our experience in trying to put such a kit together is that there are so many variables and uncertainties associated with Family Court procedures it is difficult to keep a kit concise. Also, we note that potential applicants are quite likely to be emotionally distressed to the point of irrationality, so it may be more effective to provide funding to support groups such as ours who can provide information tailored to each individual case.

5.20 If the default position was 50/50 shared parenting, it would be reasonable to limit repeated applications for variations to parenting arrangements. In the current situation of "winner take all", we submit that denying applicants access to justice is likely to lead to increasing numbers of people taking the law into their own hands, and would be extremely dangerous in some circumstances.

5.21 The current failure of the Family Court to enforce access orders has significantly undermined its standing in the community. It is widely recognised that women can flout Family Court orders with no fear of sanction, and this is a continuing source of resentment and anger among many fathers. The chief Family Court Judge's suggestion that fines could be imposed is impractical given that many offenders are beneficiaries. In many cases, financial penalties would hurt the children more than the offending mother. We submit that if even a few repeat offenders were jailed for a weekend to allow access to take place, compliance would improve dramatically. This would be consistent with consequences for men who breach protection orders. Men may be jailed for sending birthday cards to their children or flowers to their ex-wife.

5.22 Families and communities would be best helped to support Court Orders if they were seen to be enforced without regard to the gender of the parent subject to the order.

5.23 In general, our impression is that implementation of the Hague Convention is working reasonably well. We are aware of one case where the daughter of a man attending our support group was allowed to leave New Zealand despite an alert in place with immigration authorities, but this may well of been an isolated case of human error on the part of the staff involved. There is a much greater problem with mothers re-locating to other parts of New Zealand in order to prevent or hinder access, and in most of the cases we have been involved with the Court has endorsed this behaviour. We submit that in the event of dispute, the Court should be required to make orders insisting that children remain in the general locality of the matrimonial home.

5.24 Supervised access is in many cases abusive to children and their relationships with their parents. Contrary to the implication of the discussion document, most supervised access occurs not because the access parent has been violent, but because the custodial parent has made an untested claim that their ex partner has been abusive. Hundreds of children have been subjected to this regime on the basis false accusations, which the Court has been unable to deal with effectively. We submit that the test of "balance of probabilities" is NOT sufficient to justify removing a child's right to meaningful contact with both parents. Many men report that the supervisors are young, have little life experience, and no appreciation of what it means to be an effective parent. Rules such as not being allowed to ask the child questions or give gifts seem designed to hinder and frustrate normal parent-child relationships. Access centres are often run by organisations which do not appear to share the cultural values of the communities they serve, and staff are not accountable for their behaviour. We submit that all access centres should be required to make provision for representation from the local community in their management. There should be a publicised complaints procedure, and provision for appeal to an independent outside authority. Feminist dominated

organisations such as the Commission for Children would not be credible in this role. It should be a requirement that supervisors must be (or have been) parents themselves, and there should be equal numbers of fathers and mothers.

5.25 The wording of this question in itself betrays the lack of appreciation that the focus should be on the child's right to meaningful and enjoyable access, rather than on punishing the supposedly violent parent. We submit that it is not in children's or society's interests to place institutional barriers in the way of parenting relationships, and that even in cases where genuine danger to the child does exist, the necessary support and protection should be paid for by the State.

5.26 Despite the rhetoric about protecting children, it is now generally understood by large sections of the community that the real purpose of supervised access is to break down parental bonds and undermine patriarchal nuclear families. Urgent attention should be paid to radical reforms in this area, rather that expensive public relations campaigns that will only serve to fool people with no direct experience of the system. Above all, we submit that no children should ever lose their rights to contact with a parent unless it has been proved "beyond reasonable doubt" that this is not in their best interest.

Conclusion

If we genuinely intend to do what is best for our children, legislators, Court officials and society alike must send a message to separating parents that they are expected to act like adults and learn to get along as mother and father even if they can no longer live together. Whatever the eventual parenting arrangement, the most important thing for children is to know **both** parents love them and are there for them.

On behalf of Men's Centre North Shore Inc

John Potter,
editor *MENZ Issues*