JUSTICE 1 COMMITTEE

Wednesday 25 May 2005

Session 2

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JUSTICE 1 COMMITTEE
16th Meeting 2005, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Helen Eadie (Dunfermline East) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Kenneth Norrie (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Hon Bronwyn Bishop (Parliament of Australia House of Representatives Standing Committee on Family and Human Services)
Mrs Julia Irwin (Parliament of Australia House of Representatives Standing Committee on Family and Human Services)
Hon Alan Cadman (Parliament of Australia House of Representatives Standing Committee on Family and Human Services)
Mr David Fawcett (Parliament of Australia House of Representatives Standing Committee on Family and Human Services)
Mrs Kay Hull (Parliament of Australia House of Representatives)
Mrs Louise Markus (Parliament of Australia House of Representatives Standing Committee on Family and Human Services)
Mr Harry Quick (Parliament of Australia House of Representatives Standing Committee on Family and Human Services)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Videoconference room T3.29

Scottish Parliament

Justice 1 Committee

Wednesday 25 May 2005

[THE CONVENER *opened the meeting at 08:00*]

Family Law (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning, Australia. Before I introduce the committee, I want to say how delighted we are that you have agreed to have this videoconference with us this morning; this is our first videoconference with another Parliament.

I am Pauline McNeill, the convener of the Scottish Parliament's Justice 1 Committee, which has seven members. On my right are Stewart Stevenson, Margaret Mitchell and Bruce McFee; and on my left are Mary Mulligan, Marlyn Glen and Mike Pringle. The committee is called the Justice 1 Committee because we have so much justice legislation that we need two justice committees to get through the business. [*Interruption.*] Apparently, Australia has lost the link.

Mike Pringle (Edinburgh South) (LD): Does that mean that they can see us but cannot see themselves?

The Convener: They can hear us but they cannot see us. Shall we just carry on until we get vision back?

Mike Pringle: Yes.

The Convener: I hand over to Bronwyn Bishop to introduce the members of her committee.

Hon Bronwyn Bishop (Parliament of Australia House of Representatives Standing Committee on Family and Human Services): Can you see us?

The Convener: No, but we can hear you.

Bronwyn Bishop: While we wait for the visual link to be reconnected, I will introduce myself and the rest of the committee. I am Bronwyn Bishop, the chairman of the current Standing Committee on Family and Human Services. Sitting next to me is Kay Hull, who was the chairman of the previous committee, which was called the Standing Committee on Family and Community Services and which conducted the inquiry in which you are interested. This is a public meeting of the current committee, to which we have invited the members of the previous committee to allow them to talk to you about their work. I was not a member of that committee. Perhaps, by way of—[*Interruption.*]

Mike Pringle: We have lost sound as well, now.

Mr Bruce McFee (West of Scotland) (SNP): Was it a reverse-charge call?

Stewart Stevenson (Banff and Buchan) (SNP): I used to have such conferences every week with people in Perth, Australia.

Bronwyn Bishop: Can you hear us?

The Convener: Yes. The visual link has also been restored.

Bronwyn Bishop: In that case, I will restate the introductions. I am Bronwyn Bishop, the chairman of the current Standing Committee on Family and Human Services.

Kay Hull, who was chairman of the previous committee that conducted the inquiry in which you are interested, is on my left. Louise Markus and David Fawcett are members of the new committee. Alan Cadman and Harry Quick were members of the previous committee and are members of the Standing Committee on Family and Human Services. Julia Irwin is deputy chair of the current committee and was a member of the previous committee.

Members will probably want to talk mainly to Kay Hull, as she was the chairman of the previous committee. Do members want to ask questions or would they like Mrs Hull to say something?

The Convener: I would like to go straight to questions, as we have just under an hour. That will allow Kay Hull to amplify points in which we are interested.

Why did the former committee decide not to recommend a presumption in favour of a child spending equal time with each parent after the parents separate?

Mrs Kay Hull (Parliament of Australia House of Representatives): I will answer first and then invite my colleagues who were involved with the report to say something.

It was inappropriate for us to recommend the rebuttable presumption in favour of a child spending equal time with each parent simply because we thought that that would mean that people would spend a lot of time in court proving that the other parent was unfit so that equal time would not be automatically awarded. Furthermore, the committee believed that the focus should be turned back on to the child's needs. The issue was not so much where the child resided as how much quality time it spent with its parents in parenting time. Bearing it in mind that the inquiry focused on the best interests of the child rather than the best interests of parents, we believed that equal parenting time and quality parenting time are more beneficial to the child than taking into account the child's physical placement in a residence for a period of time.

Mr Harry Quick (Parliament of Australia House of Representatives Standing Committee on Family and Human Services): We have an adversarial system. It can cost more than 100,000 Australian dollars to hire a lawyer to sort out a case that usually ends up with the non-custodial parent getting the child every second weekend and for half of the school holidays. The best interests of the child were paramount in our report's recommendations. We wanted to remove adversarial situations, set up parenting plans and remove the rebuttable presumption, which is based on people's self-interest in respect of what they can get out of the breakdown of a relationship.

Hon Alan Cadman (Parliament of Australia House of Representatives Standing Committee on Family and Human Services): From my examination and the committee's examination, Australia has the most interventionist court process in the world—the court can prescribe the whole process. We wanted to pull back from that and let the parents, although they may be antagonistic towards each other, decide what is in their and their children's best interests. We assumed that they would prepare a parenting plan, contribute equally to all decisions with the child or children and then decide where the child or children would reside or spend their time. A formula—the 80:20 rule—was used by family courts. Basically, 80 per cent of a child's time would be spent with the mum and 20 per cent of its time would be spent with the dad or the non-custodial parent.

Mrs Julia Irwin (Parliament of Australia House of Representatives Standing Committee on Family and Human Services): The number of submissions that the committee received—which overwhelmed us—helped us to reach our recommendations, although I stress that a bipartisan report was produced. We heard the voices of children, parents and even grandparents. Custodial parents and the majority of non-custodial parents told us that it would sometimes be hard to have a child spend equal time with each parent. One must take into account the age of the child, where the parent resides, whether the child goes to dad's, the hours that mum or dad might work and their work situations. That is why we came to the decision that we made.

Mrs Hull: I was the chairman of the previous committee. I reiterate that the inquiry was about the children's best interests.

We determined that to legislate for 50:50 joint residence for children—which is a rebuttable presumption in any case—would not engender good family relationship feelings between mothers, fathers and children. Some people thought that they would be forced to take their children for 50 per cent of the time, when their lifestyle may not be set up to do that. They thought that, if they decided not to take the child for 50 per cent of the time, they would be seen not to want to spend that time with their children when, if fact, it was their work habits and lifestyle that precluded it. Distance is also a factor: Australia is a very large country and the distance between family members could preclude 50 per cent contact from ever happening. Children could be led to believe that a parent did not want to have that time with them when, in fact, the parent's circumstances made that impossible.

If a Government tried to legislate for the rebuttable presumption of 50:50 joint custody, many parents would have to say, "We cannot have that." The children would come to believe in later years that their parents did not want that time with them when that was not the case.

The Convener: Thank you for that comprehensive answer. Did you make the right decision? How was it received in Australia?

Mrs Hull: I begin by saying that no one wins—you will learn that, too. There are no winners: you're damned if you do and you're dammed if you don't. I was strongly criticised for letting the men's groups down by not acceding to the demand to legislate for 50:50 joint custody—which is a rebuttable presumption in any case. The women's groups felt that we had sold out to the men. As I said, there are no winners.

The majority of people in Australia who are involved in separation and partnership breakdown believe that we did the right thing in the best interests of the child. Even though the committee's decision did not deliver what many people wanted, people believe that our decision to concentrate on better parenting patterns instead of the physical residence of the child was the right decision. Will I hand over to another colleague?

Alan Cadman: No—that was enough. What is the next question?

Marlyn Glen (North East Scotland) (Lab): Where there is domestic violence, did you give consideration to the type of evidence that would have to be led to establish that there had been domestic violence? For example, would there have to be an actual criminal conviction?

08:15

Mrs Hull: The committee gave thought to the type of issues that domestic violence presents. We wanted to see an established and proven history, such as doctors' and police reports. In Australia, we have what are called apprehended violence orders that can be used in partnership breakdown. Many of those orders—in fact, most of them—never come to fruition. Most AVOs do not reach the ultimate conclusion of being put in place.

We wanted proven history of violence—emotional violence, physical violence and sexual violence—and conflict. That could be obtained through doctors' files, police files or other sources. At the time, we thought that we would want a tribunal; indeed, our original recommendation was for a tribunal that would have an investigative arm, but which would not replace the state system.

In Australia, we run a three-tier system. The intention was that the investigative arm of the tribunal would not replicate the state system, but would utilise all the evidence that was available in it to determine whether there was concern for the child's welfare or the welfare of a parent—a mother or a father—who was in a violent domestic situation. Our discussions were many and varied, but we relied heavily on the idea that the tribunal's investigative arm would be able to utilise all the resources at hand to resolve such issues. Unfortunately—as you will know if you have read our report and seen the response from the Australian Government—the tribunal proposal was not accepted and it was instead decided that 65 relationship centres would be set up. We had long and detailed discussions, but it would probably take too much time to go into them in the time that is available.

Mr Quick: One of the concerns was that, when there was a breakdown, family court lawyers encouraged—in inverted commas—people to take out an AVO as a matter of course, which usually resulted in one partner being excluded from the family home. The person who was excluded then had to disprove the allegations. We heard some horrendous allegations about the use of AVOs when family breakdowns took place, so we wanted definite proof; we did not want AVOs to be used as the first weapon of choice by the disaffected partner.

Alan Cadman: The problem with our family court is that it does not have a proper process of evidence taking; the process is rather subjective. The fact that the court does not test evidence means that people on either side can throw anything on to the table and it is almost taken as fact. From a judge's point of view, it is really hard to get proper evidence. We found that judges' ability to get provable facts on which to make decisions was a problem.

Mr Quick: More and more allegations of sexual abuse were made, which in most cases were not proven. That was another weapon that was used.

Mrs Irwin: My colleagues have covered the issue fairly well, especially Kay Hull, who mentioned the idea of a tribunal, which we raised in our report—I know that the Justice 1 Committee has probably read our report. Unfortunately, we cannot envisage such a tribunal happening in Australia, but I hope that we can work on that by exerting a little bit of pressure on the Government from both sides.

Mike Pringle: Kay Hull mentioned your Government setting up family relationship centres. Have those centres been set up and, if so, how successful are they? They are not what you wanted, but will they work? How will they work, given the vast distances involved, to which she also referred?

Mrs Hull: The family relationship centres have not been set up. Two weeks ago, the budget was announced, in which 398 million Australian dollars were set aside for 65 such centres across Australia. That is a commencement; the sum is to be spent over the next three years. At times, the centres will utilise the family relationship counselling services that exist in our regional and city areas. We must be positive about what has been done. The centres as they will operate are not everything that our committee wanted, but they are a major step forward.

I hope that the family relationship centres will be used as a one-stop shop, which was one of the recommendations that we argued in our report. Such a one-stop shop would be the administrative advice centre for couples who were thinking of separating. If the centres serve that purpose, they will be a good source of administrative material to help people sort out their problems. They would provide opportunities for mediation or opportunities for people to go to an area set aside to deal with domestic violence, if that was an issue that was confronting the person who walked through the door.

The family relationship centres are really advice centres. Through early intervention services, they will allow an attempt to be made to reconcile two people—that is the number 1 priority. The centres do not deal only with the post-separation period; they are also about the pre-separation period, so we aim for a preventive approach. I hope that we can achieve reconciliation through such critical early intervention and that, instead of going to a solicitor, people will rely on the advice that they are given in the centres. The experience of getting advice from a centre would be a more conciliatory experience than going to a solicitor to determine something along the lines of "What's yours is mine and what's mine is yours."

I think that the centres will work, although it will take vigilance on our part as members of Parliament to ensure that a consistent model is put in place throughout Australia. Adoption of the best management practices will mean that the objectives that we are trying to achieve will be in the best interests of the children. Although different people's objectives will be similar, there should be some flexibility in the model so that we can deal with individual cases. That is our overall objective.

I am hopeful and positive about the family relationship centres; I, for one, intend to be very much involved in the criteria that will be applied to them. I am sorry that I am taking up so much time and talking too much.

Mr David Fawcett (Parliament of Australia House of Representatives Standing Committee on Family and Human Services): I have just come to this videoconference from the first meeting of a steering group that has been set up by the Attorney-General to work with both the Attorney-General's Department and family community services to examine how the arrangements are to be implemented, so that a voice can be given to members of Parliament as we work with departments to ensure that the three following areas are emphasised. First, there is the proactive part of our work, which can involve, for example, high school kids working on communication skills, and relates to pre-marriage skills and communication in marriage before there is any hint of a problem. Secondly, there are the areas in which people have problems; they will want either to resolve those problems or they will want facilitation leading to separation. Thirdly, there is the support phase; the emphasis is on trying to keep relationships together as a priority. That is the direction in which we are going, as Kay Hull said. We will be working with departments to ensure that the emphases on those three areas are right.

Mrs Irwin: Kay Hull covered the situation well. Various inquiries have been carried out over a number of months. We heard a number of things in the submissions to our inquiry; for example, people need more centres throughout Australia, especially in regional and rural areas. I commend the Government for its announcement in the budget. We had heard that people were waiting for up to three, four or five months before they could get some form of counselling. They might approach the court, where the judge would ask, "Have you seen a counsellor or a mediator?" If they had not, there would be another delay of three months.

As Kay Hull said, the centres will act as a one-stop shop. They represent a place for people to go for assistance in the event of breakdown of their family. Hopefully, with common sense, that is where the parenting plan would come into effect.

Stewart Stevenson: Good afternoon; I am Stewart Stevenson. I will ask a selfish question first and then I will ask the real question. How much time did your committee have to produce its report? I ask because we often feel ourselves to be under the cosh in respect of time. This is no exception.

The real question is about enforcement of contact orders. We have read about your three-stage process. It would useful for us to understand what proportion of contact orders end up at stage 3 because that is, of course, the least successful end of the system. How is that working?

Mrs Hull: I will answer the selfish question. The inquiry was announced on 28 June, the first public meeting was held on 17 August and the report was handed down on 30 December. Parliament was sitting during most of that time. The committee worked above and beyond the call of duty. We had less than four months.

There were 2,000 submissions and we held approximately 32 public hearings. It was a mammoth effort on the part of the committee, especially as it went to every state and territory right across Australia.

Mrs Irwin: At one time we were called the fly-by-night committee. As an Opposition member, I had reservations about the timeframe because, as Kay Hull said, our number 1 concern was the children. At one stage I wrote to the Prime Minister to express my concern about the Child Support Agency in Australia, although I know that your committee is not considering that.

At one stage Alan Cadman had a whiteboard—we should not talk about whiteboards—that was just horrendous but, at the end of the day and with hard work and late nights from all members of the committee, I am proud to be able to say that I took part in a fantastic report that was put together by members from both sides of Parliament.

Mrs Hull: On contact enforcement, we find that enforcement is the major issue that confronts families in partnership breakdown. We have an adversarial system—[*Interruption.*] I am sorry but one of our pagers has just gone off for some reason.

We have an adversarial system. Contact orders are delivered under the Family Law Act 1975 by the family court or the magistrates court. If one of the partners then fails to comply with the order, we have the costly process of dragging back to court the person who is not complying, which is done at the cost of the other partner. All that happens at that point is that the judge or magistrate gives the person a rap over the knuckles and sends them away, telling them that they must comply. Of course, they do not comply and they are dragged back again. It is a very costly process and it is generally why more than 291,000 of our children see a parent less than once a year. That is a major issue. Do you have a copy of our full report?

Stewart Stevenson: We have an internally prepared summary, and we have links to the full report.

08:30

Mrs Hull: I ask because page 99 of the report outlines how we think the families tribunal should work on enforcement. The report also shows how, even without such a tribunal, our Family Law Act 1975 should be being delivered through the family law court system. There are sanctions and a range of what I guess I should call punishments—including imprisonment—that have been passed by Parliament. We can imprison a person for not providing contact with a non-resident parent and for continually not complying with the law. The situation is very difficult.

Magistrates and judges do not like to order into prison a mum or dad who is not complying with an order because they do not think that that is in the best interests of the children. It has been put to us time and again that we need just one courageous judge or magistrate to say, "You will go to prison for denying your child the reasonable right to know both its parents", unless there are mitigating circumstances such as domestic violence or emotional, mental or sexual abuse. If there is good reason why the relationship should not develop, that is okay, but that is the case for only a small percentage of the people from whom we heard. According to a general rule of thumb and all things being equal, it would take only one courageous judge to stand up and imprison somebody for not complying with an order and then, perhaps, things might change, but I do not know.

Bronwyn Bishop: There is, of course, a problem with putting people into jail for such crimes, in that the sort of people who are already in jail are not awfully nice and tend to give people who are not of the criminal class a pretty rotten time. Judges get nervous about sending to jail people who might be raped or bashed, which is a major problem. Perhaps we should look at ways in which imprisonment could take place without placing people in that peril.

Mrs Hull: That is a good example of the issues that confront people in such situations. However, we have listed cumulative breaches that could lead to, for example, residency of the child being handed over to the other parent. That could work in a sincere and severe way against the resident parent if they continued to deny properly constituted court-awarded contact. It is as serious for a parent to preclude another parent from seeing their children under properly constituted court contact orders as it is for a parent constantly to evade visiting and taking responsibility for their children. We believe that each of those examples is an offence. After the order has been awarded by a court that has considered all the evidence, if a parent does everything possible to preclude the other parent from contacting a child, that is an offence against the child. However, it is as bad if the parent who has been awarded contact does not keep those contact arrangements and lets the child down again.

I encourage members to look at pages 99 and 100 of our report, where they will see the outlines of the breaches that we suggest.

Alan Cadman: I think that Stewart Stevenson's question was about supervised contact. We took evidence from agencies that supply supervised contact and found that it was a workable process. We saw one couple who could not originally stand to be in the same room as each other because their anger and bitterness were so great. However, we then witnessed that they were able to transfer the child—a girl—and acknowledge each other. There were still a lot of barriers between them, and the bloke was so angry that he could have been violent, which is why the court had ordered supervised contact. That meant that he could spend time with his daughter when otherwise he would have had no contact. He was gradually dealing with the issue, as was the mother, to the point at which the child started to benefit.

Stewart Stevenson: I have a wee supplementary question. Is it your view that the agreement between the parents at stage 1 of the process is too often entered into on the basis that one parent believes that they can disregard that agreement because the sanctions are not really severe enough later on?

Mrs Hull: That is not the case. The submissions and evidence that we received during our inquiry suggested that men in particular entered into agreements because they were advised that, if a case goes to court, the resident parent—usually, but not always, the mother—will be awarded 80 per cent of the time, whereas the other parent will be awarded 20 per cent. That equates to every second weekend or one week of each school holiday period in Australia. I believe that men enter into agreements that they do not readily accept or want because they are advised that an 80:20 bias against the male is an unspoken rule of the family law court. That is my clear understanding, although the other members of the committee may disagree with me.

Mrs Irwin: Kay Hull is correct. The men are given the same advice by their solicitors. They are told that if they do not enter into an agreement they will get virtually nothing at the end of the day.

Mr Fawcett: It depends in part on how we define agreement. Agreements work well for couples or parents who still have some sort of relationship. They have made a voluntary agreement about time with the children, payment of child support and so on. The greatest angst occurs in situations in which there is a court-imposed order with which the custodial parent

refuses to comply. That causes everything from anger to depression and suicide on the part of the non-custodial parent.

Mrs Hull: There is no doubt that the majority of people from whom we took evidence wanted to spend more time with their children but were unable to access that time.

Bronwyn Bishop: It is fair to say, however, that under our law, the more time that the non-custodial parent spends with the child, the less money they must pay in child support. Some non-custodial parents seek an order for more time so that they have to pay less.

Mrs Hull: Conversely, some women or resident parents will not agree to more time because they will receive less money. It is a two-edged sword. We have what is called the 109-nights syndrome. The child support payment of a non-resident parent who has their children with them for 109 nights is reduced. There is a financial barrier to shared care, because it means that the resident parent will receive less money. Bronwyn Bishop's observation is correct, but we must also be aware of the other side of the coin.

Alan Cadman: We have recommended that more pressure be put on couples to agree on a parenting plan. Recognition of separation and the benefits that flow from it should be held back for a period to allow that to happen. That is not the case at the moment.

Mr Fawcett: We have also recommended that the 109-day rule be changed or removed, as part of the CSA review.

Mrs Irwin: We have not received a response from the Government on that point. [*Interruption.*] I am sorry about the beep—it may be telling us that there is a division in the house or that we need to go down to the chamber to make a speech.

The majority of custodial parents believed that allowing a non-custodial parent to have more nights, weekends or holidays with the children would mean that they received less money. We made some recommendations about the 109-night rule, but the Government has not yet responded to them.

Mr Fawcett: The Government has not yet received the report from Professor Parkinson.

Mrs Hull: I understand that the Justice 1 Committee is not involved in child support and that the bill that it is considering relates to family law. Our inquiry related to two areas—family law and the child support scheme. We will stick to the issue of family law.

Mrs Irwin: However, there is crossover between the two issues. That is the problem that we experienced in Australia. You will agree that, at the end of the day, no custodial parent or child should be worse off financially.

Mrs Hull: Julia Irwin is right.

The Convener: It is helpful for us to know that. We are not considering support issues, but we cannot ignore them when we are considering post-separation agreements.

Mrs Mary Mulligan (Linlithgow) (Lab): Good afternoon. In their answers, our colleagues have suggested that the court system is not necessarily the most appropriate vehicle for resolving disputes about contact, residence and so on. Will they say a little more about the evidence that they received during their inquiry that suggested that alternatives to the court system in such circumstances should be considered?

Alan Cadman: We heard from a range of people, from lawyers to families who have been involved in such situations—you will find out what they think about the courts.

Mrs Hull: Alan Cadman is right. We heard about cases in which parents went through hundreds of thousands of dollars and almost bankrupted themselves through the court process and then sat down and agreed with each other around the table. Without exception, for the people who appeared before us or put in submissions, the court system created a heated, adversarial, me-versus-him scenario.

The Family Law Act 1975 was amended in 1995 under the pathways project, which was intended to provide outcomes with a far greater emphasis on shared parenting. However, the statistics that were provided to us by Professor Parkinson show that shared care was awarded more often before 1995, when the new family law court measures were put in place. In other words, we got more shared care orders out of the courts before the legislation that was intended to deliver them was put in place. We heard that time and time again, and the evidence is clear. There are still many submissions on our website that indicate that parents feel that they are pawns in a game between legal advisers.

Bronwyn Bishop: Another aspect to such cases is the bitterness. Only 5 per cent of divorces end up in court, so we are talking about only a small percentage, but those that get to court are bitter. Sometimes, people's attitude is, "If you're going to destroy me, I'm going to ruin you financially." They will use all the delaying tactics that court procedure affords. They will say that they need witnesses, barristers or whatever, and the costs escalate. That can be a deliberate ploy by one litigant to ensure that the other litigant is bled. It gets as awful as that.

08:45

Mrs Hull: Once people get on to the merry-go-round, they simply cannot get off because they are so deeply in debt in the system. They are convinced by their legal representatives, who say, "You can't get off now because we are going to win the case. I will get you more." One partner might be quite happy to have 70:30, 60:40 or 50:50, but their legal adviser will say, "No, don't accept that. We can get you more." People become entrenched in the system and they cannot get out. It is difficult for them to deal with the system.

Frankly, the legal profession has taken away parents' rights to children after separation. The legal profession becomes the voice, so the focus becomes case law rather than the best interests of the family and the question of how people are going to raise their children in future. That is not something that solicitors, judges and lawyers should sit around tables and argue about. It is not a legal issue. It is a social and community issue, and it is a family issue. All things being equal, parents should be sitting down and discussing this with each other, rather than using case law from the mouths of lawyers.

Mrs Irwin: A number of my constituents here in Australia have been through the family law court, and some of them have lost their homes. It cost one gentleman about 105,000 Australian dollars to fight a case. He said "Our number 1 concern is the children", and that if he had not taken the advice of his lawyer and had had the mechanism of a mediator, he could have sat down and worked out what he and his ex-partner were going to do about maintenance, about how many nights a week he was going to have the child and about schooling and religion and so forth. We are hoping that the parenting plan will work—we feel that in our heart of hearts. The people who have e-mailed me and those I have talked to in the wider community, not only in my electorate in western Sydney but throughout Australia, have confidence in it as well.

Alan Cadman: Property is another matter. When property is involved the court appears to be the only avenue.

Mrs Louise Markus (Parliament of Australia House of Representatives Standing Committee on Family and Human Services): As well as the financial cost to the parents, there is a cost to the extended family. In many cases, the extended family—grandparents, for example—lose their homes and their investment for the future, such as their superannuation. Families are put into a situation in which they have to give everything, and the only winners financially—winners is probably not the right term—are the lawyers and solicitors.

Mrs Mulligan: Thank you for that response. One of my colleagues will consider grandparents and extended families later, so I will not pursue that at this stage.

On the answer to Mike Pringle's question on family relationship centres, I was interested in how it is envisaged that they will develop. I was particularly interested in a point raised by Mr Fawcett on early education about relationships. It has been said to us that it is easy to get into marriage and much more complicated to get out of it, and that we should give more information to people about how to establish relationships so as not to bring about their breakdown. Did you receive much evidence on that matter? Do you think that the family relationship centres will be able to address it?

Mrs Hull: Yes, we received a lot of evidence on that. The problem is that too few early intervention services are available for people who are having difficulties. The family relationship centres have included early intervention services to try to keep the reconciliation side of things. However, the centres need to have a significant shop-front presence; they cannot be in the back streets. We have Anglicare, Centacare and others, but it is difficult to find them. They need to be in people's psyche. We have Medicare offices in Australia, which administer our family payments and family assistance. Everyone knows that that is where you go to get family assistance, administrative advice and the Medicare health system. The same needs to happen with family relationship centres.

Alan Cadman: But they should not be run by public servants.

Mrs Hull: I am not talking about public servants; I am talking about visibility. The centres have to be visible and not secreted away in some back street. People have got to feel that when they walk into the centres their reason for being there is known. The centres need to be part and parcel of everyday life.

Bronwyn Bishop: There is another side to the comment that Mary Mulligan made about it being easy to get into marriage and hard to get out. The difficulties of getting out of marriage, the complexity of the law and the fact that so many people feel that they are wronged has meant that about 25 per cent of children in this country are born out of wedlock. People are not marrying but they are still having children. They are, however, having fewer children. The average for young women is now down to 1.7 children. The average age for men and women who marry has greatly increased: people now wait until they are well into their 30s. That gives rise to other complications.

The law is difficult for people and there is a lot of anger. People can be divorced at will, but there

are a lot of consequences when people say, "This is not for me." We have not looked at that side of the equation very much.

Mr Fawcett: Some of the stories that you will have heard from colleagues are of couples saying, "If I had only known about the emotional hurt and the financial cost, I certainly wouldn't have gone down the legal path and perhaps I would've even worked harder at the relationship." I have had a lot of feedback from people who just did not know how much hurt would follow separation.

Through relationship centres and the programme that underpins them, we hope to get the message out that the centres are there and can provide information to give people skills so that they do not end up in such situations in the first place. They can do that proactively through a range of measures. However, although centres will offer some services, they will be more like referral centres. They will refer people to other agencies and organisations that can provide pre-marriage counselling, marriage counselling, reconciliation services or post-separation services.

Margaret Mitchell (Central Scotland) (Con): Good afternoon. I notice that an important part of the standing committee's inquiry was consideration of the child's wider family. You have recommended measures to try to involve the wider family more fully, especially the grandparents. Why did you decide not to recommend a right of contact for grandparents, and how did you overcome that by recommending other measures such as raising awareness and involving the grandparents earlier in mediation, in interventions and in other ways of establishing contact?

Mrs Hull: If you pull chapter 5 of our report off the website, you will see that it covers grandparenting. Under the Family Law Act 1975, grandparents have a right to apply for contact with their grandchildren. I guess that they would have to demonstrate that they had had significant involvement with the children, but they have the right to apply to the family court for time with the children.

A lot of research and statistics was presented to us on grandparenting—information on how many times a year, and in how many families, grandparents still had meaningful relationships and contact with their grandchildren. However, we have limited information on the impact on children of not having contact with their grandparents post-separation. We have therefore suggested that further research be done on grandparents and children. That did not come out in our report but we certainly discussed the involvement of grandparents as we prepared the report.

Under the current law, the committee felt that there was now capacity for grandparents to establish a right of contact. If the tribunal had been put in place, it would have clearly identified that grandparents and other significant people in grandchildren's lives had to be considered during the parenting plan process. After the breakdown of a partnership, if those significant people still desired contact, and if the children desired it too, the parenting plan would have had to take that into account.

We also took into consideration cultural differences in our communities. In our indigenous community, the family has a wider aspect that involves not just one carer or one set of grandparents but a number of elders and community carers. In Cairns in northern Queensland, we saw a good model of how some indigenous communities determine life after separation for children who live in an environment in which there is an extraordinarily extended family that involves elders and other members of the indigenous community.

Basically, our committee believed—my colleagues will confirm this—that grandparents had ample opportunities to gain contact but that those were not well known. The biggest problem is that grandparents do not know that they can apply to the courts during the assessment phase for contact with their grandchildren. There needs to be an education process to inform grandparents of their rights.

Our report also indicated that the children should be consulted on the issue because, in some cases, children do not want to have meaningful contact with their grandparents. We saw that when we met young people and when, from behind a two-way screen, we were able to witness young children determining how they would like to spend their time with mum and dad. That was an interesting process for us.

Looking at the entire package, we believe that more education is needed so that grandparents know of their rights under the Family Law Act 1975. We also believe that children should be well and truly consulted about their contact with any other significant person.

Mrs Irwin: Kay Hull has covered the issue well, but I urge the Justice 1 Committee to listen, as we did, to the voices of the children without the custodial or non-custodial parent around. That really helped us. As Kay Hull said, as well as the children of 15, 16 or 17 years of age who came before our committee, we also observed young children at play and we were able to take on what their views and concerns were. That helped us to come to a decision on many of our recommendations.

We received a number of submissions from grandparents and several grandparents spoke at

our public hearings. Legal action can cost them a lot of money—one family had to spend 75,000 Australian dollars. In that case, the grandparents were devastated because they had previously helped out by looking after the child three days a week when mum and dad were at work. Unfortunately, the grandparents had not then seen the child for about nine months, so they wanted a right of contact. In that situation, our tribunal would have been fantastic, but I am sure that my colleagues will agree that such contact should come into the equation when the custodial parent and non-custodial parent sit down to discuss the parenting plan.

Bronwyn Bishop: Convener, I note that we are getting close to 6 o'clock, when we might have a division, but I think that we have yet to hear from just one more member of your committee.

The Convener: That is right. Bruce McFee has a question.

Mr McFee: Briefly, what was the reason behind the Australian Government's decision not to go ahead with the tribunal system? Has that decision had an effect on the improvements to contact with grandparents that were recommended in the standing committee's report?

Mrs Irwin: I am an Opposition member, so perhaps someone else should answer that question. Colleagues on my side of politics, including the majority of my caucus, would have liked the tribunal to have been set up, even if it was only on a trial basis. I tend to blame the lawyers who are in the Parliament. Say no more.

Bronwyn Bishop: I should say that I am a lawyer, but I was in favour of the tribunal.

Mrs Hull: There are too many lawyers in here.

09:00

Mr Quick: Within our caucus, our shadow Attorney-General was not on the same wavelength as those of us who were involved in the committee process. I guess that the tribunal would have been a quantum leap, given that we had upset the fathers, quite a few of the women, the family court and the Child Support Agency. However, we think that our report is wonderful. If we could institute the tribunal, perhaps two or three years down the track we would have a complete system that worked in the best interests of the children and which enabled members of the extended family, such as grandparents, to be involved in bringing up the children.

Mrs Irwin: Perhaps our colleagues might be able to do that in Scotland, then we could make speeches in the federal Parliament here in Australia praising them for what they are achieving and using them as an example.

Mrs Hull: I believe that ultimately we will have such a tribunal. The 65 relationship centres—our one-stop shops—are the commencement of that work and I believe that they will be successful. They will start to do the lawyers out of business and there will be a move towards tribunal-type provision. That will be a big step and will represent a move towards dismantling the family law court, although I would be quite happy with that.

Bronwyn Bishop: It will not mean quite that.

Mrs Hull: Honestly—I have to say this. In the long term, it would mean dismantling the family law court because the courts would be left with very limited functions; only property issues and matters to do with proven entrenched conflict or violence would go to the family law court for determination. My view is that there will ultimately be a tribunal and that the family law court will become less and less important.

Bronwyn Bishop: There is a difficulty in that respect because in our system tribunals may not act judicially: they may not act as courts, because that would be unconstitutional; they may have only an administrative function. That difficulty is not insuperable, but it is a problem.

Mrs Hull: I must explain that evidence from the Government solicitor was to the contrary. That evidence was that tribunals could operate using enforcement orders, for example, and that they could operate and sit on their own in such matters. The only thing that such tribunals would be unable to do would be to operate retrospectively in respect of issues that had previously been determined by the courts. In a de novo case, a tribunal would—to all intents and purposes—be able to act as a court. Contact orders and other decisions that were made by a tribunal would be every bit as enforceable as they would be had they been made in a court of law. That evidence from the Government solicitor was, however, contested. My lovely friend Bronwyn Bishop is—as two of the ladies on the Justice 1 Committee are—ever the lawyer and is much more learned than I am in the law. I just look for common sense.

Bronwyn Bishop: I agree with that.

The Convener: I know that you have to.

Mrs Irwin: We hope that one day we will have a trial of a tribunal in one of our states.

The Convener: The debate will certainly continue.

Mrs Bishop, I know that you must leave soon for a division, so I conclude by saying that we have just begun our work and that we have a very short time for it: we have only six weeks in which to prepare for Parliament an early-stages report on family law. That is but one part of what we will examine. We will also examine the rights of

cohabitants and unmarried fathers and ancient Scots law, in respect of which we will consider whether we should keep it or get rid of it. Praise is due to you for the work that you have done; it is clear that you have done an enormous job for parents. We have learned so much from you during the past hour and you have given us much to think about.

In tandem with the committee's work, other professionals—even lawyers—are working on matters such as parenting agreements, which will feed into the work that our Government is doing. Unfortunately there has not been time for you to ask us about what the Scottish Parliament is doing, but we would, of course, be delighted to return the favour if there is anything that you wish to talk to us about in the future.

I end by thanking standing committee members, old and new. I also thank the technicians, Leon Keenan and Phil Harding, and the committee secretariat, James Catchpole and Trish Tyson, at the other end for ensuring that the videoconference went smoothly.

Bronwyn Bishop: Thank you very much. We hope that we have been useful. We have enjoyed this experiment, and I echo your thanks to the people who have put it together; it has worked remarkably well. We wish you every success with your inquiry. If you want us to follow up on anything, we will be pleased to do it.

Mrs Irwin: You have our e-mail addresses, so please e-mail us if you want to ask any further questions or to speak to us individually. I thought that our inquiry was somewhat fly-by-night, but yours is also pretty rushed. We look forward to reading your recommendations to your Government.

We have a saying here in Australia: we will not say goodbye, but hope that our paths will cross again some time.

Bronwyn Bishop: Just for the sake of formality, if there is no further business, I declare this public meeting of our committee closed.

Mrs Hull: Feel free to contact us.

The Convener: We will.

I close the meeting.

Meeting closed at 09:06.

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