

Family Court to move on Early Intervention

4 December 2009

The Principal Family Court Judge announced today that from 12 April 2010 the Family Court will initiate a national programme to intervene sooner in urgent cases, and to place more determined emphasis on mediation for non-urgent or routine cases.

The Family Court's move follows a positive evaluation of the Parenting Hearings Programme, which was piloted in the Auckland, Tauranga, Rotorua, Palmerston North, Wellington and Dunedin Courts for two years.

The evaluation highlighted the importance to litigants of a judicial decision being made at the earliest opportunity and the value in being able to talk directly to the Judge. Although the Parenting Hearings Programme did not resolve cases as speedily and as completely as had been initially intended, surveyed users of the Family Court said they felt that the time frames were "about right".

Since receiving the evaluation, the Family Court judges have discussed the model that might best suit New Zealand for the future. This year a highly successful Early Intervention Programme has operated in Christchurch and the key to its success has been the use of expert lawyers, appointed as Counsel to Assist the Court, to conduct mediations. The success rate has consistently reached 84% of cases referred to it.

The Judges have decided to use the Christchurch model, but also to incorporate important messages contained in the Parenting Hearings Programme evaluation.

The essential elements of the new model, which will be called the National Early Intervention Programme, will be, firstly, to assess the intake of all applications coming into the Family Court so that the correct pathway for each case can be fixed from the beginning.

Applications that are seen as urgent because they are made without notice or according to certain specific grounds will assume a different course from standard cases. There will be strict expectations in terms of steps to be taken, directions to be given and complied with, and a time for disposal of the case. Many domestic violence cases will head down this pathway.

The law requires that once a Protection Order has been made without notice and no defence is filed the Court should resolve that application within 42 days of the defence being filed. But on many occasions, this requirement is not complied with. The new project will try to ensure that this requirement is met.

However, for standard cases the Christchurch model will very much apply. After counselling, which will be more strictly monitored than at present, mediation will occur before specialist mediators. These are currently lawyers appointed to assist the Court, since the Family Court Matters legislation which allows for family mediators has not yet been implemented.

If a case is not resolved by mediation, it will head directly to a 45 minute Rule 175 Conference, which will involve direct engagement between the judge and the parties to see if settlement can be achieved. Failing that, focused directions will be issued to ensure efficient disposal of the proceedings. Orders cannot be made at such Conferences unless by consent. The Christchurch experience has been that such Conferences have resolved the majority of cases that are not complex.

If however still no resolution occurs at this Conference, a half day hearing can be expected within 2 – 4 weeks. The nature of an urgent hearing has often been enough to bring a sense of reality to Family Court litigants.

Where cases are complex and must inevitably require more time for hearing the Early Intervention Programme will no longer apply.

Both the Parenting Hearings Programme Evaluation and the Christchurch programme have emphasised the need for focussing on the issues and thereby limiting evidence and examination of those issues at hearing. The greatest frustration

Family Court judges continue to experience relates to the presentation of issues and evidence not relevant to children's welfare.

There will be challenges for all participants in the Family Court process in meeting the need for greater clarity of focus, but the Christchurch experience has been that this has been welcomed, especially by the lawyers of the Family Court.