ADDRESS GIVEN BY THE RT. HON DAME SIAN ELIAS, GNZM, CHIEF JUSTICE OF NEW ZEALAND

The Opening Address given to the Conference of the Family Courts of Australia, At Sydney on Thursday 26 July 2001

Many think that a Judge should make public statements only in judgments. Lord Kilmuir, the most famous proponent of this school of thought, explained why, with what one assumes was wholly unconscious irony when he said:[1]

> So long as a Judge keeps silent his reputation for wisdom and impartiality remains unassailable: but every utterance which he makes in public, except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism.

If speaking in public always runs the risk that a Judge will be shown up as foolish and partial, then speaking to a knowledgeable audience about a subject you know little about, is especially risky. I am most conscious that in succumbing to the very great honour of the invitation to speak at this conference, I have been foolish indeed.

The invitation was irresistible. Although in New Zealand, the Family Court will be merely 20 years old in October this year, we followed consciously the Australian example. I still recall the fervour with which we greeted the model. In a submission to the Beattie Commission in 1977 which was rather bold for someone of my then age and experience, I enthused perhaps naively about the conciliation service with Court annexed which would make family determinations almost "judge-proof".

Well, the wheel has turned. I want to talk a little about the changes we have seen and can expect. Family Courts operate at the edge of social change. If they are not responsive, they come under strain. The 1970s are a world away. Yet our Family Courts and the legislation they apply were largely shaped in that more therapeutically optimistic time.

The Family Courts, uniquely in the court systems of our two jurisdictions, bring together professionals from different disciplines who work with families. Ultimately, disputes which are intractable must be resolved by a Judge.

People care about our family law, its content and its procedures. It affects all of us. It is not surprising that over one-third of the submissions received by the Beattie Commission, in the last comprehensive review of the New Zealand Courts, were about family law and the need for reform.[2] The substantial legacy of that Royal Commission has in fact been our Family Court.

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1 The Hon John Phillips, "The Judiciary and the Media" (1994) 20 Monash University Law Review 12.

2 *Report of the Royal Commission on the Courts* (1978).

It is worth considering how the expectations of the 1970s have been fulfilled. In those optimistic times some of our legislators seem to have thought that the role of the Judge in the new Family Court would wither away. The system was a "forum and support for those involved in family conflicts to negotiate, settle and accept their own resolutions".[3] The Judge was to be removed "as a distinct power figure". Another Member of Parliament described the new breed of Judges as "people who are prepared to remove themselves from the traditional role of the court".[4]

The Family Court remains a Court. As such I think it has had a beneficial effect upon the operation of the courts of general jurisdiction. It has pioneered the abandonment of much unimportant formality, intimidating to lay participants. Its emphasis upon conciliation has been picked up by the civil courts which have come to recognise that only in intractable cases is an imposed solution after exhaustive and expensive examination in the best interests of litigants. Ultimately the Family Court is a Court with power to make coercive orders affecting the lives of litigants to an extent not often encountered in the general courts. The Court must be scrupulous in its attention to the safeguards developed by our general law over many centuries. The formal rules of evidence may be relaxed. The care and objectivity they are designed to ensure are perhaps more important in this jurisdiction than any other.

When the Family Courts Act was being debated by Parliament in New Zealand one of our more thoughtful MPs said that the success of the Court would depend on four things:[5]

1. The adequacy of funding given to the Family Courts;
2. Their physical circumstances (the surroundings in which they are housed);
3. The quality of the Judges; and
4. The way in which the proceedings of the Court were conducted.

In the calibre of the Judges appointed to the Family Courts in Australia and New Zealand I believe we have been fortunate. The New Zealand legislation provides that only those who, by reason of training, experience and personality are suitable, may be appointed as Judges of the Family Court. The Court has been very well served indeed by dedicated and knowledgeable specialists. That it should be so reflects the intrinsic importance and indeed interest of the work with its interdisciplinary dimension, essential if the Judge is to have the tools to deal with human behaviour.

The housing of the Courts, the adequacy of their funding, and doubts about the way in which the proceedings of the Court are conducted are however challenges still. In Australia, you have had the invigorating experiences of the critical reports by the

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3 Rt Hon Geoffrey Palmer "The Family Court and the Future" (1988) 1 Family Law Bulletin 178.

4 Minogue, New Zealand Parliamentary Debates (7 August 1980) 2499.

5 Caygill, New Zealand Parliamentary Debates (7 August 1980) 2497.

Australian Law Reform Commission[6] and its characterisation of the Court as "a beleaguered and defensive institution". In New Zealand we have a continuing media and political campaign against "secrecy" in the Family Court and discrimination by it against men. That is certainly causing the Judges of our Court to feel beleaguered and defensive. In both countries we may expect restructuring. In New Zealand, the Family Court is part of a general reference received by the New Zealand Law Commission to report upon the structure of all Courts and Tribunals in New Zealand. In addition, the Law Commission has received a separate reference to look at any changes "necessary and desirable in the administration management and procedure of the Family Court in order to facilitate early resolution of disputes". The Law Commission has been directed to consider in particular how the present dispute resolution processes may be improved.

I know that initiatives such as these can be unsettling and can add to the stresses of judicial life. It is important to see them as opportunities to be grasped. After 25 years, it is time. It is important to remember that these reviews spring from a generally shared conviction in the community that the work performed by the Family Court matters very much to everyone. That is an affirmation of the validity of the work. If there are criticisms, they arise from expectations of the system which we as Judges working in it would want to see fulfilled. I like to think we can all learn from criticism.

There are significant challenges. Few of them can be met by Judges. That is why community support for the work of the Family Court is essential. Without such support it will prove impossible for the Court to succeed. I do not think that there is room for complacency here.

That is why the battering the Court is receiving in the media in New Zealand on the question of Court secrecy needs to be squarely confronted, as was done in Australia when similar jibes about "star chamber justice" were made.

The Australian Family Court originally excluded the public from its hearings. In the face of mounting public criticism the restriction was relaxed to permit press access. In New Zealand, the Family Court continues to sit in private. This practice has been strongly criticised by media and community groups.[7] The criticism has been echoed in Parliament. The Family Court has been portrayed as a secret forum lacking accountability for unfair decisions.[8] A The Private Member's Bill[9] was introduced which would have changed the legislative presumption contained in various Family Law statutes[10] that the Family Court sits in private. The Bill appeared to allow full

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6 ALRC *Review of the federal civil justice system* (1999) DP 62; *Managing Justice: a review of the federal civil justice system* (2000) ALRC 89.

7 See, for example, Haines L, "Fathers and lawyers want more open Family Court" The Dominion, 25 January 2001.

8 Newman M, "Shared Parenting" Press Release, 19 January 2001. For example, Newman states: "Every day however, dreadfully unfair decisions are made in the Family Court, that no-one hears about. Judgements (sic) that tear families apart and have terrible consequences are made, but because the Family Court is closed, only the families know what is going on and the public has little idea of what the pain of injustice is happening on a daily basis".

9 The Family Court (Openness of Proceedings) Amendment Bill 2000 81-1.

10 Most family law legislation contains a provision as to privacy. Examples may be found in the Family Proceedings Act 1980, where in s169 names and addresses of parties, together with orders made, may

public access to all Family Court proceedings and would have permitted the publication of the names of parties and the content of proceedings other than in unusual or exceptional cases.[11] It was defeated at its first reading.

The criticism has increased. In January a spokesman for a men's group released the names of six Family Court Judges who were said to be anti-men. It called for their resignation.[12] The release claimed that due to the closed nature of the Court, "Judges can get away with major transgressions of the law". The attacks on Judges continued in a later press release which claimed that a newly appointed Judge, as a feminist, was "anti-father" and could not treat cases in an even-handed manner.[13] There was no substantiation of this claim. The Judge had done nothing on the Bench to earn the slight that she was incapable of observing her judicial oath.

Such criticisms go beyond healthy debate in a democratic society. They are ultimately very destructive of public confidence in the judicial system. Judges cannot expect to be popular. It would be wrong if they cared for popularity. Ultimately judicial independence depends upon community belief that the system is valid. Reports such as this wrongly imperil community confidence. They are almost impossible to respond to, even by an Attorney-General fulfilling a traditional role as protector of the Judges.

I have no problem with criticism of judicial actions. I agree with Justice Frankfurter that "the need is great that Courts be criticised". However, he added a very important rider - "but just as great [is the need] that they be allowed to do their duty".[14] In New Zealand, there is a risk that the crescendo of misinformation will impede the Judges of the Family Court in doing their duty.

The decision whether representatives of the news media or other members of the public should be permitted into the Family Court is a judgment for the legislature to make. It needs to weigh up all sides. It is critical that the vulnerable be protected from the sort of prurient attention that was a feature of the divorce courts of my youth. It is an important principle of our law that justice is administered in public ("in the face of mankind", as Jeremy Bentham put it) and it is important that a balance is struck which is not corrosive of community confidence.

Irrespective of the legislative balance, the persistence of the criticism may require us to undertake better explanation of the role of the Family Court. In March 2001, a television documentary on a day in the life of a Family Court Judge was aired in New

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be published, but not any report of the proceedings. Section 159 of that Act restricts those persons that may be present at a hearing, as does s166 of the Children, Young Persons, & Their Families Act 1989. In the Guardianship Act 1968, the Court is not open to the public (s27) and proceedings may not be generally reported (s27A). Section 35 of the Matrimonial Property Act 1976 provides that proceedings may be in private if requested.

11 Judge Boshier, "On Openness and Transparency" (2001) 3(9) Butterworths Family Law Journal 218, 219.

12 Carlin D & Cheriton B, "Anti-Father Family Court Judges Exposed" Christchurch Star, 23 January 2001; "The six most anti-family" Northland Age, 25 January 2001.

13 Carlin D, "New Family Court Judge has history of Anti-Father Bias" 15 June 2001.

14 *Bridges v California* 314 US 252, 284 (1941).

Zealand. It showed a Family Court Judge working in his Chambers, sitting in Court, chairing a mediation conference and attending a mental health hearing at Middlemore Hospital.

A Family Court Public Affairs Committee has reported to the Principal Family Court Judge on ways to enhance public confidence in the Family Court by encouraging the education of the public about the Family Court, its workings and ethos, while preserving the privacy of those who seek its assistance.[15] The Committee favoured the retention of privacy in Court proceedings, especially where children were the subject of proceedings. It recommended however that protocols should be developed for allowing members of the public with a genuine interest in a case the right to attend. The Committee also recommended that Family Court decisions should be released to the media to address the "secrecy concerns as to how the Court operated".[16]

These are practical strategies for the judiciary to consider. In New Zealand, where the Courts do not control their budgets, it is also a matter for the Department for Courts.

I mentioned earlier my belief that since their inception the Family Courts of our two jurisdictions have been fortunate in the calibre of the men and women who have served as Judges. I do not however think that there is room for complacency. Judging in a Family Court is stressful. Only the most intractable problems require adjudication. Those embroiled in such disputes are often emotional, angry or disaffected. There are usually no "right" answers. There are often no optimal outcomes. The Judge is left to try to achieve the best outcome possible in the circumstances. That can be grinding. The enthusiasm of the Judges and their professionalism will not in the long haul be maintained if the conditions they operate under are eroded by overwork or by slippage in the support necessary.

In the Family Court, it is especially important that a judgment is convincing to the party who wanted more than the judgment delivers. I view with real unease calls for skeleton judgments and other shortcuts in judicial determinations. I am sure they have no place in the Family Court. These disputes can rankle forever. Some of the most persistent vexatious litigants I have encountered first developed a sense of injustice in family litigation. So Family Court Judges need the space to prepare and to write. My impression in New Zealand is that the Judges in our Family Court work under real pressure.

It is important to be vigilant to ensure that legislative reform likely to add to the workload of the Family Court is mirrored by additional resources. In New Zealand we seem to be over the worst with the Domestic Violence Act, but around the corner is the Property (Relationships) Act 2001. The Act is a radical reform of family property law. It addresses the serious deficiencies in our law in relation to the property rights of those in de facto marriages and those whose spouse has died. Single sex relationships are included. All property acquired during the marriage (apart from inherited or gifted property) will be subject to a presumption of equal

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[15] Family Court Public Affairs Committee Report to His Honour Principal Family Court Judge Mahoney, 28 April 1995.

[16] Judge Boshier, supra note 11, at 220.

sharing. The Court will have wide powers to depart from equal division if there is significant economic disparity between the parties resulting from their division of functions. Adjustments can also be made if property has been transferred into trusts or companies with the effect that the interest of one of the parties has been defeated. The Court will have greater power to protect the interests of children on property division. To coincide with the large changes, the Family Court will no longer share originating jurisdiction in matrimonial property cases with the High Court. While a welcome mark of confidence in the Family Court, it is not yet clear whether sufficient additional judicial resources will be made available to the Court.

It is clear that the Family Courts in both Australia and New Zealand will come under increasing pressure to manage their work more effectively. Judicial management was the principal subject of the criticisms made by the Australian Law Reform Commission about the Australian Family Court. There are indications in New Zealand too that more active case management is expected of all Courts, including the Family Court. Certainly, if the case is to be made out for increased resources, it will be necessary to show that the work cannot be more efficiently managed with existing resources. In later sessions you are to consider judicial management. It goes with the territory these days, although I detect a slight retreat from fervour and a corresponding emphasis on judicial function.

An important support for Judges, often overlooked, is preparation for the job. The days are long past in my view when a Judge was expected to be all-knowing. Judicial independence is not undermined by assisting Judges in preparing for what they will encounter on the bench. Judicial education through bodies such as the New South Wales Law Commission, New Zealand's Institute of Judicial Studies, or the proposed Australian Judicial College is what the public and the Judges are entitled to expect of a professional judiciary. The need is not principally for instruction in law. I think we need to do better in preparing our Judges for the different cultural contexts in which they will practice. It is important for all Judges to know our communities. It is especially important for the Judges of our Family Courts where culture may have a significant bearing on expectations, behaviour and outcomes. It is not realistic to expect that every Judge will have perfect understanding of the diversity within society. It is important that these efforts are not deflected by the sneer of “political correctness”. Understanding of the cultural and social context in which families operate is essential to the function discharged by the Family Court Judge.

So too is the ability to discover and suppress the values and personal perspectives that the Judge without insight will unconsciously apply. The facts which a Judge selects as significant to the decision may be very different from the facts the parties consider to be significant. The Judge’s perception of significance will be shaped by the values and experiences he or she has. If those experiences and values are narrow or fixed, the Judge may misread the lives of others and not appreciate that the decision is coloured by unconscious prejudice. In family law in particular, this danger needs to be recognised and Judges need to be assisted to understand it.

When at 26 I suggested that family law should be made “judge-proof” in the new Family Court, I was thinking of my experiences with Judges who had in the 1970s fixed views on the role of women but who did not value “women’s work” in a

marriage. I was thinking of my experiences in trying to obtain "no-fault" separation orders on the grounds of "serious disharmony" and being knocked back by Judges who said that they were not going to find a state of serious disharmony because the wife had set out to create it in circumstances where the husband wanted the marriage to continue. I was thinking about the Judge who said of an abusive husband "You only have to look at the photographs of the house to see that the appellant is a good husband and provider". I was thinking about the successive appellate courts which failed to understand the flexibility to do justice between the parties that the matrimonial property legislation provided. These were some of the best Judges of their day. Some indeed became Judges of the new Family Court. I could give many similar examples from the past 25 years. It remains a great disappointment that the Matrimonial Property Act 1976 was interpreted with such little imagination.

The point I wish to make is that unconscious values get in the way. Judges are not very good at keeping abreast of changing social values. They are out of the mainstream. That will not matter greatly if legislation is prescriptive and regularly updated. Where wide discretion is conferred, as in the requirement to act "in the best interests of the child", there is danger. That is why strategies to assist Judges to experience the different values through the community and to discover and confront their unconscious preferences are an important support.

In Court, the Judge also needs support. Not only from professionals in the disciplines which deal with human behaviour but also through competent legal representation of litigants. It is here that there is reason for serious concern. Not only with the calibre of those lawyers practising in the Family Court but also with the absence of any legal representation in an increasing proportion of cases.

On the first point, Mark Henaghan has written that the keys to good family law are imagination and perspiration.[17] I agree. I also agree with his assessment that few lawyers have the imagination to see what can be argued and too few are willing to incur the perspiration of wading through the statutory texts or comparative case-law for novel arguments.

Perhaps the main reason for the lack of imagination and perspiration is cost. Chief Justice Nicholson has identified as one of the two major strains upon the Family Court restrictions on legal aid funding. (The second is the burgeoning case-load of the Court.) As a result, he considers there has been "… a wholesale denial of access to justice in the area of family law".[18]

In both Australian and New Zealand, ready access to legal aid was an essential assumption at the time the Family Court was set up. Again, it may be that the world has moved on. In both countries there is increasing public resistance to the burden of legal aid payments. In New Zealand, 85% of civil legal aid is spent on proceedings in the Family Court.[19] There is increasing concern about the public cost

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17 Henaghan M, "Imagination and Perspiration – the Keys to Family Law" NZLS Family Law Conference, Wellington, 2-4 October 1995, 343.

18 Chief Justice Nicholson, "The State of the Court" (1998) 13 Australian Family Lawyer 9.

19 Morris J, *Women's Access to Legal Services* (1999) NZLC SP1 para 392.

of securing legal representation and professional reports within the court. Increased expenditure seems unlikely.

In both Australia and New Zealand there has been a rise in the number of litigants in the Family Court who are unrepresented. That trend can be expected to continue if legal aid is further restricted. Yet the Family Court is perhaps the worst jurisdiction in which the self-represented can do adequate justice to their cases. In Australia, in recent cases involving homicides in connection with Family Court litigation, the offenders have been largely unrepresented in the proceedings.

In New Zealand, the Law Commission's Study Paper *Women's Access to Legal Services*[20] demonstrated widespread belief that the present system is failing many women. Their perception is that it is not delivering affordable protection of their rights. It is to be expected that the problems reported with women's access to justice in family law disputes are shared by many men. I do not know to what extent there is unmet need in family law dispute determination. My impression is that, as indicated by the *Women's Access to Legal Services* study paper, the poor are largely absent from the formal processes of the Court, except in cases where protection orders are sought for domestic violence.

It is hard to escape the conclusion that solutions to the problems of access will in part have to be found in the operation of the Family Court itself.

There are two main opportunities. The first is in informing the public effectively about the services provided by the Court and assisting those who need to have such access to get into the door. At a time when the unrepresented litigant is a fact of life, the dissemination of such information in simple language is essential if the courts are not to be overburdened by the special needs of litigants in person and judicial officers are not to be compromised by the need to assist such litigants in a manner which is inappropriate.

The second opportunity is to assist those who have got through the door to clear away as much of their dispute as possible, and refine the issues requiring judicial intervention so that scarce legal aid can be properly targeted. Judge Boshier and others have recommended the establishment of a Family Conciliation Service.[21] The question of the form of alternative dispute resolution in the Family Court in New Zealand remains an open question. There is a widespread view that the mediation conducted by Judges under the Domestic Proceedings Act is too linked with court processes to operate at an early stage. The Beattie Commission had proposed a conciliation service with a court attached. That was not the model implemented. There is increasing support for the provision of a Court annexed mediation service at the front end, to sift out the cases requiring judicial intervention and to refine the issues. It is thought such a service would help those who are not initially able to gain access to legal advice and would better manage the process for those who are. The suggestion is directly in issue in the New Zealand Law Commission's reference on the Family Court. Such an approach would fit in with modern caseflow management techniques. It might also enable more generous legal aid to be made available when it is clear that problems require judicial intervention by court hearing.

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[20] Ibid.

[21] Judge Boshier, *Review of the Family Court: A Report for the Principal Family Court Judge* (1993) at 2.

The Australian Law Commission's research into the operation of the Family Court suggests that the processes before judicial determination should not be protracted. Indeed the Commission has questioned some of the case management practices of the Court. Before we look back to the Beattie Commission blueprint in New Zealand, we need to consider whether the experience in Australia suggests reconsideration. The Law Reform Commission report suggests that the place of the Judge needs to be re-emphasised and that litigants should be able to have faster access to a Judge. There is much food for cross-jurisdictional thought and discussion here.

What of the other changes we can expect in the next 25 years. It seems to me that there are substantial challenges which will have to be faced. The first, which is already upon us, is the technological challenge. It is hard to escape the feeling that, as we stand on what is still only the edge of the information age, we are in a legal frontier comparable to that encountered by the industrialists of the 19th century. Huge changes in the traditional legal order can be expected. Some of these changes are already upon us. The Hague Convention is a direct response to the shrinking world and the ease of cross-national movement. The same forces are already causing reassessment of our attitudes to relocation of children by the custodial parent across national boundaries. In New Zealand we have been cautious in our response to the pressure for such relocation,[22] in invocation of the best interests of the child. In the United Kingdom and Australia Judges have invoked the same principle to permit such relocation, in recognition of the benefits for the child of the fulfilment of the aspirations of the custodial parent.[23] This is another example of different values and perspectives shaping responses to the same problem. It would be unrealistic to think that the pressure for such movements will not increase. Social attitudes may well be developing rapidly here.

Similarly, the mobility of families across national boundaries is placing strains upon conventional conflict of law principles in matrimonial property cases.[24] Some international co-ordination seems inevitable.

Indeed, the impact of international law upon our domestic family law seems only likely to increase.[25] In New Zealand, apart from invocation of the United Nations Convention on the Rights of the Child and application of the Hague Convention, we have not seen imaginative use in family law cases of other Conventions and the New Zealand Bill of Rights Act 1990. It would be idle to think that this area of law will remain immune from the stock-taking about human rights which is sweeping the common law world. In addition to international law, law is increasingly internationalised by comparative case law. The accessibility of decisions from other jurisdictions is having a significant influence upon the development of thinking in our

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22 See, for example, *Stadniczenko v Stadniczenko* [1995] NZFLR 493. Also see Henaghan M, Klippel B & Matheson D, *Relocation Cases* NZLS Seminar, June 2000.

23 See, for example, *Poel v Poel* [1970] 1 WLR 1469; 3 All ER 659; *Payne v Payne* [2001] 2 WLR 1826; *AMS v AIF* (1999) 199 CLR 160.

24 In NZ, see *Samarawickrema v Samarawickrema* [1995] 1 NZLR 14; *Birch v Birch* (High Court Hamilton, AP41/00, 25 May 2001, Elias CJ and Paterson J).

25 Sir Anthony Mason, "International Law and its relationship with Family Law" *Enhancing Access to Justice* (1995) Family Court of Australia Second National Conference Papers 15. And see, for example, *Minister of Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273; *Tavita v Minister of Immigration* [1994] 2 NZLR 257; *Puli'uvea v Removal Review Authority* [1996] 3 NZLR 538.

domestic Courts, particularly where they build upon international standards in conventions to which Australia and New Zealand are parties.[26] The trend will not be welcomed by everyone. It has the potential to cause us to rethink the dominance of the "best interests of the child" test, and our preference in this jurisdiction to avoid "rights talk". It may open up our specialist courts to fresh winds.

In the new age of technology, the implications of genetic knowledge and engineering are likely to transform family law in ways we can only perceive dimly.[27] Our existing knowledge of human behaviour and human development is likely to be profoundly affected. Additional knowledge may have significant implications for our present assessments of where the best interests of the child lie in matters of custody and access. Already, there are indications that attitudes to contact between children and violent parents is being rethought.[28] Increased knowledge about the effects of contact with a violent parent may throw up difficult ethical issues and raise conflicts with significant human rights. The human rights dimension and increasing understanding of human development may substantially affect the role we accord children in the decision-making process.[29]

Then there are the substantial shifts in social conditions facing our societies. In New Zealand, 238,000 people live in de facto relationships. 189,900 children live in single parent families.[30] These are the realities behind legislation such as the new Property (Relationships) Act. These are the realities against which our current legislation in both Australia and New Zealand is likely to be transformed. They raise fundamental questions, especially of equality.

Decades of formal equality in the eyes of the law has not led to real equality between men and women. Even in terms of access to legal services, Joanne Morris's report has demonstrated the gap between law and reality.[31] Increasingly feminists are questioning the liberal legal tradition's emphasis upon statements of equal rights. In a recent thought-provoking work, Sandra Fredman has pointed out that equality in law will never achieve equality in fact while gender inequalities are part of the social system in which law operates.[32] The strategy of formal equality does not work for women who undertake traditional female activities and responsibilities. Unpaid caring responsibilities are largely ignored in the workplace. Fredman is of the view that "the undervaluing or ignoring of child-care is a key to women's continuing disadvantage". In New Zealand our principal Family Law statutes were enacted in the first drive to achieve formal equality between men and women. They are now widely thought to have emphasised such formal equality at the expense of the

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26 Mason, supra note 25, at 16.

27 See, for example, Deech R, "Family Law and Genetics" (1998) 61 MLR 697.

28 Smith L, "To see or not to see? Psychological perspectives on custody and access issues with children and their parents who have been violent" (October 1999) paper presented at the Australian Family Courts Conference.

29 See, for example, Gold M, "The Voice of Children in the Family Court" in Taylor N & Smith A (eds) *Enhancing Children's Potential: Minimising Risk & Maximising Resiliency* (1998) 132; Judge Doogue & Blackwell S, "How do we best serve children in proceedings in the Family Court?" (2000) 3(8) Butterworths Family Law Journal 193; Smith A, Taylor, N et al "Access and other Post-separation Issues: A qualitative Study of Children's, Parents' and Lawyers' Perspectives (abbreviated)" in Taylor & Smith, supra, at 251.

30 Figures are for 1996. *New Zealand Now: Children* (1999) Statistics New Zealand, 37.

31 Morris, supra note 19.

32 Fredman S, *Women and the Law* (1997).

majority of women who shoulder a disproportionate burden in unpaid family care. Such responsibilities effectively deprive most women of the opportunity to benefit from the legal equality formally secured. "This snake in the legal grass", as Lord Justice Sedley puts it,[33] is the unequal effects of equal laws. The challenge for legislators and Courts is to find the solution to this paradox.

Then there is the general question about the role of Judges. It is an inadequate view of the role of the Judge within our legal system as simply delivering legal services to consumers. Of course questions of timeliness and cost efficiency need to be kept under close review if access to justice is to be properly provided to all. Of course parties should be assisted to come to their own solutions. Where problems cannot be so resolved, a determination by an independent Judge applying legal principle to the individual case is vital to the maintenance of a civil society. Although the costs of litigation are not to be minimised, Judges deal with real life problems in actual cases. That anchors their decisions to the actual community. In no area of law is that more important than family law. There are I think indications that the judicial function of the Family Court Judge will receive more emphasis in the next 25 years. That and the human rights climate may have implications for the specialisation of the Courts, at least at appellate level.[34]

So we have much change to look forward to, but in the future for the Family Courts of Australia and New Zealand there is one constant. That is the strength of the ties between our Courts. On this occasion, in celebration of 25 years of the Family Court of Australia, I want to acknowledge the debt of our jurisdiction to your lead. We have benefited greatly from the close working relationship between the Courts. It began with the initiative of Chief Justice Elizabeth Evatt and it became a firm feature of our Courts under Chief Justice Nicholson. It has helped that in our Principal Family Court Judge, Judge Mahoney, we have a leader as enthusiastic about family law and cross-Tasman ties as his counterpart.

It has become a tradition for New Zealand Judges to come to conferences and seminars of your Court and for your Judges to be represented at our less frequent triennial conferences. In 1999 we held a joint conference in Auckland on the theme "Co-operating to Serve our Communities". I hope very much that initiative will be repeated in the future. I want to pay especial tribute to the work of Chief Justice Nicholson in his generosity in fostering the ties between our jurisdictions. It has encouraged greater cooperation between Judges of our two countries, outside the family law jurisdictions - to our great gain.

I have been honoured to speak at the opening of this conference. I have spoken about challenges. There will always be challenges for Family Courts. You should also reflect with satisfaction during the interesting sessions over the next few days on how much has been achieved.

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33 Rt Hon Lord Justice Sedley, *Freedom, Law and Justice* (1999) 41.

34 Rt Hon Richardson "Family Courts: some questions for consideration" (2000) 3(5) Butterworths Family Law Journal 113; Henaghan M, "A call for a Full Family Court of New Zealand" (1997) 2(6) Butterworths Family Law Journal 142; Judge Inglis QC "The Family, Family Law, Family Lawyers and the Family Court of the Future" (1995) 8 Otago Law Review 301, 312-313.

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