

Gendered Dynamics in Family Court Counselling

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Abstract

This article examines Family Court counselling by drawing on accounts provided by 21 women who participated in a wide-ranging study about women's experiences of difficulties with negotiating care and contact arrangements for their children through New Zealand's family law system. The study was based on semi-structured interviews that were later transcribed in full and analysed thematically. Overwhelmingly, the 18 women who spoke about counsellor-led conciliation did so in negative terms. Their critiques point to the way in which gender enters into almost every dimension of the conciliation process—from the gender of the actors, to the nature of their interactions, and to the solutions advocated—in ways that served fathers' interests at the expense of mothers' abilities to care for and protect their children. Our findings raise important questions about the principle of gender neutrality and supposed impartiality of Family Court counsellors, as well as the extent to which decisions made during Family Court counselling are the result of a consensus between the parents.

Keywords: Family law, custody disputes, conciliation, mediation, gender

For many mothers and fathers in New Zealand, Family Court counselling is the first process in a chain of quasi-legal and legal processes they encounter as they seek to resolve post-separation disputes over the care of their children. Family Court counselling has the potential, therefore, to make significant differences to the lives of disputing parents and their children through the de-escalation or even resolution of their conflicts. Yet such counselling also has the potential to create fresh wounds and to entrench conflict. Given these vastly different potentialities, it is important for those working with such challenging cases—Family Court counsellors—to have some insight into how their interventions may be experienced by those involved in them. Yet insights generated through research are few and far between. As with other conciliation

strategies in use in other countries, Family Court counselling has not been well documented or researched. As a consequence, little is known about its effects on parental conflict, including how gender is taken account of in ways that may reproduce or undermine pre-existing inequalities between mothers and fathers. This article takes up the need to discuss these issues through a focus on women's voices, voices that have been sidelined in recent debates over custody law (Fineman, 2000–2001; Perry, 2006; Smart, 2006). First, we set the scene through a critical discussion of the increasing use of non-litigious mechanisms for resolving disputes between parents who live apart.

The pros and cons of counselling conciliation

Family Court counselling is one of a number of non-litigious mechanisms for attempting to resolve parental disputes over care arrangements for their children. Such mechanisms (which include a range of conciliation strategies, such as counselling, mediation, and therapeutic mediation) have become well-established in Western countries (Greatbatch & Dingwall, 1989; Kaspiew, Gray, Weston, Moloney, Hand, Qu, & the Family Law Evaluation Team, 2009; Trinder & Kellett, 2007).¹

Proponents claim a number of benefits for conciliation. First, conciliation strategies are thought to grant a high degree of input and control to participating parties. As the New Zealand Law Commission (2003) put it, conciliation “allows parties to generate their own solutions rather than having them imposed” (p. 11). For this reason, Field (2006) indicates that conciliation has the potential to be good for women: “it can be a constructive, positive, collaborative negotiation environment in which cooperative bargaining and consensus decision-making occur” (p. 49). Second, it is argued that decisions made through conciliation are much more effective at the level of compliance and duration, an outcome that is generally attributed to the potential afforded by conciliation to reduce conflict between the parties by improving communication. Third, conciliation approaches tend to be much cheaper than litigation and are therefore increasingly favoured by cash-strapped governments looking to reduce the costs of the legal system.

Conciliation strategies are not without their critics, with scholars pointing out that they assume the two parties are evenly matched and that decisions are the result of consensus rather than coercion (Bryan, 1992; Field, 2006; Greatbatch & Dingwall,

1. For example, mediation has become a mandatory first step in resolving parental conflicts in Australia and has seen the establishment of Relationship Centres throughout that country (see Kaspiew et al., 2009).

1989, 1999; Henaghan, 2007). As these authors argue, inequality between parties is actually more typical of any interaction, including interactions that take place between separated parents in a conciliator's room (Bryan, 1992; Field, 2006; Greatbatch & Dingwall, 1989, 1999; Henaghan, 2007; Johnson, Saccuzzo, & Koen, 2005). The sources of inequality between parents disputing care and contact arrangements are several. First, financial disparities between parents arising from gendered inequities in the labour market and compounded by a gendered division of labour in the home are commonplace. As Bryan (1992) argued, gender disparities in financial resources enhance men's negotiating power: financially advantaged fathers can "threaten to terminate or extend the length of the negotiations if the other party fails to meet his demands" (p. 449), whereas financially vulnerable mothers "cannot risk the potential of the matter going on to a costly trial" (Field, 2006, p. 57). Another important source of gender inequalities is gender differences in perceived credibility: in general, men are accorded a higher level of credibility than women (Mack, 1993; Schafran, 1989–1989, 1995). As a consequence, where there are differences in the accounts being provided by parents, it has been argued that it is more likely that family court professionals will believe the version of events proffered by fathers (Field, 2006).

However, the most widely recognised threat to equality in the counselling room is male partner violence (Bryan, 1992; Field, 2006; Greatbatch & Dingwall, 1999; Johnson et al., 2005). As Henaghan (2007) says:

If the relationship is one where violence (which includes threats as well as physical harm) has been used by one party to get their own way when things are in dispute, then that pattern of behaviour will be brought into the conciliation process. That means that the physically and psychologically dominant partner (who, statistically, based on protection orders, is likely to be the man) could use threats of physical violence in the conciliation process. It may be just a look or an inference that is enough to remind the other party of the consequences of a disagreement. (p. 280)

Indeed, victims of male partner violence may not need a look or an inference to engage in practices of appeasement—relenting, conforming and compromising (Johnson et al., 2005). For many victims of male partner violence, practices of appeasement will have become second nature, a response they enact to achieve a modicum of safety. Not only is this pattern of interaction called forth by the presence of the abuser in close physical proximity, but it is also actively encouraged by the process of conciliation that seeks compromise solutions (Johnson et al., 2005; Stark,

2009). The emphasis on compromise in conciliation strategies like Family Court counselling, in a context of a strong presumption of contact, can thus put victimised women and children at a considerable disadvantage—one that may result in issues of safety being inadequately addressed (Bryan, 1992; Neale & Smart, 1997a; Stark, 2009; Trinder & Kellett, 2007).

Considerable concerns have also been raised about whether the neutrality expected of conciliators is actually possible, and whether their impartiality toward outcomes is always desirable. It has been noted that in situations of inequality, a conciliator's neutral stance toward the disputing parties may simply allow the stronger party to drive the process toward that person's preferred solution, and that in such situations conciliators may need to intervene on behalf of the weaker party (Greatbatch & Dingwall, 1989). The (im)possibility of conciliator impartiality has been an additional source of debate (Beck & Sales, 2000; Bryan, 1992; Greatbatch & Dingwall, 1989; Trinder, Firth, & Jenks, 2010; Trinder & Kellett, 2007). Greatbatch and Dingwall's (1989) conversation analysis of a mediation session with a separating couple indicates that conciliators shape the outcome through a process they called "selective facilitation." Selective facilitation operates through the subtle guiding of dialogue toward the conciliator's favoured outcome, at the same time as they steer conversation away from disfavoured outcomes. Such observations are highly suggestive of the impossibility of fulfilling aspirations for neutrality and impartiality, and the need for conciliators to engage in high levels of reflexivity instead.

In New Zealand, conciliation strategies have largely taken the form of Family Court-sponsored counselling and judge-led mediation; this article focuses on the former rather than the latter.² Under the Family Proceedings Act 1980, formerly married, cohabiting, and civil unioned parents who wish to resolve conflicts in relation to care arrangements for children (or over property) are entitled to up to six sessions with a counsellor free of charge. Despite being referred to through the rubric of counselling, the Family Court-sponsored process is more akin to mediation (Goldson & Taylor, 2009; Maxwell, Pritchard, & Robertson, 1990a, 1990b). As Goldson and Taylor (2009) have stated, Family Court counselling is "a process that is designed to help parties identify issues, explore options and try to reach agreement" (p. 207).

2. Generally, parents who approach the Family Court for help to resolve care and contact arrangements are sent to a Family Court counsellor in the first instance. Should parents fail to reach an agreement in counselling, they are then referred to judge-led mediation.

According to Goldson and Taylor (2009), what sets counselling apart from mediation is the orientation of the practitioners involved: counsellors are expected to draw on “social science theories relating to family systems, child psychological development, and attachment” (p. 207). However, Family Court-sponsored counselling is not, and was never intended to be, a replacement for couples therapy. Accordingly, there is an ever-present potential for ambiguity over the purpose and possibilities of Family Court counselling, something that can introduce a level of confusion and tension into the process for disputing parties because some of them inevitably come to counselling with expectations that the counsellor’s orientation will be derived from therapeutic rather than quasi-legal interventions.

While not prescribed in law there is some evidence to suggest that many Family Court counsellors begin their interventions with separated parents by conducting one-to-one meetings with each parent.³ It is not mandatory, however, for Family Court counsellors to use these one-to-one sessions to screen for domestic violence, even though it is a common feature of the relationships of many so-called high-conflict couples (Johnson et al., 2005; Kaspiew et al., 2009; Rhoades, 2002; Stark, 2009). For Henaghan (2007), this constitutes a significant flaw in the provision of counselling through New Zealand’s Family Courts since it means that, in many instances, Family Court counselling may well proceed on the problematic assumption that violence and coercive power have not been a feature of the parties’ relationship.

The next section begins with a description of our study before we move on to undertake a gendered analysis of counsellor-led conciliation. We suggest that gender enters into almost every dimension of the conciliation process, from the bodies of the actors to the nature of their interactions, and to the solutions advocated in ways that bolster fathers’ power and serve their interests.

The study

The women spoke about Family Court counselling in the context of a wide-ranging study that set out to examine the experiences of women in *dispute* with the legal system over care and contact arrangements for their children. The study therefore deals with a subset of post-separation parents, those for whom histories of parental conflict

3. Despite this recommendation, earlier research in New Zealand suggests that only 30 to 60% of counsellors conduct separate first interviews (Maxwell et al., 1990a, as cited in Henaghan, 2007, p. 281).

and/or violence against women or children are prominent, a group that is over-represented in family courts across the Anglo-West (Kaspiew et al., 2009; Trinder & Kellett, 2007). Participants were recruited for the study through two means: several joined as a result of snowballing (a sampling technique in which existing participants recruit additional participants from their personal networks), but the majority of participants joined following the publication of a story on our project in several free Auckland newspapers.

In all, 21 women were interviewed for the study between late 2006 and early 2008, although only 18 discussed their experiences of Family Court counselling.⁴ The semi-structured interviews invited women to narrate their experiences of difficulties with negotiating care and contact arrangements for their children, particularly, although not exclusively, in relation to legal or quasi-legal processes. Most of the interviews lasted two hours, with some lasting three or more hours. All of the interviews were recorded and transcribed in full. This was followed by a thematic analysis of all of the interviews which, for the purposes of this paper, was directed at locating all references to Family Court counselling in the women's interviews and discerning patterns in this talk. In the discussion that follows, we draw on those women's accounts that most clearly illustrate our analytical points. In the excerpts we have used pseudonyms and altered minor details that might enable the identification of our participants.⁵

The 21 women who participated in the full study ranged in age from their late 20s to the mid 50s. Two were Māori, 14 were Pākehā and 5 were white migrants from other Western countries who had conceived children with New Zealand men. Just on half of the group were either in receipt of the Domestic Purposes Benefit or on a low income, another seven were earning moderate incomes, while a few were in high-income employment. The women had been separated from the fathers of their children from one to 12 years, and their children ranged in age from 15 months to 14 years. In seven cases there had been a history of physical violence (male on female) prior to separation, and in two additional instances there had been non-physical abuse (for example, threats of violence and destruction of property).

4. As far as we know, none of the women in the study were seen by the same Family Court counsellor, so the comments they make refer to different counsellors. However, it is not possible for us to verify this because women had often forgotten the names of these people or, in quite a few cases, had seen several counsellors over time.

5. To further protect participants' anonymity, we have used different pseudonyms for the same participant in separate papers arising from this research.

Women's experiences of Family Court counselling

A minority of the 18 women in our study who had experienced Family Court counselling spoke in positive terms about their contact with the counsellors: one woman spoke of Family Court counselling with her former husband as a positive experience because it initially improved communication between them even though this was a short-lived effect, and they had to resort to the court to resolve their dispute; another woman indicated that her experience in the Family Court counsellor's office had been satisfactory, but the intervention had not generated a care plan, which left her feeling frustrated, and another four women spoke of feeling validated by the counsellors' acknowledgement of their former partners' coercive tactics. Significantly, this acknowledgement was conveyed to the women in after-session, one-to-one discussions out of the earshot of the fathers concerned and, in several cases, following conciliation sessions in which the Family Court counsellor had allowed the fathers to engage in sustained verbal attacks. In all six of these cases, the counsellors involved were women. However, the majority of women in this study who had participated in counsellor-led conciliation spoke about it as a "waste of time," largely because the intervention not only failed to produce a settlement of the dispute, but also failed to improve their relationships with the fathers of their children and, in some instances, actually entrenched the conflict through inflicting further harms. More specifically, the women were highly critical of what they saw as the counsellors' pretensions to gender neutrality and impartiality. It is this criticism that we pick up on and examine below.

It was clear from our participants' comments that the gender of the counsellors was significant and operated in complex and unpredictable ways to generate perceptions about a lack of counsellor neutrality. We want to illustrate this complexity through comments made about male counsellors, before looking at some of the comments made about female counsellors. Five of our participants had seen a male Family Court counsellor, 12 had seen a female counsellor, while the sex of the other counsellor seen was not made clear.

All of the women who met with male counsellors thought they operated from a "male perspective" and were thus biased against them. To examine this claim in more detail, we want to discuss two cases in some depth. Barbara and her former husband, Bill, sought assistance from the Family Court following a heated argument that precipitated the breakdown of a long-standing contact arrangement when their daughter, Lily, was around five. Barbara's marriage to Bill had been characterised by escalating verbal abuse and threats of physical violence, which prompted Barbara to leave when Lily was 2½ months old in order to protect her from exposure to conflict

and violence. On separation, Barbara sought and obtained a Non-Molestation Order (an early version of a Protection Order); she later agreed to have this order uplifted so that Bill could remain in New Zealand and Lily could have an ongoing relationship with him. However, Bill's continuing abusive propensities, as well as his lack of insight into Lily's physical, psychological and emotional needs, caused Barbara to remain highly protective of Lily's wellbeing; she supervised Bill's contact with their daughter.

About the choice of a Family Court counsellor, Barbara said, "I chose to be PC and go for a male counsellor." She went on to say, "I thought I was being fair by doing that." What remains unspoken here is the notion that Bill might have perceived a female counsellor to be biased against him as a result of a presumed bond of solidarity between Barbara and the female counsellor. Barbara strategically chose a male counsellor because she thought negotiations with Bill might go more smoothly; a male counsellor would remove any possibility of Bill claiming that power was unfairly skewed against him in the counselling sessions. Barbara's choice, however, should not be read as an indication that she thought counsellors would simply side with their own gender. Barbara made other comments that indicated that she believed counsellors would be motivated by what was right and just under the circumstances:

Barbara: I stupidly thought that he [the counsellor] would see everything that I saw about Bill, that he was this, you know, this person that had the wrong idea, the wrong end of the stick totally and should be treating me with a bit more respect. But I didn't find that was my experience.

Because of this expectation, Barbara did not anticipate that the counsellor might draw on different notions of what was just and right and that she would experience these different notions as an expression of gender solidarity with Bill:

Barbara: ... we'd had the first two sessions, I think the first one he [the counsellor] was, you know, talking about how Bill had been denied participation in his daughter's life and I was sort of, you know, "Do I bring the violins out?" And it was that sort of session. The second session was basically, when are you going to agree to let Bill have Lily? All it came to was "Okay poor Bill here has missed out on so much of his child's life already," you know the violins came out, you know it's about "he's missed out on all this" and even to the point of, you know, it did disregard totally the way that he treated me. That's never, it's like, "Oh well, we've been there and done that. You've gone through that. You're apart now. We know he's like this, but never mind, he's her father."

Barbara came to question her choice of a male counsellor because of what she perceived to be a strong alliance between the counsellor and Bill that resulted in her being put under considerable pressure to concede to longer periods of contact time that would be unsupervised; Barbara thought this was not in Lily's best interests.

Valerie's account of Family Court counselling also revolves around perceptions of solidarity between male counsellors and fathers that exacerbated pre-existing inequalities between Valerie and the father of her child, Vaughan. The mother of a young child, Valerie was experiencing considerable levels of distress over care and contact arrangements. However, as a migrant to New Zealand, Valerie lacked a good network of social support. To this end, she sought individual counselling with Malcolm. According to Valerie, she openly talked with Malcolm about her relationship history (which had involved her partner's broken promises at moments when Valerie was physically incapacitated and caring for their newborn) and her psychological vulnerabilities, including her sense that she did not feel like she had a voice. Shortly after she began counselling with Malcolm, Valerie's ex-partner, Vaughan, was referred to him for Family Court-sponsored counselling. When Malcolm was asked by Valerie whether this represented a conflict of interest, he reportedly downplayed any potential difficulties and pointed out that they had only met a couple of times. The Family Court counselling sessions went ahead. Despite promising Valerie that her sense of powerlessness with respect to Vaughan could be managed through a shuttle approach, if necessary, Malcolm actually pressured Valerie into participating in joint sessions, and then pressured her into accepting an unsupervised contact arrangement even though she remained concerned about Vaughan's willingness to keep their infant child safe:

Valerie: I was just on the edge of my seat and I was going, "I want to leave. You said that we could be counselled separately." And the counsellor said to me, "You can't leave because if you leave the court will send you back for enforced counselling." And I said, "You said that I could leave. You said that at any stage I could leave." And he said, "No, this is best for your child." ... And I was too scared to leave then, so I just had to sit and wait it out.

And there was just this barrage, like the counsellor said to me again, "Alright why can't Vaughan have contact, if Vaughan says that he won't do all these things—" Because I said, "Well I've got concerns about his cannabis use, about this, and about that." I found Jono [her son] with a tin of cannabis, playing with a tin of cannabis. So I said, "I've got all these concerns." And he went, and it was like he just wanted to get it all wrapped up you know so he could just tick that box, right these two are

done...I said, "Are you saying that I have to take Vaughan's word for it, if he says he's not going to do any of this stuff, I just have to go, okay?" And he said, "Yeah, that's it. You just have to accept it and give it a go."

On the basis of her interpretation of this exchange as an egregious example of gender-based solidarity between the counsellor and her former partner that operated to intensify her sense of vulnerability and powerlessness, and to undermine her position on Jono's safety needs, Valerie cautioned other women against working with male counsellors:

Valerie: I couldn't believe it, I don't know, I think it must be like the dynamics of two men. Which is another thing that I would say for women, if you're going to counselling, see if you can get a woman counsellor. It might not make that much difference, but I never again would have a man.

What then of our participants' experiences with female counsellors? Were these similarly characterised by gender-based solidarity, this time between our participants and the counsellors concerned? The simple answer to this question is no. The women in our study who saw female Family Court counsellors, by and large, told stories of female counsellors who appeared to guard against accusations of gender-based solidarity through taking a male perspective and through high levels of tolerance for performances of aggressive masculinity. Such was the case for Donna, a woman who had disclosed a history of male partner violence to the counsellor:

Donna: My first session was kind of okay, and I kind of outlined the violence, the bullying kind of style that Dave has had. And then we had to do one together and it was a really bad experience. ...She allowed him to speak to me, I thought, in a way that was completely unacceptable and rude and sarcastic in that kind of an environment.

Donna attributed the counsellor's failure to establish appropriate protections around her former partner's conduct as "trying to hook him in" and "wooing him into her confidence." Yet the counsellor's orientation to the establishment of a relationship between herself and Dave—arguably a strategy to compensate for any perception of gender-based solidarity between the counsellor and Donna—meant that she failed to censure Dave's aggressive acts, permitting him to re-victimise Donna within the counselling session.

Donna's experience of a counsellor's failure to manage conduct within joint sessions was not an isolated one.⁶ Keera and Nina both participated in Family Court counselling sessions that exposed them to the wrath of their ex-husbands because the counsellors were unable or unwilling to authoritatively demand reasonable and respectful behaviour within the session. For instance, Keera described an interaction with the Family Court counsellor after one counselling session in the following manner:

Keera: ... we got um these stupid counselling sessions where at the end of them all the counsellor actually said to me, she said, "How did you cope with those?" And I said, "What do you mean?" She said, "I kept on wanting to rescue you from those tirades." And I said, "I coped because I've heard it all before, it was just the same stuff coming out."

Interviewer: Can I just clarify (Yeah), Kevin was able to engage in tirades against you in the counselling sessions (Yeah) and the counsellor didn't stop them?

Keera: No.

It should be obvious that a counsellor's failure to place limits on verbal aggression operates to condone this manner of exercising power, including outside the counsellor's rooms. This failure might simply be an outcome of a counsellor's lack of skills in conflict management and/or in the identification of domestic violence (suggesting the need for better training in these areas). Alternatively, it could represent a counsellor's lack of critical reflexivity and ability to see through cultural excuses for these forms of masculine power that seek to produce women's compliance.

The tolerance counsellors displayed toward fathers' aggressive behaviours in counselling sessions was matched by displays of tolerance for histories of violent actions and/or risky behaviours (for example, heavy alcohol and drug consumption). For instance:

Hannah: We didn't have many meetings with her [the counsellor], maybe four (mm) altogether. A couple of them were one-on-one, but we also had the two with

6. Others spoke about Family Court mediation, as opposed to Family Court counselling, in similar ways. For example, Irene spoke about going into a state of shock during mediation sessions between herself and her violent ex-husband: "I was in mediations with him, but after an hour of sitting with him I'd be shaking and freezing cold because I'd just go into shock, and I'd be having to sit with this man and listen to this over and over and over and over again."

two of us together and at the end of which she said to me I should give him time to restore his confidence in me. I said, "Have you listened to anything I've said?"

Interviewer: *Why would he need time?*

Hannah: *I said, "It should be the opposite surely," because the thing is that he had an affair behind my back. The usual story, you know.*

Interviewer: *Right and that's what precipitated—?*

Hannah: *The separation eventually, yes.*

In this interaction, the counsellor chose to foreground a one-off threat, made by Hannah, to deprive Hamish of access to their two daughters during an argument immediately following the revelation of Hamish's affair, rather than foregrounding Hamish's history of sexual indiscretions, absentee fatherhood, and financial control. In so doing, the female counsellor produced a one-sided reading of relational breaches of trust and a one-sided requirement for relational repair work.

However, counsellor tolerance of past displays of men's power and neglect was not limited to female counsellors, suggesting that this form of tolerance might have additional roots, for instance, in a family law system that emphasises *settlement* and defines settlement in terms of the extensive involvement of fathers in the lives of their children except where there is credible evidence of extreme violence (Elizabeth, Gavey, & Tolmie, 2010; Smart & May, 2004; Tolmie, Elizabeth, & Gavey, 2009; Trinder et al., 2010). The example below, which describes an encounter with a male counsellor, illustrates this point:

Lisa: *...it was just a complete waste of time. I wanted to talk about how Luke [the father] was going to address the issues of his anger and his violence and his drinking and he [Luke] didn't want to obviously talk about that or acknowledge any of those problems....And I was just, "Oh my God, I'm not going to not talk about these things because I'm not going to let you come around to my house and see our baby when you haven't tried to, um, do anything to help yourself."...And then the Family Court counsellor is just like well, "Yes, why don't we just, you know, bypass all that stuff and just brush all that under the carpet."*

Interviewer: *The counsellor wasn't interested in it?*

Lisa: *No, not at all. And he would just say, "Why don't we, you know, make some plans for the future and not talk about the past because that's not really relevant any more. It's about how you're going to, you know, get on with each other in the future and for the child, and blah-blah-blah." He just wanted to say they've made this arrangement, sign off on it, blah-blah-blah.*

As Lisa's comments suggest, women in our study often experienced the counsellors' pressure to reach an agreement as a negation of their concerns about the safety of their children with the fathers involved, and hence as a negation of what they believed was in their children's best interests. Yet this negation within conciliation sessions has gendered implications: it serves to increase the power of men, enhancing their bargaining positions, and laying open the possibility that women will be seen as the obstructive party.

A counsellor's gender did seem, however, to play a key role in several stories women told about the disdain with which their former partners treated female counsellors:

Donna: If she'd been a kind of power broker in some way he would have respected her. If she'd been a man he would have respected her. If she had been young he might have respected her. If she had kind of a reasonably dynamic presence to her, but she had none of those things. ... She was of low status, and so he just treated her like shit.

Counselling is, of course, feminised in other ways: it is based on personal revelations, a practice that is stereotypically linked with women rather than men. The following comment is highly suggestive of the implications of Family Court counselling for men at the level of their identities, such that they may be unwilling to fully embrace the possibilities afforded by counselling conciliation:

Amber: ... then he [her ex-husband] started to come to the understanding that counselling wasn't going to work for him, he wasn't going to go to counselling because he was a man and what was he doing putting his feelings out in front of me, you know?

If the gender of the participants in Family Court counselling is laden with implications for the micropolitics of relationships, so too are the solutions apparently favoured by counsellors. With two notable exceptions that were due to recognised histories of violence, the women in our study indicated that all of the counsellors they saw endorsed high levels of father-child contact and, in some instances, were overtly in favour of equal shared care arrangements. Each of the following two accounts points to the way the counsellors' orientation to Family Court work had been shaped by particular contemporary notions of appropriate post-separation parenting arrangements.

As has been well documented, the construction of appropriate post-separation parenting is a site of highly contested gender politics (Boyd, 2003, 2006; Elizabeth et

al., 2010; Kaspiw et al., 2009; Smart & Neale, 1999; Tolmie, Elizabeth, & Gavey, 2009, 2010, in press; Wallbank, 2007). Almost inevitably this means that the counsellors' orientation to post-separation parenting arrangements bolsters one construction of appropriate post-separation parenting arrangements at the expense of alternative constructions, while it simultaneously bolsters the interests of one party to the dispute at the expense of the other. In a moment characterised by high levels of support for generous contact provisions, and even shared care, it is highly likely that it is the fathers' interests, and power, that will be strengthened.

In the first of these two accounts, Felicity (a Māori woman) ended up with a 60/40 care arrangement with the father (Frank, a Pākehā man from an affluent background) of their nine-month-old child (Dan), despite concerns about the safety implications for Dan of Frank's mental health problems and regular use of cannabis. Felicity describes the counselling process that led to this agreement:

Felicity: ...and he [the counsellor] clearly, you know, said to us that Frank would get 50/50 access if he went to court. ...Because we were already arguing about you know custody and how we would do that, that's when the counsellor said, "No. Frank is able to have 50/50. He'll be given much more. Men have greater access to their children." And he was, you know, very young this counsellor, and I believed him.

According to Felicity's account, the counsellor's (mis)information operated as a coercive determinant of the care and contact arrangement that she and Frank reached through Family Court counselling.

Notably, Felicity's story reveals what Belinda called "an ideological commitment" among some counsellors towards equal shared care. In Belinda's case, this manifested itself, among other ways, in the counsellor's description of Belinda's preferred parenting arrangement, which was based on the model of a primary parent and a regular contact parent, as "old-fashioned," a term that served to pathologise and thereby marginalise her preferred arrangement:

Belinda: ...what happened is she got us to outline what our ideal scenarios would be and I said that my scenario was that Cassie, my daughter's, primary home was with me, and then she had regular contact with her father. And Barry's model was that our daughter has two homes, one with him and one with me and that she spends equal time in both. So I had this you know, what is supposedly an "old fashioned" idea of kind of me being the primary caregiver.

Later, Belinda elaborated on the counsellor's preferences:

It was like there was some kind of manual, prescriptive manual, that they had about how post-separation contact between parents had to be managed.

Given that Belinda's former partner was seeking a shared care arrangement (which Belinda did not think recognised their past parenting practices or Cassie's needs at that point in time), the counsellor's overt support for a particular model of shared care (that is not legislated for) is a clear example of counsellor partiality. But it is partiality that partakes in gendered battles over post-separation care arrangements, both at the micro-level of a gendered contest between Belinda and Barry, and a more macro-level of a gendered contest over equal physical shared care. Furthermore, it is an additional example of the way in which Family Court counsellors wield power within conciliation sessions; by constructing the ideal post-parenting pattern of care and contact, counsellors buttressed the more overt power that they reportedly exercised through applying (gendered) pressure on parents to resolve their disputes.

Discussion and conclusion

Our findings raise important questions about the gender neutrality and impartiality of Family Court counsellors as conciliators, which in turn raise important questions about how power is distributed between mothers and fathers and the extent to which decisions made during Family Court counselling are truly the result of a consensus between the parents. While the women in our study reported a number of examples of what appears to be gender-based solidarity between male counsellors and fathers, somewhat unexpectedly female counsellors did not establish relations of solidarity between themselves and mothers. In fact, the opposite seems to have been the case: female counsellors often seemed to compensate for perceptions of gender-based solidarity by tolerating men's aggressive behaviours within counselling sessions. The women in our study also produced numerous accounts of counsellors applying pressure on mothers to agree to contact arrangements that the mothers felt were unsafe for their children. Such pressure worked in tandem with counsellor tolerance of past harm and neglect, to further fathers' interests at the expense of the ability of the mothers in our study to fulfil their moral (and legal) obligations to protect their children from harm (Elizabeth et al., 2010).

The findings of our study are in keeping with Penelope Bryan's (1992; see also Beck & Sales, 2000) 20-year-old critique of divorce mediation, in which she argued that

divorce mediation typically worked against the interests of women because they had access to fewer sources of power than men, and as a consequence were more likely to “agree” to financial and child care arrangements that favoured men. Furthermore, in an echo of Fineman (1988), Bryan pointed out that divorce mediators frequently favoured joint custody awards, a stance that is more likely to be articulated by fathers (and fathers’ rights groups) than mothers.

Our findings are also in keeping with the more empirically based findings of Elizabeth Trinder’s research on in-court dispute resolution in the United Kingdom (Trinder et al., 2010; Trinder & Kellett, 2007). Trinder’s examination of in-court conciliation processes combined a longitudinal quantitative survey of parents who had used in-court conciliation services (Trinder & Kellett, 2007) with conversation analysis of in-court conciliation sessions to examine, in detail, the interactions between conciliators and parents (Trinder et al., 2010). It is important to note that there are significant differences between the system of in-court dispute resolution in the United Kingdom, which is based on a one-hour, one-off intervention with post-separated parents (see Trinder & Kellett, 2007), and New Zealand’s system of Family Court counselling. Nevertheless, there are good reasons to suggest that there may be similarities in the ways in which conciliators handle the process of dispute resolution in the two countries, not least because of the prominence both legal systems attach to father contact and to settling disputes without litigation whenever possible.

Trinder and Kellett’s (2007) survey with parents found that a majority (60%) reported that in-court conciliation meetings “had been very tense and unpleasant” (p. 329). Such sentiments were stronger among resident parents (who are overwhelmingly mothers), who reported “less choice about entering the process, more anxiety beforehand, more tension in the meeting, less able to say all they wanted to and more likely to report being pressured into an agreement by their ex-partner” (Trinder & Kellett, 2007, p. 329).

In more recent work, Trinder et al. (2010) demonstrated that in-court conciliators routinely ignored, reframed, and rejected the allegations that resident mothers made about domestic violence, and other sources of risk or harm, such as alcohol or drug abuse, a finding that is remarkably reminiscent of Greatbatch and Dingwall’s (1999) findings a decade earlier. As Trinder et al. (2010) showed, conciliators marginalised safety concerns through a range of strategies: they failed to seek further information that might have helped to determine the salience of allegations; they closed the conversation down by changing the topic; they downplayed the seriousness of

allegations through normalising the behaviour under scrutiny and/or by historicising it; and they overtly contested the veracity of the allegations, despite a lack of evidence to support their sceptical position. As a result, conciliators failed to address the safety needs of mothers and children, a failure that had been noted over ten years earlier by Greatbatch and Dingwall (1999).

Many of the processes identified by Trinder et al. (2010) were clearly at work in the descriptions of Family Court conciliation provided by the women in our study, a finding that is more worrying in the New Zealand context because of the generous time provisions afforded to counselling-conciliation in this country. The women in our study also spoke about their concerns over violence, alcohol and drug abuse, and/or poor parenting skills, being marginalised as Family Court counsellors attempted to steer conciliation sessions toward a care and contact agreement that not infrequently represented fathers' wishes. In reflecting on their experiences, it is hardly surprising that many of the women in our study thought the Family Court counsellors (both male and female) operated from a male perspective. Or, to borrow from Holland, Ramazanoglu, and Sharpe (1998), the Family Court counsellors that the women encountered appeared to act as if they were "male-in-the-head": they drew on a hegemonic ideal of post-separation parenting arrangements that is based on extensive father-child contact, if not equal shared time.

The propensity of Family Court counsellors to centre fathers' interests as if they inevitably coincided with children's interests is undoubtedly compounded by the "settlement ethos" (Smart & May, 2004, p. 355) that pervades family law across the West. As Trinder et al. (2010) showed, the settlement ethos contributes to the marginalisation of mothers' concerns and leaves children unnecessarily exposed to the risk of harm. Yet, just as significantly, the push to generate an agreement represents a missed opportunity for improving the relationship between parents by properly addressing issues of harm, hurt, betrayal, and loss (Smart & May, 2004; Smart & Neale, 1997). This despite the fact that the importance to children's wellbeing of amicable post-separation relations between parents has been well documented (Bruch, 2006; Emery, Otto & O'Donohue, 2005; McIntosh & Chisholm, 2008). Rather than allowing the original therapeutic ethos of Family Court counselling to be subverted by the rush to produce quantifiable results in the form of care and contact agreements, a recentralisation of the ethic of care, as recommended by Neale and Smart (1997b) over a decade ago, would reconstruct the role of the Family Court counsellors in ways that would enable them to avoid some of the pitfalls we have identified herein. Of

necessity, such a move would need to be complemented by the widespread uptake of professional education in gender power relations as these relations play out between former heterosexual partners in the context of Family Court counselling.

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