

A CROSS-DISCIPLINE APPROACH TO FAMILY LAW CHILDREN'S CASES

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ABSTRACT

The current *Family Law Act 1975* (Cth) in Australia rests on the concept of cooperative parenting in regard to children's proceedings. It gives priority to continual involvement of both parents in children's lives after separation, while taking into consideration practical aspects of doing so, and whether or not this places children at risk. There is one major problem with this approach. If there have been high levels of conflict between the parents prior to applications being made to the court, and that conflict continues while parents attempt to co-parent because of court orders, there could be more damage done to the children according to literature on conflict.

Human needs theory as it relates to conflict resolution indicates that it is the absence of human needs being fulfilled that is the cause of conflict at all levels of life. If these needs are not fulfilled then the conflict will continue. "Needs" should always be distinguished from "wants". During current court proceedings, it is usually client's "wants" that the lawyers are trying to achieve as "needs" are often difficult to identify.

As there are many forms of human needs, it is first necessary to discover what needs are not being fulfilled and then to find ways for those needs to be satisfied. In the context of family law situations, psychometric assessment with clinical observation by a psychologist who also reads court and subpoenaed documents is one relatively objective and faster means of diagnosing what unfulfilled needs or other issues such as poor parenting skills, financial problems etc are causing the conflict in each case. Psychologists can then recommend changes that may rectify this situation. If a psychosis is discovered then further examination by a psychiatrist would be appropriate. This needs to be done in the context of a new approach to family law systems, and the timing of the assessment is critical to its success. It should be either before court applications are made, or at the beginning of the court processes to avoid going down wrong paths after court proceedings are commenced.

To facilitate a team approach made up of psychologists, psychiatrists and lawyers with the judiciary monitoring and making orders, the development of a common discourse is needed. A common language description of various classifications of disorders in a manual such as a "Cross-discipline Family Law Manual" ("the Manual") may improve the understanding of psychological disorders by lawyers and the judiciary as well as professionals in the ancillary processes of counseling, mediation and relevant courses. The Manual could utilize information from the Diagnostic and Statistical Manual ("DSM") which is used by psychologists and psychiatrists to describe various psychological and psychiatric disorders. If the descriptions in the proposed Manual are also accepted by psychiatrists and psychologists this could bring together a common understanding of all professionals involved before or during family law proceedings.

In addition to the common language, potential therapy could be provided during the months between court mentions. Proposals for change in the court processes and draft orders are included in this thesis.

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