



# AFCC eNEWS

BI-MONTHLY E-NEWSLETTER  
VOL. 1 NO. 1  
FEBRUARY 2006

## WELCOME TO AFCC eNEWS

### About *AFCC eNEWS*

The *AFCC eNEWS*, published bi-monthly, will provide up-to-date information for professionals including case law and research updates, international news and the latest initiatives in family law and conflict resolution. *AFCC eNEWS* will be sent to AFCC members and is available to the public. Please invite your colleagues to register for *AFCC eNEWS* by forwarding this issue and encouraging them to subscribe. All e-newsletters will be archived in the member center on the AFCC Web site, only accessible by AFCC members. AFCC will never share, rent or otherwise distribute the *AFCC eNews* subscription list.

### Family Law Education Reform Project

The Board of Trustees of the National Council of Juvenile and Family Court Judges and the ABA Council of the Section of Dispute Resolution have both unanimously voted to endorse the Report of the Family Law Education Reform (FLER) Project. The Project, co-sponsored by AFCC and the Center for Children, Families and the Law of Hofstra University School of Law, seeks to close the gap between the teaching and practice of family law.  
[Read the report...](#)

### Case Law Update

by *Barbara Glesner Fines, Ruby M. Hulén*  
*Professor of Law, University of Missouri-Kansas City*

Family Courts are increasingly making use of parenting coordinators and other professionals to assist in mediating ongoing disputes in family law cases. However, the Florida Court of Appeals

### UPCOMING EVENTS

#### AFCC 43rd Annual Conference

May 31-June 3, 2006  
Westin Innisbrook Resort  
Tampa Bay, Florida

[Conference Brochure \(PDF\)](#)  
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### IN THIS ISSUE

- [About AFCC eNEWS](#)
- [Family Law Education Reform Project](#)
- [Case Law Update](#)
- [Research Update](#)
- [Featured Article](#)
- [Family Court Review Update](#)
- [International News](#)

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has provided a strong reminder that courts may not require cooperation with these professionals and processes unless the underlying dispute is grounded on legal rights. In this case, the court reversed a trial court's order appointing a parental coordinator and mandating that the father meet with the coordinator in order to resolve visitation dispute between him and his children's maternal grandmother. The court found that, since the grandmother had no right to visitation absent of showing of harm to the children, the orders appointing a parenting coordinator violated Father's constitutional right to privacy.

Cranney v. Coronado, 2006 Fla. App. LEXIS 1094 (February 1, 2006). Click for [opinion \(PDF\)](#). For more daily case law and other legal developments, visit the [Family Law Prof Blog](#).

## Research Update

### Trauma and Depression Affect Parenting

*courtesy of J.M. Craig Press, Inc.*

Complex trauma refers to a situation in which an individual has been traumatized on more than one occasion and/or suffers particularly severe symptoms. The purpose of this study was to determine the impact on parenting based upon the type of trauma the mothers experienced. The traumas included: childhood sexual or physical abuse; witnessing harm or violence as a child; partner violence; and sexual assault as an adult.

[Read more...](#)

## Featured Article

### How Children Contribute to Custody Disputes

*by Donald T. Saposnek, Ph.D., courtesy of Mediate.com*

Children's limited comprehension of the meaning and implications for them of their parents' breakup creates terrible confusion and emotional upset and generates characteristic attempts to cope with the disruption. However, the limited means they have for expressing their needs makes it difficult for their parents to accurately recognize and address those needs.

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## Family Court Review Update

For over four decades, *Family Court Review (FCR)* has served as an interdisciplinary communication forum for all concerned with the improvement of all aspects of the family court system. *FCR*

- [ACR Family Section](#)
- [International Academy of Collaborative Professionals](#)
- [International Commission on Couple and Family Relations](#)
- [National Association of Counsel for Children](#)
- [National Council of Juvenile and Family Court Judges](#)

### Did you know?

AFCC will be awarding one \$5,000 grant to provide parenting coordination services to parents that would otherwise not be able to afford this intervention.

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[David Vigliotta](#)

Published bi-monthly by the Association of Family and Conciliation Courts

is published four times a year and brings a comprehensive coverage of family court practice, theory, research, and legal opinion. A professional forum, *FCR* presents peer-review articles by distinguished judges, attorneys, and other family court specialists.

AFCC members receive online access to the entire collection of *FCR*, beginning with the first issue published in 1963. *AFCC eNEWS* will inform readers on topics that will be covered in future issues of *FCR*.

[Upcoming Topics ...](#)

## **International News**

### **Supreme Court of Canada set to hear two family law cases during the first session of 2006**

*by Wendy Bryans, LL.B., Ottawa, Canada*

Two cases from western Canada will be heard this month by the justices of Canada's highest Court. The first is actually a group of cases, dubbed the "Alberta trilogy," which seeks to clarify when it is appropriate to make retroactive orders for child support. The second, *Leskun v. Leskun*, raises the issue of the role of spousal misconduct when determining spousal support.

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### **Drops from Down Under**

*by Hon. Graham Mullane, New South Wales, Australia*

The big news from Australia is the latest 54-page draft of the Family Law Amendment Bill (Shared Parental Responsibility) to amend the Family Law Act, which covers most family proceedings in the country. The government plans to have amendments in operation by July 1, 2006.

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### **Trauma and Depression Affect Parenting**

*by J.M. Craig Press, Inc.*

Banyard, V.L., Williams, L.M. and Siegel, J.A. [2003]. The Impact of Complex Trauma and Depression on Parenting: An Exploration of Mediating Risk and Protective Factors. *Child Maltreatment*, 8, 334-349.

We have reviewed research regarding the affect of maternal depression on child rearing [See Digest 2,3], but this is the first study we have seen that asked similar questions regarding parenting and depression when mothers' also had suffered traumatic experiences.

Complex trauma refers to a situation in which an individual has been traumatized on more than one occasion and/or suffers particularly severe symptoms. The purpose of this study was to determine the impact on parenting based upon the type of trauma the mothers experienced. The traumas included: childhood sexual or physical abuse; witnessing harm or violence as a child; partner violence; and sexual assault as an adult. The authors measured both levels of depression and parenting ability in a group of 152 women. The average age of the group was 31, nearly all of whom were African American, and 56% were single. Sixty percent of the women had a high school diploma or a GED certificate, and 44% were employed. Parenting outcomes were measured by the presence or absence of physical punishment; parenting satisfaction; neglect; and whether the mother had ever been reported for child abuse. The average number of trauma types experienced by the participants was 2.5, but those who had been sexually abused had higher scores.

The authors found that when participants suffered higher levels of trauma exposure, they showed decreased parenting satisfaction, practiced excessive discipline and were more likely to be reported for neglect. They also found that mothers who were physically abused as children and who suffered assault as adults were more likely to be neglectful, have involvement with child protective services, and experience lower parental satisfaction. Finally, mistreatment by mothers increased when they were older and had more children. On the other hand, women in the study fared better when they had more friendships, were more able to care for themselves, and were less lonely.

#### **CRITICAL ANALYSIS**

The sample was overwhelmingly African American. While this is an understudied population and deserves attention, it also limits the ability to generalize from the findings. Another problem is that the authors only asked whether the participants were exposed to these adverse events; they did not determine the frequency or severity of the trauma they suffered.

#### **RECOMMENDATIONS**

We have known for some time that women who have been mistreated may not be good caregivers, especially when the abuse has been recent and severe. This study suggests that there may be a cumulative effect of recurring abuse that will affect mothers even more adversely. Being aware

of this information is important in family law matters when allegations arise that abused women are not capable of managing their children because they are psychologically disturbed. Women who suffer trauma may very well appear to be seriously disturbed, but with proper care and support, they can be restored and should not be discriminated against for reasons beyond their control.

This digest is contained in the Psychology and Family Law Digest, Volume 5, Number 5.

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### Supreme Court of Canada Set to Hear Two Family Law Cases During the First Session of 2006

by Wendy Bryans, LL.B., Ottawa, Canada

Two cases from western Canada will be heard this month by the justices of Canada's highest Court. The first is actually a group of cases, dubbed the "Alberta trilogy," which seeks to clarify when it is appropriate to make retroactive orders for child support. The second, *Leskun v. Leskun*, raises the issue of the role of spousal misconduct when determining spousal support.

Decisions from the Supreme Court of Canada are generally released about six months after the oral hearing.

The "Alberta trilogy" actually refers to four cases: *Kenneth Hiemstra v. Geraldine Hiemsta*, SCC File No. 3087; *Daryl Ross Henry v. Celeste Rosanne Henry*, SCC File No. 30807; *D.B.S. v. S.R.G.*, SCC File No. 30808; and, *T.A.R. v. L.J.W.*, SCC File No. 30809.

All cases involved fathers who were paying child support and saw their incomes rise over a period of years. Canada's *Federal Child Support Guidelines* provide neither an administrative procedure for recalculation nor a provision specifically addressing retroactive support. Under the Guidelines, a parent who receives child support can seek updated income information from the other parent annually, in order to determine if the child support order is still appropriate.

At present, the case law on when it is appropriate to make retroactive orders varies from province to province and even within some provinces. Some courts have determined claims for retroactive support restrictively, based on a number of factors, including the child's need for support at the relevant time, whether the payor engaged in "blameworthy conduct" and the reasons for the delay in seeking support, among others. The Alberta Court of Appeal, in these four cases, has taken a more expansive approach and decided that the starting point should be that a child support payor will be responsible for paying increased child support from the time the payor's income increases. Failure to do so will result in an increased child support order, retroactive to the date of the increase in income. It is this decision that the paying fathers are appealing.

In *Gary Leskun v. Sherry Jean Leskun* (2004 BCCA 422 and SCC File No. 3058), an ex-husband had applied to rescind a May 2000 order requiring him to pay \$2,250 (Can.) a month in spousal support to his ex-wife. The two lower courts both rejected the husband's application. One of the central issues in the case was the role that spousal misconduct plays when determining spousal support. Section 16 of Canada's Divorce Act, dealing with spousal support, contains a provision requiring a court *not* to take into consideration any misconduct of a spouse in relation to the marriage. It is the interpretation of this section which is being appealed. Justices at the Court of Appeal level stated that this provision does not preclude consideration of spousal conduct in relation to self-sufficiency, where the failure to achieve self-sufficiency resulted in part from that spousal conduct. They also noted that there were further factors – the age of the wife at the time of the break-up of the marriage, her own health and her

family's sorrows – which related to the finding that she was not self-sufficient.

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### Drops from Down Under

*by Hon. Graham Mullane, New South Wales, Australia*

The big news from Australia is the latest 54-page draft of the Family Law Amendment (Shared Parental Responsibility) Bill to amend the Family Law Act, which covers most family proceedings in the country. The Government plans to have amendments in operation by July 1, 2006.

Some of the changes will expressly require a court in residence proceedings between parents to consider making orders for parents equally sharing residence of the children, and some are intended to encourage the court to more often do so. These changes result from recommendations of a parliamentary enquiry set up because of complaints made about what is perceived as bias against men in such decisions. The enquiry also recommended replacement of courts as deciders of such matters by three person tribunals, which the Government rejected.

The changes include:

- making the court consider whether children spending equal time with both parents is practical and in the best interests of the child (if not, then to consider substantial and significant sharing of time);
- making the right of children to know their parents and to be protected from harm the primary factors when considering the best interests of the child;
- amending the existing definition of family violence to make it clear a fear or apprehension of violence must be reasonable;
- requiring the court to take into account whether the parents fulfil their major responsibilities (e.g., pay child support, show up for contact);
- more remedies against people who breach contact orders;
- making children's proceedings less adversarial in court;
- requiring the court to make costs orders against those who make false allegations of violence or abuse;
- better recognising the role of grandparents in raising children after separation; and
- requiring couples to make a genuine effort to resolve their dispute before applying for parenting orders.

Recent amendments to the Family Law Act include Bankruptcy jurisdiction for the courts to be able to deal with situations involving the interaction of family law and bankruptcy, and the competing interests of bankrupt or insolvent persons, their creditors and spouse. As well, there are new powers under the Act in property proceedings to make orders that also alter the interests of third parties, such as creditors. For example, orders can be made that a joint liability of the parties becomes the responsibility of only one.

Other changes under way include the establishment of sixty-five Family Relationship Centers across the country to provide couples with free counselling to save the relationship or to attempt agreement about the future of their children (a precondition to using the courts).

The Federal Government's power under the Constitution to legislate about property disputes between couples extends only to married couples.



Recently all but two of the states have agreed to give the Federal Government that power with respect to couples in de facto marriages, and this legislation is expected to further amend the Family Law Act later this year. The amendments will only apply to the referring states.

While the states wanted to also refer the power in relation to same-sex couples, the Federal Government refused to accept it. So same-sex couples will continue to be reliant on the state law and state courts. The legal rights of unmarried people regarding property disputes differ markedly between states. New South Wales has legislation which covers anybody in a relationship of dependence, regardless of whether there is any sexual, romantic or financial relationship. In other states there is legislation that gives rights in a de facto marriage where there is a child of the relationship or cohabitation for at least two years. In another state there is no particular legislation and people mostly rely upon the law of trusts and seek to establish an implied or constructive trust in relation to the other's property.

The Australian Constitution gives the Commonwealth Parliament exclusive power to legislate regarding marriage. Despite other approaches overseas, the present Government will not legislate to facilitate same-sex marriages. And it seems the Government is unhappy about having to recognise same-sex marriages validly effected in other countries. The Victorian Law Institute, which represents the solicitors of the state, protested on January 27, 2006, that last year the Attorney General's Department instructed at least two Australian embassies in Europe to refuse to provide a certificate to Australian citizens requiring proof of their single status for a same-sex marriage. The president of the Institute said, "Every Australian citizen has an inherent right to obtain personal information and verification from the Government as to their personal details and legal status, such as date of birth, criminal record, citizenship or marital status." Meanwhile, the government of the Australian Capital Territory (which includes Canberra, the National Capital) says it will soon legislate to provide for civil unions, including for same-sex couples.

Also in Victoria, the State Government has started a campaign to encourage parents of children conceived with donor sperm to tell the children and to provide counselling for families with such children. Research shows that only one in three of such children know their conception was by donor sperm. Victorian law allows such children to be contacted by the Infertility Treatment Authority seeking their consent to meet their donors. The children also have the right to initiate contact with the donor through the Authority. The connection is made only if the child is 18 and they both agree. The Victorian Law Reform Commission had made interim recommendations that sperm donors not be able to initiate the contact. Some doctors in the IVF field have also expressed strong opposition.

### **New Zealand**

New Zealand's Care of Children Act 2004 commenced on July 1, 2005, and brings changes in the concept of Guardianship to include custody and the right of control over the upbringing of the child, with duties and responsibilities defined by the legislation. There are extensive changes in terminology and a new emphasis on shared responsibilities for parents and parents coming to their own agreed arrangements. There are also provisions for agreements between parents and donors for children born by "assisted human reproduction procedures." Some children have been given rights to seek review of a parent's or guardian's decision or refusal to give consent. The legislation to some extent follows the Australian Act in its provisions about parenting orders. There is also a new regime in relation to enforcement.

I was lucky enough to attend the New Zealand Family Court Judges Triennial Conference at Nelson in June. The New Zealand Conference was excellent and one of the best sessions was by Alan Blackburn from a program called *Man Alive*, for men and boys who have problems with violence. It has been operating for nine years. The program is government funded and is available free for persons ordered to participate by the Family Court. He spoke of the different approaches of the Family Court and the criminal courts, and different types of violent men whom he classifies as "family men," "cobras" and "rottweilers." Blackburn provided considerable insight into working to change violent men and raised holistic strategies to reduce violence in the community.

### **Upcoming Conferences:**

**February 23-24, 2006:** Australian Institute of Judicial Administration  
Family Violence Seminar, Adelaide, South Australia

**May 1, 2006:** University of Southern Cross Centre for Children and Young  
People (Lismore NSW) Family law Conference at Byron Bay, New South  
Wales, Australia

**May 3-7, 2006:** International Association of Women Judges 8th Biennial  
Conference, Sydney, Australia

**June 7-9, 2006:** 3rd International Conference on Therapeutic  
Jurisprudence, Perth, Western Australia

**October 22-26, 2006:** 12th National Family Law Conference, Perth,  
Western Australia

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