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ICT-enabled Communication in the Family Court: Eliciting the Child's Voice

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ABSTRACT

This paper explores ICT-enabled communication for children in separated families in New Zealand and for the families themselves in their communication with the public sphere and with public authority. Within the multiple private spaces occupied by the post-separation family, financial, custodial and technological inequalities are likely to exist. Results to date suggest that a significant catalyst for children's voices is their higher ICT skill level. The same can be argued for parents' voices. ICT is valued by legal practitioners to facilitate running their own business but the importance of ICT for children and their parents is not recognized by them. Furthermore, members of the helping professions do not possess high ICT skill levels and do not perceive the use of ICT as a means of representing children's views or those of their parents.

Keywords

Community informatics, Family court, New Zealand

INTRODUCTION

When a family separates the whole of family life is rearranged – including financial, legal, living and custodial arrangements. Despite irretrievable breakdown between the parents the relationship between parent and child needs to be maintained if the children are not to be disadvantaged by the separation (Goldson, 2004). It follows that in other than abusive situations the children need to have a part in the negotiations so central to their lives. Sadly, despite the mandate that children must have a say in matters which affect them, (Section 12 of United Nations Convention on the Rights of the Child to which New Zealand is signatory), this occurs in only a very limited way in the Family Court process (Tapp and Henaghan, 2000).

This paper seeks to explore the concept of ICT-enabled communication for children in separated families that have come under the jurisdiction of the Family Court in New Zealand (NZFC). The research questions addressed in this project are: can ICT be utilised to (i) provide effective communication within separated families, particularly for children; and (ii) also between families and the Family Court.

Whilst the underlying philosophy of the NZFC is to primarily represent the children their voices are rarely heard directly throughout protracted and difficult negotiations. Significantly too, research indicates that it is not just in the legal arena that children do not feel heard and acknowledged but also within the family during and following their parents' separation (Smith et al., 2000). After separation the family no longer has a 'single private space' but rather multiple private spaces interacting with the Public Sphere and with Public Authority (Figure 1) (Habermas, 1996). Within these multiple private spaces financial, custodial, and technological inequalities are likely to exist. Results to date for this research project suggest children have a higher ICT skill level which gives them a voice. Results to date also suggest that technically-assisted communication is valued by legal practitioners within the NZFC to facilitate running their own legal organization. Legal practitioners do not appear to recognize the importance of ICT to the children involved in family disputes under the jurisdiction of the NZFC. Early results also indicate that members of the helping professions: counselors, social workers and government employees – who are often the first port of call for separating families – do not possess high ICT skill levels and do not advocate the use of technically-assisted communication for children. This research is ongoing.

In this paper first concepts underlying the structural transformation of the public sphere (Habermas, 1996) are discussed. Secondly, ICT-enabled communications for separated families and their children are explored. The qualitative research method employed to explore the situation in urban New Zealand is described. Data gathering, data analysis, interpretation of results and further research conclude the paper.

MULTIPLE DYNAMIC SPACES AND BLURRED BOUNDARIES

Prior to separation it is taken for granted that the child's voice will be heard within the family unit and that the child's interests will be served within this private space. When parents separate they move from a joint space within the Private Arena (Figure 1) to multiple individual spaces. These spaces are no longer solely within the Private Arena. (Figure 1) and are characterized by reduced levels of communication within the family. Also, external agents are required to mediate, guide, counsel, and legislate what previously had been the private affairs within the family. It is within the border space that exists between the private arena and public authority (Figure 1) that this project is situated.

The research questions addressed in this project - can ICT be utilised to (i) provide effective communication within separated families, particularly for children; and (ii) between families and the NZFC – are situated within the border between the Private Arena and Public Authority (represented by the NZFC). Technologies considered for this research project are: telephony – both standard and mobile; computer supported communications (email, discussion, online chat, webcam), teleconferencing and video conferencing.

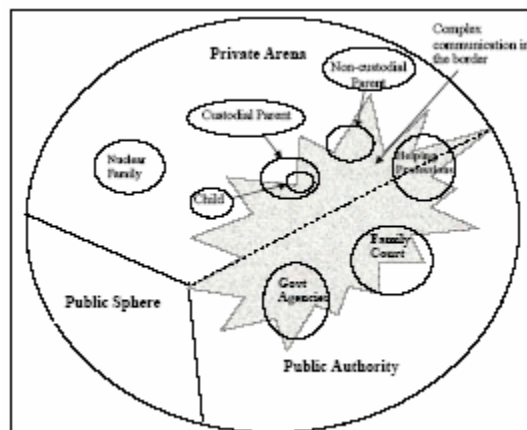


Figure 1. Communications Spaces for Separated Families (based on (Habermas, 1996))

DEFINING PUBLIC AND PRIVATE SPACE

For the purposes of this paper the private arena, public sphere and public authority (Habermas, 1996) is defined as shown in Figure 1. Habermas's separation of the private arena from public authority provides an appropriate theoretical framework in which to situate this research. Public authority is the arena in which legislation is made and enacted as opposed to public space in which interaction with others takes place according to legislated and cultural norms. It can be seen from Figure 1 that there is movement from a shared private family space to multiple spaces within the border between the private arena and public authority. Each external stakeholder operates within a different mediated space with the mandate of the NZFC. Legal practitioners dictate legal and financial arrangements child protection agencies monitor the separated family spaces, helping professionals assist separated families to reach acceptable living arrangements and WINZ monitor non-custodial parental child support payments. Whilst the family may have separate physical geographical private spaces (or indeed even virtual private communicative spaces) separated families are monitored and legislated within the overlapping spaces of the private arena and public authority. Just as (Sheikh, 2004) has identified a 'fragmented public sphere' p1 in his debate on the role of art in public spaces, this study identifies multiple private spaces and complex overlapping spaces with public authority in the form of the NZFC.

Stakeholders after Separation

Stakeholders after separation proliferate. They include: NZFC representatives including legal practitioners (solicitors, counsel for child, counsel for parent, judge and administrators); members of the helping professions (counselors, psychologists, youth workers, social workers and family therapists); the statutory child protection agency, Child Youth and Family Support (CYFS) as well as Work and Income New Zealand (WINZ) who are responsible for establishing and monitoring levels of non-custodial parental maintenance. All of these stakeholders operate with a mandate from the NZFC and therefore operate within Public Authority (Figure 1) to represent, advise counsel or monitor separated families and their children. Each external stakeholder shares a common knowledge about the NZFC seeing the family as client. Each external agent communicates to the family with their own professionally-based language. The separated family is buffeted by forms

of expression previously unknown whilst moving from a mutual private space into multiple mediated spaces. It is little wonder therefore that the child's voice is lost in transition from mutual private space to multiple mediated spaces in the border between the private arena and public authority.

The Communication Dilemma after Separation

Not only does communication become more difficult for the separated family with emotional, psychological, financial and legal issues but also there are different living arrangements in multiple private spaces that may or may not be geographically distant. When the family separates, a child's ability to communicate with the non-custodial parent is reduced. Power and control issues relating to time, place and form of communication are changed for the child.

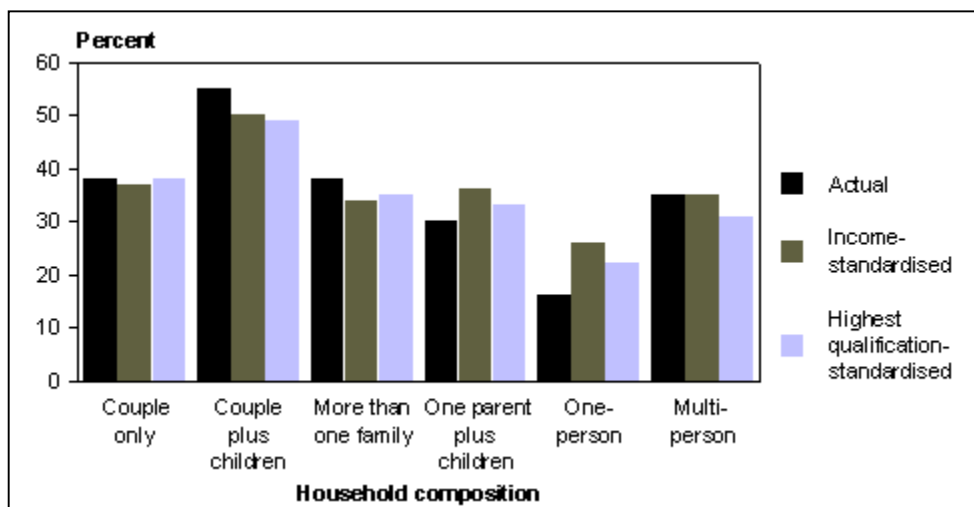


Figure 2. Internet access (Source: Statistics New Zealand, 2001 Census of Population and Dwellings)

Households consisting of a couple with children were more likely to report having internet access, compared with all other household types, as shown in figure 2. By comparison, two-parent families with dependent children were about twice as likely as sole-parent families (50% compared to 25%) to have internet access. Highest qualification-standardized (Figure 2) refers to the highest qualification within a household. Similarly for income.

Other factors affect the family dynamics (and hence the way in which they communicate). Amongst these is the reduction in disposable income for both parents - often it is the custodial parent with the greatest income reduction, which in turn increases the income differential between the parents - access to ICT between the two homes, disparity of ICT knowledge of the respective parents and differential parent/child communication between the custodial and the non-custodial parent. The child is less likely to communicate with the non-custodial parent. Inevitably these communication barriers are compounded by the emotional and psychological issues that arise after separation.

Often one of the primary stakeholders to enter the scene on separation is a counselor. In New Zealand, separating couples are given up to 6 hours of state funded counseling in an effort to assist the couple to find matters of conciliation. The results from our pilot study indicate that members of helping professions, such as counselors, are less technologically skilled than other external stakeholders who influence family decisions at this time. This in turn impacts on the range of options for post separation communication between family members. Our results suggest that members of the legal profession are more skilled with ICT. They are more aware of how ICT can assist the practice of law than with how technology can assist separated families.

All external stakeholders act in the role of intermediaries (Castells, 2000) acting on behalf of the family either in their separate identities or as the reformed separated family units. These intermediaries operate with the mandate of the NZFC and the voice of Public Authority (Habermas, 1996) (Figure1). Without child focused or child inclusive counseling practice (Goldson, 2004) there is a real risk of the child's voice being lost in the welter of adult concerns.

ICT-assisted Empowerment

In our study it was the children who had the most knowledge and the highest skill levels with ICT. Even when barriers were placed before them they knew how to overcome difficulty. One child knew how to gain access and use any device whether it was mobile phone, landline or computer no matter where it was located and who owned the device. This particular child had regained control of his own communications with both parents despite power and control issues clouded by emotional and psychological issues.

RESEARCH METHOD

In the exploration of ICT communication for all stakeholders involved in the affairs of separated families, data was gathered from families by interviews conducted by a family court counselor with families with whom the counselor had established rapport. For all of these families this was after the family had separated. Each family had a different experience in interfacing with NZFC stakeholders. For this pilot project, three families were interviewed. Data was gathered about current usage of, attitudes and barriers to ICT amongst children, custodial and non-custodial parents (Table 1). Qualitative analysis revealed multiple emerging themes. In order to preserve anonymity and to respect the confidentiality of participants in this pilot study, actual numbers of responses have not been recorded, but rather issues that arose from the data are reported.

Data from other stakeholders was gathered by surveying legal practitioners, members of helping professions involved with the NZFC and members of government agencies. Survey questions included a bank of questions involving computer usage and skill level. This was followed by another series of questions relating to the use of ICT for communicating NZFC matters. In particular external agents were asked if they had formally recommended that separated families use electronic communication to keep in touch with each other. The total number of participants in this pilot study is shown in Table 1.

Survey data was also analyzed qualitatively to assess awareness of ICT, attitudes toward it and to what extent ICT-based communications channels would be considered in the deliberations of the Family Court. Both enablers and barriers to effective use of ICT to assist separated families have been identified for all stakeholders (Table 2, Table 3) except administrative staff within the Family Court. We have also identified attitudinal, financial, knowledge and skill differences between stakeholders.

This exploratory study has identified opportunities for future research that will enable the development of models within the NZFC to build technology usage into the decision making process and to reflect better the reality of communication choices that exist for children (this includes management of the potential negative aspects of ICT-assisted communication). In further research we will survey firstly administrative staff within the NZFC located in Auckland and secondly all stakeholders in both urban and rural settings throughout New Zealand.

His Honor Principal Judge of the NZFC, Judge Boshier, stated that: 'New provisions advance research and thinking that children have been insufficiently involved in court proceedings...children's issues and access to the Family Court process are being promoted as more important than they were previously . . . In my view, parents' wishes and perspectives may be less important than was the case previously' (2004).

Legal Practitioners	Helping Professions	Government Agencies	Families
13	5	2	3

Table 1. Participants in Pilot Study

Data Gathering

Ethics approval was gained both from the researchers' academic institution and the NZFC to conduct this study. Interviews of families were conducted by the NZFC counselor (who was also one of the researchers). Surveys were distributed to the Family Court Association in Auckland. Data was also gathered from published material produced by NZFC, the justice department website, Statistics News Zealand, Family Court initiatives in Australia (Pidgeon, 2003) and informal discussions with a selection of NZFC stakeholders including legal practitioners, counselors, youth workers and government agency staff.

Data Analysis - Enablers

Children interviewed were acquainted well with ICT-assisted communication especially with mobile telephony (all children in the study were aged 8 and over). Their main concern was having enough money to pay for connect time on their cell phones so they could send text messages to stay in touch with parents. Children were not averse to 'borrowing' another family member's phone to call or to send text messages. This was a point of contention for siblings and parents alike. The need to communicate was greater for the child than any consequences of using another's phone. All children interviewed also were familiar with sending emails but this was not their preferred method of communication. No children used computers in public space (library, school, internet café or community centre) to communicate with family.

Enablers	Legal Practitioners	Helping Professions	Govt Agencies	Families		
				Non Custodial Parents	Custodial Parent	Children
Communication						
Permanent record	Y		Y			
More measured	Y	Y				
Less intrusive (than phone)	Y					
Mutually agreed guidelines		Y				
More communication channels		Y	Y	Y	Some	Y
Virtual private space		Y				
Conflict						
Reduced	Y					
Issues resolved	Y					
No direct contact of parties	Y					
Psychological presence		Y				
Time factors						
Speed	Y					
More time to access information			Y			
Skill						
Children have ICT skills	Y					Y
Empowerment						
For all family		Y		For some	For some	Y

Table 2 ICT Enablers for Family Court Stakeholders

Both custodial and non-custodial parents were not as familiar with mobile telephony. Some parents could send text messages (but most preferred not to). Most parents preferred to use the landline phone at home to talk to other family members. Text messages were for making logistical arrangements. They were not for conversation. One custodial parent endeavored to get his child to have conversations with the non-custodial parent in preference to sending a text message – 'so that there was

dialogue happening with her mother'. For most parents the main concern was the cost of the communication – either real or perceived. Communication with the other parent should be 'paid for by him/her not by me'. Most non-custodial parents used whatever ICT-assisted communication that was available. Most custodial parents stated that they preferred to talk on the phone at home. It is interesting to note that this statement did not line up with reported communication experiences of the other parent who found that home phone numbers were withheld, emails unanswered and cell phones not used.

Most legal practitioners regarded themselves as experienced ICT users. They could see the benefits of having recorded communication by the use of email (Table 2). They could also see that the act of writing an email message could mean that more thought was put into the communication. One legal practitioner reported that email messaging was less intrusive than phone calls and therefore less likely to cause conflict. Issues were more likely to be resolved in a less stressful virtual space where there was no direct contact between the parties. The speed with which NZFC business could be conducted was cited both as an enabler and a barrier for ICT-assisted communication – an enabler because solutions could be found more quickly and a barrier because some separated parents require time 'to settle down' before solutions can be found. Whilst some legal practitioners acknowledged children's skill with ICT-assisted communication, only a few were incorporating ICT-enabled communication in formal recommendations for separated families.

Barriers	Legal Practitioners	Helping Professions	Govt Agencies	Families		
				Non Custodial Parents	Custodial Parent	Children
Fears						
Threat of Virus	Y	Y	Y			
Information safety	Y	Y				
Online chat fears	Y	Y				
Confidentiality	Y					
Lack of ICT knowledge	Y	Y	Y	Y	Y	
Ease of use	Y	Y	Y	Y	Y	
Availability of ICT						
ICT for all parties	Y		Y		Y	
Communication guidelines						
No Formal recommendations made	Y	Y		na	na	na
No communication guidelines		Y				
Intrusive phone calls	Y					
Email abuse	Y	Y				
Cost of ICT	Y	Y		Y	Y	Y
Each case considered			Y			
Attitude to technology		Y	Y	Y	maybe	

Table 3 ICT Barriers for Family Court Stakeholders

Members of the helping professions – counselors, psychologists, youth workers and family therapists – also agreed that ICT assisted communication meant that families communicated in a ‘more measured’ way. One counselor suggested that the mutually accepted communication guidelines were necessary for the effective use of ICT. Most helping professionals agreed that more communication channels meant a greater likelihood of messages being received and family conflict being resolved. One counselor noted that virtual communication space allowed for a ‘psychological presence’, another mentioned that email communications between visits to the counselor could obviate misunderstanding and crises. One youth worker identified the benefits of virtual space for ‘conducting conversations privately, not publicly.’

One member of CYFS, a family coordinator whose role it was to bring stakeholders together for the benefit of separated families, noted that the permanent record from a collection of emails was an added cheap resource enabling her to spend more time with the communication record in order to facilitate effective solutions.

Data Analysis - Barriers

The biggest differentiating barrier for ICT within separated families is the lack of ICT knowledge. Not only do children know more about ICT, the differential between parents is likely to increase when the family separate. No longer are they one family unit with shared resources including ICT knowledge and skills. Children however do not have the financial resources to provide their own infrastructure to support ICT-assisted communication. The financial differential between custodial and non-custodial parents increases and at the same time the disposable income of both parents decreases. The combination of lack of knowledge and cost of ICT contribute to attitudes that create a barrier to the effective use of ICT.

For government agency staff the main barrier appears to be a lack of ICT knowledge. ICT is regarded as hard to use, and introduces the risk of virus attack. This in turn affects the attitudes that they bring to family sessions to solve communication dilemmas.

DISCUSSION

Only one participant in this pilot study (a member of the helping profession) identified the benefits of shared virtual private space implicitly acknowledging for the family that communication had moved from a single private space into a mediated public space. Separated families therefore find their communications taking place in public spaces, mediated by one or more NZFC stakeholders. Discussions that would have been conducted previously in a mutual private arena are now shared in the space that borders public authority (Figure 1). More importantly the child's voice is less likely to be heard directly. There is no single shared private arena for separated families. ICT enabled communication allows not a single private arena, but rather multiple private conversation spaces. These multiple private and virtual communication channels provide an avenue for children's voices. When we consider that the highest ICT skill level and the highest motivation to communicate demonstrated in this pilot study was with children it is as if the need to be heard has been achieved. ICT-enabled communication provides a series of vehicles for children to be heard directly.

It is no surprise that cost is a common barrier to the adoption of ICT-enabled communication for separated families. As reported in the Social Report, 2004, in NZ it is three times more likely that a single-parent family with dependent children will be below the poverty line than a two-parent family with children (anon, 2004).

It is also no surprise that lack of ICT knowledge was considered a barrier by separated parents within this pilot study. Not only did the economic status of both parents decline, the ICT knowledge base within the family is no longer shared between the parents.

Goldson (2004) points to the need for a stable family environment upon separation. Increasing the number of ICT-enabled communication channels for the separated family is one factor contributing to family stability.

The gaps apparent in data collected in this pilot study include:

- A lack of ICT knowledge within the helping profession. This has implications for recommendations made to separating families on how they can keep in touch;
- An unwillingness by the legal profession to make formal recommendations for ICT-enabled communications between child and non-custodial parent;
- The separate arenas in which various stakeholders operate. There appears to be a need for ICT-enabled communication between the legal practitioners and the helping profession as intermediaries to expedite the NZFC process. If the multiple communication channels that exist between different helping professionals, legal practitioners, government agencies and custodial and non-custodial parents and their children could be streamlined

and simplified by the use of interoperable ICT communication systems the processes in the NZFC may be able to provide quicker and more sustainable solutions for families and their children; and

- A set of guidelines for ICT-enabled communications for all stakeholders.

The research questions addressed in this project were: can ICT be utilised to (i) provide effective communication within separated families, particularly for children; and (ii) between families and the Family Court. The data suggests that ICT communication requirements, benefits and barriers are different for each stakeholder considered. All stakeholders are in agreement that ICT can be utilized for more effective communication. What is not clear is how ICT can be utilized. There are major skill differentials between stakeholders, no clear guidelines or indeed willingness to incorporate formal ICT-enabled communication directives in NZFC orders that are made. It is clear that external stakeholders bring to their dealings with separated families their own professional agendas with respect to ICT. Legal practitioners know the benefits that ICT can offer them professionally. Legal practitioners also bring their own fears that in turn influence the way in which legal orders are made regarding the use of ICT. However it is the children who are making use of technology to improve communication with parents, particularly non-custodial parents. One wonders if this knowledge base could be harnessed by other stakeholders in some way for the benefit of all. The sample size for this pilot project was small and it will be interesting to see what emerges from the national study to be conducted in the near future.

FUTURE DIRECTIONS

In eliciting children's voices, this pilot study has highlighted the importance of ICT-enabled communication channels.

Future research identified includes:

- An investigation of policies and procedures within schools to provide internet access for: children to keep in touch with the non-custodial parent; and information web pages on separation processes and procedures for children so that they have direct access to information. Currently in NZ there is no national policy or guidelines on internet access for children when they are at school.
- A full NZ study of both urban and rural separated family populations to identify ICT needs in these sectors;
- A survey of NZFC staff to gather views and perceptions of the effectiveness of ICT-enabled communication to conduct the business of the court including effective communication with all stakeholders;
- Consideration of structural changes within the NZFC towards a less adversarial approach(similar to the system being trialed in Australia with the introduction of Family Relationship Centres supported by a free helpline and information website);
- Training for all intermediary stakeholders to enable more effective use of ICT and a reduction in fears about mal-use of ICT;
- A NZFC set of guidelines for all stakeholders for ethical and effective ICT-enabled communication; and
- On a theoretical level, the implications that arise from situating the research within a socially structured framework.

CONCLUSION

Findings from this pilot study in Auckland provide valuable information to continue this research throughout New Zealand; and also add to the total knowledge pool about how ICT-assisted communication can improve and empower separated families, particularly children. The impacts of this study are both immediate and applicable in the foreseeable future. As ICT becomes cheaper more separated families can make more effective use of the technology available.

As families rearrange themselves on separation, the dilemmas posed by changed and more complex communication can be addressed by the effective use of ICT. This paper has explored the concept of ICT-enabled communication for children in separated families that have come under the jurisdiction of the NZFC. In exploring the wider issues of whether ICT can be utilised to provide effective communication within separated families and between families and the Family Court, it has become evident that children in such situations are more likely to have a higher skill level with ICT-enabled devices than their parents. Whilst the underlying philosophy of the NZFC is to primarily represent children's interests their voices are rarely heard directly throughout protracted and difficult negotiations. Significantly too, research indicates that it is not just in the legal arena that children do not feel heard and acknowledged but also in the private spaces during and following their parents' separation (Smith et al.,2000). Subsequent to separation the family no longer has a 'single private space' but rather multiple private spaces interacting with the Public Sphere and with Public Authority (Habermas, 1996). Within these

multiple private spaces financial, custodial, and technological inequalities are likely to exist. Results to date for this research project suggest that children's higher ICT skill level is an empowering factor as families rearrange their private lives. Results to date also suggest that technically assisted communication is valued by members of the legal profession within the NZFC to facilitate running their own legal organization and the importance of ICT for children is not recognized by members of the legal profession. Early results also indicate that members of the helping professions, counselors, social workers and government employees – who are often the first port of call for separating families – do not possess high ICT skill levels and do not advocate the use of technically-assisted communication for children. This research which is ongoing utilizes Habermas's (1996) structural transformation in the public sphere as a theoretical and philosophical base.

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