



# AFCC eNEWS

BI-MONTHLY E-NEWSLETTER  
VOL. 1 NO. 2  
APRIL 2006

## AFCC's 43rd Annual Conference Juggling Conflicts, Crises and Clients in Family Court

*"After attending my first AFCC Annual Conference, I promised myself to never miss one."*

- Hon. Raymond McNeal, Ocala, Florida

AFCC's 43rd Annual Conference, May 31-June 3, 2006 at the Westin Innisbrook Resort in Tampa Bay, Florida is fast approaching and reduced hotel room rates are going quickly. *Juggling Conflicts, Crises and Clients in Family Court* showcases more than 150 presenters from thirty states and a half-dozen countries and includes 60 sessions on research, mediation, child custody evaluation, parenting coordination, family law education and more. Reduced conference rates are valid until April 28, 2006 so register now and save!

[More info...](#)

## Call for Presenters AFCC's Seventh International Symposium on Child Custody Evaluations

The Call for Presenters for AFCC's Seventh International Symposium on Child Custody Evaluations, October 19-21, 2006 in Atlanta, Georgia, is available on the [AFCC Web site](#). If you are interested in participating as a presenter, please submit a proposal before May 15, 2006.

[Call for Presenters \(PDF\)...](#)

## Case Law Update

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

Professionals may be nervous about the risk of liability arising from their participation in family law cases given the regular disclosure of negative, private information about individuals. An important rule limiting this liability risk is the litigation privilege. The California Court of Appeals has reaffirmed the strength of the

## UPCOMING EVENTS

### AFCC 43rd Annual Conference

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



*Juggling Conflicts, Crises and  
Clients in Family Court*

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## Did you know?

AFCC's Silent Auction takes place, Friday, June 2, 2006, at the [AFCC 43rd Annual Conference](#) in Tampa Bay, Florida. Many unique items will be offered from Australian boomerangs—to tickets to golf's [2007 U.S. Open](#) in Oakmont, Pennsylvania.

privilege in a case involving a juvenile who sued a supervisor of the county's victim witness program, alleging invasion of privacy, libel, and negligent infliction of emotional distress. The supervisor wrote a letter referring to a child molestation accusation against the juvenile, which was published in a visitation dispute involving the juvenile's family. The supervisor's letter was privileged because it constituted a communication made in a judicial proceeding, which furthered the family law action, and the supervisor was a witness or participant in that action.

Jacob B. v. County of Shasta, 137 Cal. App. 4th 225; 2006 Cal. App. LEXIS 282 (March 1, 2006). Click for [opinion](#) (PDF). For more daily case law and other legal developments, visit the [Family Law Prof Blog](#).

### **ABA Youth At Risk Initiative ABA Presidential Initiative Recommends Family Law Education Reform Project**

Recommendations from a planning conference for the ABA's Presidential Youth at Risk Initiative include two proposals related to the [Family Law Education Reform Project \(FLER\)](#) cosponsored by AFCC and the Hofstra Center for Children, Families and the Law. An interdisciplinary group of 60 professionals and youth met in New York in early February 2006 to develop recommendations to address important issues in America's Youth. The recommendations propose that the FLER recommendations be studied and implemented and the Initiative's Action Plan suggests that that ABA Section of Family Law assist study the FLER report and assist with implementation. The conference was hosted by Hofstra Law School and planned by the ABA Center on Children and the Law, Division for Public Education and Office of Karen Mathis, ABA President Elect. The recommendations are available at [www.abanet.org/child/youthatrisk](http://www.abanet.org/child/youthatrisk).

### **Research Update Siblings View Parental Conflict Differently** *courtesy of J.M. Craig Press, Inc.*

Scholars have begun to examine the question of what pathways lead from child abuse to subsequent adjustment problems. This study also expands our knowledge by looking at how siblings may respond to violence between their parents. Specifically, the authors examined the question of whether child adjustment was related to how they perceived their parents' conflict.

[Read more...](#)

Proceeds help support AFCC's special programs and initiatives.

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## **OUR COLLABORATING ORGANIZATIONS**

- [ABA Center on Children and the Law](#)
- [ABA Section of Dispute Resolution](#)
- [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](#)

## **MARK YOUR CALENDAR**

- **Parenting Coordination: Helping High Conflict Parents Resolve Disputes**  
Joan B. Kelly, Ph.D.  
*June 26-27, 2006*  
Loyola Law Center  
Chicago, Illinois
- **Advanced Issues in Child Custody: Complex Family Violence, Alienation, Child Sexual Abuse and Attachment**  
Nancy W. Olesen, Ph.D.  
*June 28-29, 2006*  
Loyola Law Center  
Chicago, Illinois
- **Seventh International Symposium on Child Custody Evaluations**  
*October 19-21, 2006*  
Sheraton Midtown Atlanta  
Atlanta, Georgia  
[Call for Presenters \(PDF\)](#)
- **Seventh International Congress on Parent Education and Access Programs**  
*October 22-23, 2006*

## Featured Article

### **The Psychology of Divorce**

*by Donald T. Saposnek, Ph.D. and Chip Rose, JD, CFLS, courtesy of Mediate.com*

In helping couples to successfully negotiate the ending of their marital relationship, it is vital for the divorce professional to understand the underlying dynamics of the family as a system and of the divorce process; the professional must grasp how the divorce crisis influences and is influenced by both family structure and family process.

[Read more...](#)

### **AFCC Workshop (Mp3)**

#### **What Grown Children Have to Say About Their Parents' Divorce**

*(members only)*

From the comfort of your own home, iPOD or CD player, AFCC members can download and listen to select conference sessions in Mp3 format. This edition of *AFCC eNEWS* features the workshop, *What Grown Children Have to Say About Their Parents' Divorce* presented by Constance Ahrons, Ph.D., Janet A. Walker, Ph.D. and Hon. Linda Dessau at AFCC's 41st Annual Conference, May 12-15, 2004 in San Antonio, Texas. AFCC members only can access this workshop by logging into the AFCC Member Center and clicking "AFCC Conference Audio" and following the links to AFCC's 41st Annual Conference.

[Listen now...](#)

## International News

### **New Ontario Act Bans Faith-based Arbitration in Family Law**

*by Prof. Nicholas Bala, Ontario, Canada*

The Government of Ontario recently adopted the Family Statute Law Amendment Act, 2005, creating a new regime for Ontario family arbitrations by making amendments to the Arbitration Act, 1991 and the Family Law Act. The new act now differentiates between family arbitrations and other arbitrations and mandates that all family law arbitrations in Ontario be conducted only in accordance with Canadian law.

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### **Changes in Dutch and Belgian Divorce and Visitation Law**

*by Bridgitte Chin-A-Fat, Ph.D., Breda, the Netherlands*

On November 28, 2005 Dutch Parliament approved a proposal to reform Dutch divorce

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law. On March 24, 2006 Belgian Parliament approved a Proposal to reform Belgian legislation concerning residence for children after divorce. Both proposals change legislation in parenting after divorce, aiming to reduce future conflicts. Both proposals however are very different at the same time.

[Read more...](#)

### **Drops from Down Under featuring the AIJA Family Violence Conference**

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

The Australian Institute of Judicial Administration (AIJA) conducted a family violence conference, February 23-24, 2006 in Adelaide, Australia. The conference follows upon a workshop on Domestic Violence conducted in April 2005 designed to identify current issues and court practice in relation to dealing with family violence matters.

[Read more...](#)

### **Membership Notice Notice of Board Nominations and Bylaw Changes**

The AFCC Nominating Committee will be nominating members to the Board of Directors at the Membership Meeting at the Annual Conference, June 3, 2006. The Board of Directors has approved changes to the bylaws, which will be voted on by the membership at the Membership Meeting.

[Read full notice...](#)

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## **ABOUT AFCC eNEWS**

*AFCC eNEWS* is a bi-monthly e-newsletter published by the Association of Family and Conciliation Courts (AFCC). *AFCC eNEWS* provides professionals with time sensitive and up-to-date topics including case law updates, research innovations and international news. You are welcome to forward this e-newsletter to colleagues who might be interested in this information.

### **Web Site Version:**

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### **Editor:**

David Vigliotta



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### Siblings View Parental Conflict Differently

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

Scholars have begun to examine the question of what pathways lead from child abuse to subsequent adjustment problems. This study also expands our knowledge by looking at how siblings may respond to violence between their parents. Specifically, the authors examined the question of whether child adjustment was related to how they perceived their parents' conflict.

The authors studied 112 mothers and their children who were interviewed at a battered women's shelter. All children were 8 or older, and the average age of the siblings was 8 and 12. The sample was 30% Caucasian, 35% African-American, and 34% Hispanic. The mothers' average age was 33 and their educational level was 11 years. Most sibling pairs had the same parents. Mothers and children were interviewed separately by different interviewers, and both completed rating scales.

#### The authors found that:

- Twenty-two percent of the children reported moderate to severe depression, and 24% reported moderate to severe symptoms of anxiety.
- Thirty-eight percent of the mothers reported moderate to severe acting out problems in at least one of their children. They reported anxiety and depression in 40% of them.
- The older children were more likely to experience self-blame, but they did not feel as depressed as their mothers thought they were.
- Those children who blamed themselves more, and felt more threatened by their parents' conflict, were more likely to be depressed than their sibling. In fact the appraisal of threat, regardless of whether it was valid or not, was the largest contributor to adjustment problems.

They concluded that "Our findings suggest that inter-parent conflict in domestically violent homes is not an equally shared, family-wide risk factor in the development of children's adjustment problems, but rather, each child in a family experiences and responds to the conflict in a unique manner" [p. 330].

#### Critical Analysis

There is much theory to support the idea that children in the same family will view events differently. This is one of the few studies we have seen that documents this phenomenon.

In recent years, we have learned that observing family violence can be harmful to children even if they themselves are not injured [See Digests: 1,4; 5, 2 & 3; and 3,6.]. This study combined these issues and confirmed that observing violence is harmful as well, but it is neither equally harmful to all children nor harmful in the same way.

There were two limitations. First, fathers were not included, so we cannot know if their perceptions would have been different from those of the

mothers. Second, the authors did not examine differences among the children based on their ages. Therefore, we cannot know for example, if older children were less harmed than their younger sibs.

### **Recommendations**

Although we have said so before, it bears repeating that children do not have to be physically injured to be harmed when they observe family violence. Furthermore, this study emphasized that because children will not view their circumstances in the same way, it is important to assess them through individual interviews. In this way, those who have been adversely affected can obtain the services they need.

[Skopp, N.A., McDonald, R., Manke, B. and Jouriles, E. N. [2005]. Siblings in Domestically Violent Families: Experiences of Interparent Conflict and Adjustment Problems. Journal of Family Psychology, 19, 324 – 333.]

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### **Changes in Dutch and Belgian Divorce and Visitation Law** *by Brigitte Chin-A-Fat, Ph.D., Breda, the Netherlands*

On November 28, 2005 Dutch Parliament approved a proposal to reform Dutch divorce law. On March 24, 2006 Belgian Parliament approved a proposal to reform Belgian legislation concerning residence for children after divorce. Both proposals change legislation in parenting after divorce and aim to reduce future conflicts. However, due to differences in the divorce laws in the two countries, the proposals are very different. This article discusses the basics of the two proposals.

The Dutch proposal introduces a mandatory parenting plan for all parents wanting to get divorced, the possibility for judges to refer parties who cannot reach agreement on parenting issues to mediation and the so called "administrative divorce." The proposal is the formalization of many changes that took place in practice in recent years. Since the 1990's, the use of divorce mediation has grown rapidly. Dutch research shows that divorce mediation is a process that is not only evaluated positively by parties, but also produced good and fair (in the parties' eyes) results. The research results were additionally used to create a new procedure in divorce law that combines mediation and an administrative divorce procedure (i.e., out of court).

Parties getting divorced are mandated to submit a parenting plan with the petition to divorce. If parties cannot submit a parenting plan, their petition should contain a statement of what has been tried to come to agreement and why no agreement was reached. That party also has to make a suggestion as to how the arrangements regarding the children should be made. The judge can then refer parties to mediation. Although many judges refer parties to (voluntary) mediation in practice, so far there was no legal basis to do so. For parents who have joint custody and get into conflict after divorce, a totally new procedure is created, for which they do not need a legal representation. A parent can apply for a hearing of a dispute that the court is obliged to hear within three weeks of the petition. This is new, since in the Netherlands going to court *pro se* does not exist. Taking a matter of parenting to court based on the current law takes much more time and parties always need a lawyer's representation.

In Belgium, parents who get divorced are to present to the judge a plan how to divide the time where and with whom the children stay. If the parents reach agreement, the judge formalizes the parents' agreement in a court order. The new element is that if parents do not reach agreement, the judge should first investigate the possibility of having the children stay as much time (per month) with the one parent as with the other. An unequal division of time can be ordered only if the judge finds that an equal sharing of time is not the best solution. The judge should explicitly motivate this decision and take into consideration the best interest of the child and parents. The Belgian Civil Code already contains the possibility for judges to refer parties to mediation and the proposal emphasizes the (voluntary) use of mediation in these kinds of conflicts.

Both proposals are now to be approved by the Senate. If the Senate does approve, the legislation in the Netherlands will probably be effective next year. It will be new for Dutch divorce lawyers to have their clients make parenting plans and the question is how the courts will evaluate the plans.

There is also critique on the proposal: mediation – unfortunately - has no formal role, even though in the debate mediation is expected to be used more and more. If the Dutch Senate turns down the proposal, it goes back to Parliament. Then after debate, probably the parenting plan and administrative divorce for parties who do not have children will definitely come through, but this is less to be expected for the new procedure for custody conflicts for which parties do not need legal representation. Regardless of the Senate's actions in either the Netherlands or Belgium, a fundamental change for parents and children in Dutch and Belgian law will be made soon.

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### **New Ontario Act Bans Faith-based Arbitration in Family Law**

*by Prof. Nicholas Bala, Ontario, Canada*

The Government of Ontario recently adopted the Family Statute Law Amendment Act, 2005, creating a new regime for Ontario family arbitrations by making amendments to the Arbitration Act, 1991 and the Family Law Act. The new act now differentiates between family arbitrations and other arbitrations and mandates that all family law arbitrations in Ontario be conducted only in accordance with Canadian law.

The new legislation comes following a controversy surrounding the creation of the Institute of Civil Justice by a group within Toronto's Muslim community in the fall of 2003. The Institute aimed to arbitrate civil disputes, including family matters, according to Sharia (or Muslim) law but within the framework of the Ontario Arbitration Act, 1991. The government of Ontario commissioned a report by Marion Boyd, a former Attorney General, which recommended that religious-based arbitration should be permitted, subject to various protections, [December, 2004 \(PDF\)](#). That report and the possibility of implementation of the Muslim tribunals created a great deal of publicity in Ontario, as well as across Canada and abroad.

Until the adoption of the new act, various positions had emerged amongst the Canadian public on this subject, particularly within the Muslim community. The proponents of the project believed the tribunals would allow Muslims to settle their private disputes using a set of laws that were familiar to them, in a way that would be consistent with Canada's multicultural and freedom of religion policies. Some groups suggested special training and monitoring of all arbitrators. Others advised that the term "Sharia" not be used in describing the tribunals, as this term refers to a religious code involving all aspects of a Muslim's life and therefore conveys the idea that all Muslims must submit their disputes to the Muslim tribunals, whereas arbitration tribunals are, by nature, of voluntary participation.

The opponents of the project expressed a concern that Sharia is biased against women and that the implementation of the tribunals in Canada would create a two-tier family justice system which would be detrimental to Muslim women. They argued that although involvement with the tribunals would be on a voluntary basis, Muslim women would feel pressured into participating and would not have the courage to challenge an inequitable award within the judicial system. There were also concerns that Sharia lacks a standardized interpretation throughout the Muslim world and is not consistent with the concept of equality that exists in Canada.

Some of the features of the new Ontario regime are:

- The term "family arbitration" is applied only to processes conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction. Other third-party private decision-making processes for family matters are of no legal effect in Ontario (the Act does not deal with recognition of foreign court judgements).

- Both the Arbitration Act, 1991 and the Family Law Act apply to family arbitrations, and the Family Law Act governs in case of conflict between the two statutes.
- Family arbitration agreements are domestic contracts under the Family Law Act and are enforced under that Act, not under the Arbitration Act, 1991.
- A family arbitration agreement must be in writing and each party must receive independent legal advice before making the arbitration agreement.
- Power is provided to make regulations under the Arbitration Act, 1991 to govern family arbitrations. For example, these regulations will require arbitrators who conduct family arbitrations to be members of a specified dispute resolution organization, to undergo training, to submit reports, to inquire into matters such as power imbalances and domestic violence and to keep records.
- A party's failure to object to an irregularity in the arbitration will not be considered a waiver of the right to object later.
- Arbitral awards based on other laws and principles, including religious principles, will have no legal effect and will not be enforceable by the courts of Ontario.

Family law is an area of shared jurisdiction in Canada. Although divorce is a federal matter, arbitration of disputes between individuals falls under provincial legislation. Arbitration in family law is not used to the same extent in all provinces in Canada. In the civil law jurisdiction of Quebec, for example, the *Civil Code* expressly prohibits the use of arbitration in family law matters and other matters of public order.

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### Notice of Board Nominations and Bylaw Changes

The AFCC Nominating Committee will be nominating members to the Board of Directors at the Membership Meeting at the Annual Conference, June 3, 2006. The Board of Directors has approved changes to the bylaws, which will be voted on by the membership at the Membership Meeting.

At the AFCC membership meeting on June 3, 2006, the following individuals will be nominated to the Board of Directors:

For their full three-year term beginning July 1, 2006 and concluding June 30, 2009:

Ms. Wendy Bryans  
Ms. Nancy Ver Steegh

For their second three-year term, beginning July 1, 2006 and concluding June 30, 2009:

Cori Erickson  
Hon. William Fee  
Mr. Robert Smith  
Hon. Hugh Starnes

For the completion of the term of William Howe, concluding June 30, 2008:  
Dr. Arnold Shienvold

For the completion of the term of Stephen Grant, concluding June 30, 2008:

Dr. Janet Walker

#### AFCC Nominating Committee:

Ms. Leslye Hunter, Chair  
Mr. Joel Bankes  
Dr. Phil Bushard  
Hon. George Czutrin  
Dr. Philip Stahl

The following changes are proposed to the Bylaws of AFCC. These proposed changes will be voted on by the membership at the Annual Membership Meeting scheduled for 8:00am, June 3, 2006 at the Westin Innisbrook Resort, Tampa, Florida.

a. The Name of the Organization should be amended to conform to the corporate papers. Thus, change on page 1:

I Name

The name of the corporation shall be AFCC (the "Association")

Shall be changed to:

I Name

The name of the corporation shall be Association of Family and Conciliation Courts (AFCC) (the "Association") (which may be referred to as "AFCC" and is hereinafter referred to as the "Association").

b. The number of officers shall be amended to include a separate and distinct position of Vice President and a separate and distinct position of Secretary. Thus, change on page 6:

(L) Quorum

Three (3) members of the Executive Committee shall constitute a quorum for voting purposes. If a quorum is present, all issues shall be determined and all action of the Executive Committee shall be taken by a majority vote of those members of the Executive Committee who are present.

Shall be changed to:

(L) Quorum

Four (4) members of the Executive Committee shall constitute a quorum for voting purposes. If a quorum is present, all issues shall be determined and all action of the Executive Committee shall be taken by a majority vote of those members of the Executive Committee who are present.

c. V. Officers

(A) The Officers of the Association are as follows:

1. President;
2. President-elect;
3. Vice President/Secretary;
4. Treasurer; and
5. Immediate Past-President (hereinafter referred to as the "Past-President")

Shall be changed to:

V. Officers

(A) The Officers of the Association are as follows:

1. President;
2. President-elect;
3. Vice President;
4. Secretary;
5. Treasurer; and
6. Immediate Past-President (hereinafter referred to as the "Past-President").

d. Change on page 8:

VI. Duties of Officers

(c) Vice President/Secretary

The Vice President/Secretary shall keep all minutes of meetings of the Board of Directors, the Executive Committee, and the members of the Association; policies; correspondence; books; records; contracts; and documents, other than those kept by the Treasurer. These duties may be delegated to the office of the Executive Director under the supervision of the Vice President/Secretary. The Vice President/Secretary shall perform such other duties as the Board of Directors may by resolution determine from time to time.

Shall be changed to:

VI. Duties of Officers

(c) Vice President

The Vice President shall assume the duties and responsibilities of the President-Elect in the absence of the President-Elect. The Vice President shall perform such other duties as the Board of Directors may by resolution determine from time to time.

(d) Secretary

The Secretary shall keep all minutes of meetings of the Board of Directors, the Executive Committee, and the members of the Association; policies; correspondence; books; records; contracts; and documents, other than those kept by the Treasurer. These duties may be delegated to the office of the Executive Director under the supervision of the Secretary. The Secretary shall perform such other duties as the Board of Directors may by resolution determine from time to time.

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### **Drops from Down Under featuring the AIJA Family Violence Conference**

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

The Australian Institute of Judicial Administration (AIJA) conducted a family violence conference, February 23-24, 2006 in Adelaide, Australia. The conference follows upon a workshop on Domestic Violence conducted in April 2005 designed to identify current issues and court practice in relation to dealing with family violence matters.

Topics included:

- Current thinking and research on family violence
- Prosecution practice
- Specialist court programs
- The relationship between family violence and alcohol, illegal drugs and other mental health issues
- Causes of family violence
- Family violence in indigenous communities Issues relating to how issues are treated in family violence matters
- Family law issues
- The effect of family violence on children

Keynote speakers included Dr. Jane Ursel, Director of the Winnipeg Family Violence Court, and the Hon. Dr. Eugene Hyman, Judge of the Superior Court of California. Dr. Ursel spoke about specialized family violence courts, which have been operating in Winnipeg since 1990 and have been gaining established throughout Canada over recent years. She reported that there are more women coming forward on domestic violence, more arrests made by police and sentencing changes have resulted in the most common sentence being two years probation with mandated treatment.

Dr. Ursel also reported that domestic violence homicides have dropped considerably while the volume of domestic violence cases in the courts has increased dramatically. The majority of cases proceed as a guilty plea, the conviction rate is higher than the national outcome for crimes against a person, and of the cases that proceed to sentence, 69% are granted probation.

The second keynote speaker, Judge Hyman, highlighted the characteristics of domestic violence, including the perpetrators and the victims. He also spoke about the procedures in the Santa Clara County Superior Court Juvenile Delinquency, Domestic Violence and Family Violence Court.

Other highlighted speakers included Dr. Toni Makkai, Director of the Australian Institute of Criminology (AIC). Dr. Makkai presented "Causes of Family Violence" and current research conducted by AIC. In domestic homicides, 58% had a history of intimate partner violence and men were 75-85% of the offenders.

Justice Colleen Moore from the Family Court of Australia, who chairs the court's Domestic Violence Committee, emphasised how serious a problem family violence cases are for the court. New research of a sample of 91 cases before the court concluded that 68 involved allegations of family violence. Justice Moore stressed the court's Family Violence Policy was developed 15 years ago and the last major report by the Family Violence

Committee was in 2003. The recommendations were approved and have been implemented by strategies in five key areas over a two year time frame.

Several other speakers spoke about the importance of Judicial education in family violence and the use of specialized Family Violence Courts. Ms. Maria Dimopolous of Myriad Consultants, Victoria, spoke on "The Complexities of Cultural Differences in Family Violence" and about the intersection of women's rights and cultural rights.

Justice Robyn Layton of the Supreme Court of South Australia referred to research that suggests that boys from violent homes are 1,000 times more likely to perpetrate abuse against a partner or child. She raised some serious issues about the Government's proposed changes to the Family Law Act. She also raised the issue of the difficulties protecting children in a federal system with the significant constitutional problems that arise when trying to integrate the system. She supported the concept of a federal court with jurisdiction in relation to child contact, residence, maintenance, and child protection.

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