

New Study: Fathers' experience of family mediation

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LAWYERS AND MEDIATORS COMMONLY observe how difficult it is to engage fathers in family mediation.¹ A qualitative study completed in 2021 at the University of Auckland Law School, supervised by Professor Mark Henaghan, sought to bring men's voices to the forefront to find out why and how the system was failing them.

Background – The Gender Revolution

It is important to view family mediation against the backdrop of significant socio-political changes within the modern family over the past five decades. Alongside the major shift in behaviours towards less committed relationships, fewer children and high marriage dissolution rates, studies found an increase in men's involvement in household and childcare activities, which was termed 'the gender revolution'. The first stage of the revolution saw women entering the workforce in great numbers yet continuing to perform most household tasks. We are now in the second stage where men have begun to be far more involved in childcare and household chores.² A 2018 study found that in families where both parents work the same number of hours, mothers spend an average of 33 hours per week in household and childcare activities, while fathers spend only 16 hours.³

From this trend emerged the new fatherhood ideal, characterised by an expectation men will be highly involved in parenting and household tasks. However, studies found that contemporary fatherhood puts more emphasis on emotional connection and play, at the expense of participation in childcare work.⁴ This new fatherhood stands in contradiction to traditional masculine norms, which continue to shape the behaviour of most men, and many fathers struggle to find a balance between the two.⁵

An awareness that we are in the midst of a revolution, and that this cultural shift replaces gender behaviours that are millennia long, is crucial to understanding some the behaviours of fathers during divorce.

The importance of fathers in children's lives

Recent studies provide clear evidence that the involvement of fathers in their children's lives is hugely important, and that fatherhood has a *different quality*, but is not inferior to motherhood. A 2018 meta-analysis of 46 studies on fatherhood concluded: "There is clear and consistent evidence that positive father involvement supports child development across a host of domains."⁶

A stark demonstration of the importance of fathers is evident in the statistics on children who grew-up with absent fathers, represented in high rates of youth crime, depression, suicide, behavioural problems, poor academic performance, and homelessness.⁷ Studies examining the causes for father absence uncovered an unexpected finding — disengaged fathers were those who had a very close bond with their children during the marriage. These fathers were so heartbroken by the sharp change in their relationship to brief, artificial visits, that many could not bear the pain and disengaged.⁸

Divorced fathers often find themselves in new territory with few tools to guide their behaviour. The statistics show that following divorce, most mothers want sole custody, while fathers are split: a third want sole paternal custody, a third joint custody and a third sole maternal custody.⁹ This wide variation reflects the ambiguous social message and an absence of clear rules for fathers.

Most experts conclude the two crucial factors for children's wellbeing following

divorce are having a *meaningful relationship with both parents* and a *low level of conflict* between parents.¹⁰ Meaningful relationship is measured by the openness and depth of sharing emotional content, which can only be created through participation in children's everyday lives.¹¹ Despite some controversy,¹² most recent studies conclude that shared parenting is the best arrangement to foster a high-quality relationship with both parents, even in high conflict families.¹³

Findings of the current study

Four main themes emerged from the interviews conducted for this study:

(a) The severity of men's reaction to separation

The majority of participants in the study described a severe grief response to separation, with depression-like symptoms and characterisation as physical injury and death.

Jeremy: "I was definitely sad, depressed, grieving, angry. ...by the time we got to mediation I lost a lot of weight, I wasn't eating very much, I was, you know, there were some days when I wasn't getting out of bed."

John: "So yeah, it really pushed me to a breaking point. The thought of suicide crossed my mind a couple of times, but it didn't really go very far because I will not do that to the kids. ... It felt like my kids have died, but I couldn't properly grieve because they weren't dead."

Tom: "But yeah, you know, like, [pause] yeah, it was, it, like, yeah, I can't really describe it. It was physically so, so emotionally difficult that it was kind of physically harming in a way. Like I was almost sick, and I couldn't talk, and I couldn't control my, you know, crying and all sorts of things."

Scholars agree that men's reaction to divorce is more intense and severe than it is for women. Studies reveal findings such as: divorced men are 4.8 times more likely to commit suicide than divorced women,¹⁴ divorced men are nine times more likely to be admitted to psychiatric hospitals, and suffer higher levels of physical illness,¹⁵ and men are more likely to experience grief and helplessness, loneliness, depression and apathy, and feelings of incompetence.¹⁶ Some of the contributing factors to men's severe reaction are:

- Profound differences in emotional expression mean men *express* their emotions less than women but do not *experience* them less. The emotions they do express tend to be only powerful emotions such as anger, contempt, disgust and pride.¹⁷ Men also tend to internalise emotions and withdraw from emotionally difficult situations.¹⁸
 - Men typically lack good support systems and find it hard to share difficult situations even with close friends. The marital relationship is often their only source of emotional support and intimacy.¹⁹
 - Divorced fathers often use the words 'death' or 'bereavement' to describe their experience.²⁰ Studies found 'masculine grief' is characterised by suppressed emotions and enhanced cognitive and problem-solving attitudes.²¹
 - Men typically mourn through increased activity, somatisation and self-medication with alcohol and drugs.²²
 - Men who conform to societal gender norms find it hard to reconcile their intense feelings with the expectation to be strong and stoic.²³
 - Women initiate around 70 per cent of divorce cases.²⁴
- The cumulative effect of these factors often results in many fathers never accomplishing a healthy grief process, but continuing to feel overwhelming loss and upheaval, primarily related to the loss of their relationship with their children.²⁵ Men's limited range of emotional expression, combined with the use of alcohol and drugs to



self-medicate, adds a highly disruptive aspect to post divorce behaviours.

(b) The devaluation of fatherhood

Most participants in the study experienced devaluation of their role as fathers, mostly by their ex-partner, but often by the mediator and by society at large. The devaluation message they described is two-fold: their performance as fathers is not good enough, and fathers are not as important as mothers for their children's wellbeing.

Barry: "[W]hen we come together, I just get the vibe that the mediator has heard this story about me as a person, me as a dad, and I'm a shit person, I'm a shit dad. And I kind of get that impression that she's [the mediator] basically made up her mind that I'm a bad person, and I'm a bad dad."

Brad: "All she cared about me was just the money."

Paul: "She [the mediator] probably believes that the mother is a better parent than the father. At one point, she said to me that I am very unusual that I want to have 50/50 care of a child."

Studies on fatherhood reveal that most fathers consider fatherhood to be the most important aspect of their lives, yet many experience a lack of respect for their role as fathers.²⁶ Scholars pointed to the clinical literature which both creates and reflects this attitude in the derogating terms used for fathers, such as 'infantile', 'incompetent' and 'under-developed'.²⁷

Other studies found that the devaluation often originates with mothers, as most see fathers as less important, doubting their abilities to parent adequately and often only seeing them as providers.²⁸

(c) A strong sense of powerlessness

Gender power was unsurprisingly the most prominent issue that came up in the interviews, with *all* participants describing feeling powerless at mediation and a loss of control over contact with their children.

Jonathan: "So essentially, Jenny sits in a position of power in the mediation because it's essentially her saying 'yes' or 'no' to my requests. ... so, someone who has everything and doesn't want to give up anything, is ultimately in a position of power."

Barry: "[A]t the end of the day, I think, as a father who's not with the children, ... you are basically powerless. You can... have the best of intentions, and you can have the smallest of intentions, but [when]... the mother says, 'no', you can't get anywhere."

Cullum: "[B]asically, you still feel powerless, ... you've got a bit of a say and somebody's there to listen to what you've got to say, but it makes no difference. You can ask away, [but]... if the mother turns around and says: 'no', this is the situation."

It is important to view this powerlessness experience in its cultural and political context. A study on the

experiences of New Zealand women found men use subtle, yet systematic, forms of subordination and domination over their partners.²⁹ Scholars observed a strong shift in power that happens at separation as men often experience a decline in power over the family and women experience an increase in theirs.³⁰

Yet, even if men's experience of powerlessness is subjective, it is nonetheless real, and its consequences may be harmful. A study on the aspect of *perceived control* over divorce settlements found that fathers perceive less control over settlement issues. This lack of control is likely to result in *non-control distress* leading to reactance and anger and to desperate attempts to regain power, often manifested through heightened conflict.³¹

(d) The system is biased against fathers

The majority of participants in the study said the mediator was biased against them and favoured their ex-partner. All participants said 'the system' is biased against fathers. Some allegations were concrete and supported by examples, while others were vague and unsupported, as if stating a universal truth.

Paul: "I know very well what mediation is, and I already had some experience of seeing how an impartial mediator works. ... I realised that the mediator I was dealing with ... wasn't even pretending that she was, she was biased. She was openly biased."

Eric: "[S]he was one sided, she believed that my ex is right, and she'd support my ex to get what she wants or closer."

Jeremy: "I really felt up against the system. I really felt like this whole system and what I'm being told needs to happen, it really feels rigged... against the fathers."

Jonathan: "So, the whole system is set up against the male, in my personal opinion. And as far as my rights, Jenny has no extra-legal right to have more access to Rebecca than me, supposedly. But of course, she has sat the whole time as judge and jury and not let me have the access that I wanted with Rebecca."

These quotes echo the political



allegations promoted by Fathers' Rights Groups that fathers are victimised and discriminated against in the family justice system.³² Nonetheless, it is important to acknowledge that bias against fathers and the devaluation of fatherhood are often very real, as transpired from the interviews.

Conclusion

This study illuminates the complex, often contradictory, messages society communicates to fathers. The depth of fathers' grief reaction to separation exacerbates this conflictual state, as many fathers struggle to manoeuvre these clashing expectations while grieving. Alongside these difficulties, fathers encounter a devaluation of fatherhood, as the different quality of fatherhood is judged inferior. It is therefore unsurprising to see the high levels of suicide, depression, substance abuse and health problems men experience following separation.

The stories of fathers reveal much frustration with a system that treats them like bad people and with mediators who do not respect fathers and are perceived, rightly or wrongly, as protective of mothers and biased against fathers. The high prevalence of family-violence in New Zealand, and the fact that most perpetrators are men, no

doubt plays a role in the perceptions of all stakeholders in the family justice system. Protecting victims of family violence must be paramount, yet not acknowledging the pain and confusion of fathers may achieve just the opposite.

The New Zealand legislation enshrined the wellbeing and best interests of children as the prevailing principle to guide decisions. Social science studies conclude that having a meaningful relationship with both parents and a low level of conflict between them optimises children's wellbeing. Studies show that in comparison with litigation, family mediation results in more shared parenting arrangements, less conflict between parents, and more contact between fathers and children in the long term.³³ Yet, family mediation is severely underutilised in New Zealand.³⁴

One wonders whether some of the negative behaviours, such as family-violence and father absence, stem from the disrespect for fathers, which creates anger and frustration or emotional difficulties. Perhaps a fundamental change in our social discourse that cements the notion that fathers are significant for the wellbeing of their children will provide fathers with the *recognition* essential for building their confidence to become such parents and break the cycle of anger and frustration.



I would argue that such fundamental change can only be facilitated and nurtured through mediation. The underlying values of mediation truly *respect* people and their innate wisdom and capacity. The adversarial system which uses the tools of the patriarchy – reward and punishment – cannot facilitate such important social change. Respect, non-judgement and acceptance are key to invoking positive change. ■

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15. John Jacobs "The Effect of Divorce on Fathers" (1982) 139(10) *Am J Psychiatry* 1235 at 1236.
16. Edward Kruk "Parental and Social Institutional Responsibilities to Children's Needs in the Divorce Transition: Fathers' Perspectives" (2010) 18 *J Men Stud* 159 at 161. *particularly* in regard to their relationship with their children, and grounded theory analysis to uncover themes related to fathers' perceptions of their children's needs, and parental and social institutional responsibilities to these needs, during the divorce transition. We found that contextual factors, particularly the legal custody determination process, largely determine both the level of paternal involvement and quality of father-child attachment after divorce. A sharp discontinuity between pre- and post-divorce father-child relationships was observed, more marked than in earlier studies. Fathers' psychological reaction to the actual or threatened loss of the father-child relationship was also more pronounced than previously reported, a consequence of fathers' increasing levels of involvement with and attachment to their children before divorce. Implications for practice and policy are discussed." container-title: "The Journal of Men's Studies"; DOI: "10.3149/jms.1802.159"; ISSN: "1060-8265"; issue: "2"; language: "en"; page: "159-178"; publisher: "SAGE Publications Inc"; source: "SAGE Journals"; title: "Parental and Social Institutional Responsibilities to Children's Needs in the Divorce Transition: Fathers' Perspectives"; title-short: "Parental and Social Institutional Responsibilities to Children's Needs in the Divorce Transition"; volume: "18"; container-title-short: "The Journal of Men's Studies"; author: [{"family": "Kruk"; given: "Edward"; multi: [{"key": ""}], issued: [{"date-parts": [{"2010"}, 3, 1]}, seeAlso: [{"}], locator: "161"; label: "page"}]; schema: "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"
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25. Kruk, above n 20, at 19.
26. Kruk, above n 16, at 173. *particularly* in regard to their relationship with their children, and grounded theory analysis to uncover themes related to fathers' perceptions of their children's needs, and parental and social institutional responsibilities to these needs, during the divorce transition. We found that contextual factors, particularly the legal custody determination process, largely determine both the level of paternal involvement and quality of father-child attachment after divorce. A sharp discontinuity between pre- and post-divorce father-child relationships was observed, more marked than in earlier studies. Fathers' psychological reaction to the actual or threatened loss of the father-child relationship was also more pronounced than previously reported, a consequence of fathers' increasing levels of involvement with and attachment to their children before divorce. Implications for practice and policy are discussed." container-title: "The Journal of Men's Studies"; DOI: "10.3149/jms.1802.159"; ISSN: "1060-8265"; issue: "2"; language: "en"; page: "159-178"; publisher: "SAGE Publications Inc"; source: "SAGE Journals"; title: "Parental and Social Institutional Responsibilities to Children's Needs in the Divorce Transition: Fathers' Perspectives"; title-short: "Parental and Social Institutional Responsibilities to Children's Needs in the Divorce Transition"; volume: "18"; container-title-short: "The Journal of Men's Studies"; author: [{"family": "Kruk"; given: "Edward"; multi: [{"key": ""}], issued: [{"date-parts": [{"2010"}, 3, 1]}, seeAlso: [{"}], locator: "160"; label: "page"}]; schema: "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"
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