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## 52. ICT in the New Zealand Family Court

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### Abstract

*The New Zealand Family Court (NZFC) is an ideal public sector application for social informatics. In a study investigating ICT-assisted communications which was conducted with multiple court stakeholders, paradoxical results emerged. This research is positioned within a five-fold layered theoretical framework encompassing: private/public space; sense of self; emotional energies; digital citizenship; and (Sawyer, 2005)'s five common observations about research in the field of social informatics. This richly textured theoretical framework provides grounding for results within and across disciplines revealing deeply engrained behaviours, emotional states, customs, workplace cultures, and the problems associated with solving private problems in public spaces.*

**Keywords:** New Zealand Family Court, Social Informatics, Multiple Stakeholders

### Introduction

In this paper a recent qualitative study of ICT-enabled communication within the New Zealand Family Court (NZFC) is positioned within a single theoretical framework (Figure 1) that utilizes Habermas's (1996) public/private space metaphor; Sawyer's (2005) tenets of social informatics and Prensky's (2001) digital citizenship.

### Background

It is at emotionally-charged times when private lives collide with the legal domain and when private matters become public that separating family members (SFMs) flounder for appropriate role models in moving from private to public domain. When the public/private space metaphor underpinning the philosophical stance adopted by this research is enriched by: individual sense of self; the difference in emotional energies experienced in fractured private spaces and public authority represented by the NZFC; and differing stakeholder digital citizenship in this domain; that surprising results emerge. Sawyer's (2005) core tenets of social informatics are: emergent and differing results when multiple stakeholders are considered in public/private spaces affected by ICT-enabled communication; inequity issues arising from the uptake of ICT; multiple ethical implications resulting from ICT; multi-layered social context; and differing results dependent on the layers, levels and depth of the analysis carried out.

This research project that investigated multi-stakeholder ICT use within the NZFC highlighted diverse and paradoxical issues: a lack of ICT knowledge within the helping profession that impacts on advice given to SFMs; legal professionals unwilling to make formal recommendations for ICT-enabled communications for SFMs; and the separate arenas in which various stakeholders operate. It is within the border between the private arena and public authority (Habermas, 1996) that communication between NZFC stakeholders becomes complex. Sawyer's (2005) social informatics framework overlaid on this border shows how the multiple dimensions afforded by ICT-assisted communication assume multiple and paradoxical roles. These multiple dimensions include: stakeholder digital citizenship; sense of self within the border; power relationships that emerge between stakeholders in the border; and emotional energies that accompany ICT-assisted communication (Figure 1).

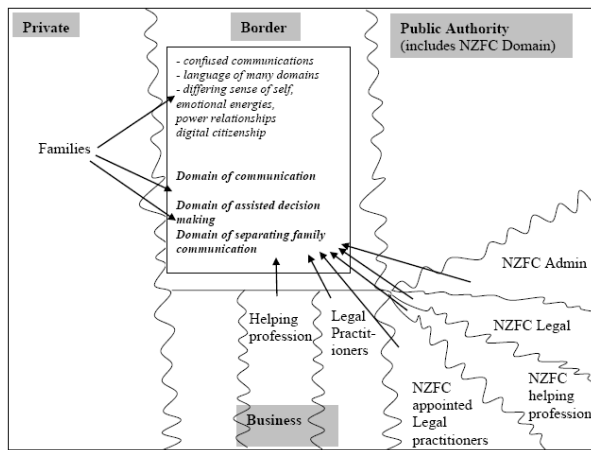


Figure 1. Spaces in the NZFC Communication Domain (Based on Habermas, 1996)

### **Digital Citizenship**

Amongst NZFC stakeholders there are varying levels of digital citizenship (Fielden and Malcolm, 2006; Prensky, 2001). There are also differing views on ICT-assisted communication within the border (Figure 1). Private legal practitioners have well-developed ICT knowledge and skills used to run their business more effectively, however they are less aware of how ICT can help separating families (Fielden and Goldson, 2005). Counselors are late adopters of ICT and thus are limited on how to advise SFMs. ICT is a normal part of working life for counselors for whom email is a more convenient way of communicating with clients. There is almost unanimous agreement (Fielden and Goldson, 2005) that email is good for logistics for SFMs in conducting asynchronous communication in emotionally-charged situations. Within the NZFC there is also differing levels of digital citizenship. NZFC administrators - who are late adopters of technology - are the first contact point for poorer SFMs. However the NZFC chief judge supports ICT-assisted communication seeing benefits in stream-lining court administrative procedures. However, he presides over an administrative system that is mired in traditional bureaucracy where administrators have a clear view of their professional role. There are also clearly drawn lines about the use of cell phones which, according to administrators are not for use in the public domain when dealing with clients.

### **Domain-specific Language**

The 'language' of NZFC is set in legal and bureaucratic terms (echoed on the NZFC website) and is usually unknown to SFMs. Each stakeholder acting on behalf of SFMs uses domain-specific professional language. For NZFC-appointed stakeholders the language is situated within a legal use of English with specific and precise use of terms most of which are unfamiliar to SFMs. NZFC administrators' language is also set within a bureaucratic system bounded by legal rules and regulations. Court appointed helping professionals add to this with their own set of therapeutic terms. These subsets of English on the whole, are unfamiliar to SFMs.

### ***Sense of Self***

Whilst SFMs operate from a fractured sense of self in his domain, every other stakeholder operates as a professional familiar with her/his particular role. SFMs move from decision-making and communication within a single unit in the private arena to the border with public authority in which decision-making is either assisted by other stakeholders, or decisions are made for them. SFMs go from being in charge and communicating about their private lives with the family to being disenfranchised by unfamiliarity with the variety of language subsets, private matters becoming public, and by being in an emotional state that is different from all other stakeholders (Goffman, 1967).

### ***Power Relationships***

Whilst mediated solutions for separating families are becoming more common, ultimate responsibility for the way in which decisions are reached and what these decisions rest with NZFC judges. Private legal practitioners in their role as SFM advisers have more power than most other NZFC stakeholders because of their role status and their knowledge of the law. Court administrators believe that their role is to make sure that SFMs complete and lodge forms correctly.

### ***Research Method***

Data was gathered about current usage of, attitudes and barriers to ICT amongst children, custodial and non-custodial parents. Qualitative analysis revealed multiple emerging themes. In order to preserve anonymity and to respect the confidentiality of participants in this 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. 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 NZFC. Both enablers and barriers to effective use of ICT to assist separated families have been identified for all stakeholders except administrative staff within the NZFC.

### ***The Communication Domain***

This border system (Figure 1) is a domain in which confused communications happen. Catalysts for each stakeholder group in this domain appear to be different and in many cases are seen to be possible only on a case-by-case basis (Fielden and Goldson, 2005). Not only does communication become more difficult for the SFMs with emotional, psychological, financial and legal issues but also there are different living arrangements in multiple 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.

### ***Socioeconomic Factors***

Two-parent families with dependent children were about twice as likely as sole-parent families (50% compared to 25%) to have internet access. Another issue which affects family dynamics 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.

### ***Stakeholder Positioning***

NZFC counselors are often the first point of contact for SFMs. Fielden and Goldson (2005) found that they are less technologically skilled than other external stakeholders. This in turn impacts on the range of options for post-separation communication between SFMs. 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 reconstituted separated family units.

### ***Enablers for ICT-assisted Communication***

In their ICT-assisted communications with their children, both custodial and non-custodial parents are disadvantaged by their lower digital citizenship. Fielden and Goldson (2005) found that some parents who participated in their study 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. Fielden and Goldson (2005) found that children as ‘digital natives’ (Prensky, 2001) with their knowledge and skill levels of ICT overcame communication barriers. 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.

Legal practitioners are experienced ICT users within their own business and recognized the benefits of electronic communication listing permanent records, time for reflection and less intrusive communication as benefits. 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 SFMs.

Helping professionals also agreed that ICT-assisted communication meant that families communicated in a ‘more measured’ way. One counselor suggested that 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 a government agency noted that the permanent record from a collection of emails was an added cheap resource.

### ***Barriers to ICT-assisted Communication***

The biggest differentiating barrier for ICT within SFMs 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. Legal practitioners believe negative factors are: threat of virus; information safety; fears associated with chat rooms and lack of confidentiality. These barriers impinge on their willingness to incorporate ICT-assisted communication in formal recommendations for SFMs. For helping professionals, information safety, online chat fears and the absence of ICT communication guidelines were seen as barriers. Most helping professionals regarded themselves as 'inexperienced users' which has an impact how they interact with SFMs. Counselors also view the financial status of SFMs as a barrier to effective adoption of ICT. Trading abusive emails between SFMs was also seen as a barrier to effective use of ICT. Lack of ICT knowledge was the main barrier for government agency staff members who regarded ICT as hard to use and at risk of virus attack.

### ***Multiple Communication Spaces***

After families separate shared virtual private space offer benefits not afforded anywhere else. Separated families 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 murky 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-assisted communication allows not just a single private arena, but rather multiple private conversation spaces. These multiple private and virtual communication channels provide an avenue for children who are the most digitally aware and knowledgeable. It is no surprise that cost is a common barrier to the adoption of ICT-enabled communication for separated families (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. Not only did the economic status of both parents decline, the ICT knowledge base within the family is no longer shared between the parents.

### ***Future Trends***

In this research conducted in the NZFC ICT-assisted communication channels pose both dilemmas and benefits to future trends. Greater emphasis should be placed on training and education for all stakeholders in the NZFC. Consideration of the wider implications for access, relevance and timeliness of e-information is also required. The economic benefits

ICT-assisted communication for earlier intervention in family crises is also required. An investigation of policies and procedures within schools to provide neutral internet facilities for children to maintain parental contact and to gather information on separation processes and procedures could also be investigated. Whilst there have been structural changes within the NZFC instigated by the chief family court judge, more research into acceptance of these changes involving ICT-assisted communication needs to be conducted.

### **Conclusion**

Findings from this research conducted within the NZFC provide valuable information to continue further research in this domain. The impacts of this study are both immediate and applicable in the foreseeable future. As ICT becomes cheaper more separated families can make better use of the technology available. 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. Within these multiple private spaces financial, custodial, and technological inequalities are likely to exist. This research is underpinned by (Habermas, 1987) communicative action theory, Habermas's (1996) structural transformation in the public as a theoretical and philosophical base and Sawyer's (2005) social informatics constructs. This study highlights the need for a more open approach to the development of closer links and alignment of aims and objectives for ICT-assisted communications within the NZFC.

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