

SOLICITORS AND DIVORCE by R Ingleby, Oxford,
Clarendon Press, 1992, 195pp, \$65, ISBN 019 825702 3.

There are many myths around about family lawyers. Common complaints by divorcees that the lawyers "make things worse" are reinforced by some of the literature on alternative dispute resolution, which paints the lawyers as the "bad guys", and contrasts their litigiousness with the peace-making and empowering roles of mediators. Richard Ingleby's research on family lawyers in England supports the findings of research in other countries which demonstrates the falsity of these ideas. The incentives upon lawyers to settle are much greater than the advantages for them of litigation. Furthermore, solicitors can play an important role in the orderly resolution of problems arising from marriage breakdown.

Ingleby's research does not claim to be representative of all solicitors engaged in divorce practice in Britain. His data was drawn from the monitoring of files of 12 clients from each of five solicitors working in a large English city, making a total of 60 clients in all. The files were monitored at quarterly intervals over a period of 18 months between 1985 and 1987. Ingleby reports (p13) that the files proved to be a rich source of data, since there were institutional and financial incentives to keep detailed records. They provided the best source of information on the progress of cases without intruding unduly upon the relationship between solicitors and their clients.

Ingleby examined the activity of these solicitors in terms of how they translated their clients' wishes and needs into legal discourse, and how they dealt with their colleagues and the court in their representation of their clients. In particular, he made use of Galanter's idea of a "litigotiation scale" to measure how much courts were invoked in the process of negotiation (pp17-18).

Ingleby's findings are presented clearly. In each chapter, he groups discussion of the data under three headings: the interaction between solicitor and client, between solicitor and solicitor, and between the solicitor and the court or other third parties. There are chapters on physical protection, interim financial support, interim child-care arrangements, final financial settlement, final child-care arrangements, and the divorce decree. The final three chapters bring together the implications of the data for our understanding of the solicitor-client relationship, the relationship between solicitors, and the interaction between the solicitor and the courts or other third parties.

Ingleby's research questions many of the assumptions which have fuelled the popularity of mediation. In Chapter Nine, he questions the notion that divorcing parties necessarily lose control over their dispute when they seek legal representation. Rather, he suggests that solicitors empower the parties, by providing a forum which enables claims to be made more effectively than if the parties were not represented, by making clients aware of their rights against each other, and by making clients aware of their rights against the state (p139).

Furthermore, he found no evidence to suggest that family lawyers preferred gladiatorial combat to reasoned and amicable negotiation. His findings support the notion that solicitors prefer to negotiate without making threats, and in a spirit of compromise. He found generally that they only threaten to invoke the courts when they are confident of getting more from the court than is on offer, and where all non-coercive means have failed. Solicitors could

only negotiate if the client's spouse was also represented, and non-representation was another reason why formal court proceedings might be initiated. In his discussion of the reasons for this preferred approach, Ingleby emphasises the coincidence between the desire of clients to avoid litigation, and the incentives for solicitors to do the same. The financial interests of solicitors lie in the rapid turnover of cases rather than increasing the bill of a particular client. Solicitors also need to maintain good relationships with other solicitors:

The paradox is that the two parties who are supposed to be diametrically opposed to each other in fact have more in common with each other than with anyone else in the proceedings (p158).

The discretionary nature of family law also increases the incentive to settle:

Where the issue is unclear, the discretionary nature of the law means that it is safer to advise accepting an offer which cannot be proven to be outside the bracket of possible determinations than it is to risk the loss of a contested hearing (p160).

Why then, are family lawyers perceived by some clients as creating increased hostility? Ingleby suggests one reason is that by making a client aware of her rights to share in the property, a solicitor may be perceived by the husband as "stirring up trouble" (p141). By empowering a spouse with information about her rights, and by offering the means by which those rights may be vindicated, the solicitor may create conflict. Women, in particular, need more of this sort of conflict.

There has been a tendency in recent years to devalue the work that solicitors do on behalf of their clients. Certainly there are considerable legal costs involved in dealing with the consequences of marriage breakdown. However, Ingleby shows that much of solicitors' activity is directed towards compliance with the procedural requirements of the courts in obtaining a divorce decree. Certain costs are incurred because of the requirements imposed by the law, rather than because of the activities of solicitors in dispute resolution.

Ingleby's book was not written as a defence of family law solicitors. However, it demonstrates the important roles which family law solicitors perform on behalf of their clients. It is a useful book, and adds valuable information about the way family lawyers operate, bargaining as they do, in the shadow of the law.

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INDIRECT DISCRIMINATION IN THE WORKPLACE by
Rosemary Hunter, Sydney, Federation Press, 1992, xxvi +
334pp, \$45, ISBN 186287 0896.

Indirect Discrimination in the Workplace is an extremely useful contribution to the literature on discrimination law in Australia. The subject matter is of great importance. Whilst directly discriminatory conduct against some groups

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