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Herald Sun

DNA has families under analysis

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FOR years, children have been the meat in the Family Court sandwich as parents fight each other over custody and child support. This week we've seen that theme turned on its head as a man launched County Court civil action against his former wife over children who are not his.

In the landmark case, the Melbourne man is suing for alleged fraud, claiming his ex-wife led him to believe - for almost eight years - that two of her children were his.

Legal experts say the foray into the civil courts could lead to infidelity suits, where one partner sues another for being unfaithful - bringing the biblical crime of adultery into the courts as a "breach of contract".

Family law expert Annemaree Lanteri said it was a reversal of the traditional Family Court conflicts.

"These are cases of people saying they no longer want any-thing to do with the children because they are not mine," she said.

Victorian Bar Council family division chair Noel Ackman. QC, saw no reason why unfaithfulness could not lead to further law suits.

"If a cause of action could be found under civil law provisions. a breach of contract, the court of civil jurisdiction might arguably entertain such a matter," he said.

DNA tests, the new miracle tool used to uncover truth in courts, has in the present case found the man is not the father of the pre-teen children he thought were his.

AFTER paying child support for the best part of a decade, he wants his former wife to pay \$400,000 for the mental anguish and depression he claims to have suffered since learning of her unfaithfulness and the children's illegitimacy.

The mother admits the children are not his and says they could have been fathered by only one other man.

But that man, Mr. X, refuses to take a paternity test to confirm the woman's belief.

Her children have had counseling and are left without the father they once had or the father they should have known.

DNA experts say 10 per cent of men in the wider community are unknowingly acting as fathers to illegitimate children. And up to 30 per cent of

those who have DNA tests have their suspicions of illegitimacy validated.

The issue looms as a huge minefield for litigation.

The Melbourne test case, believed to be the first in Australian legal history, looks set to open the floodgates for spouse suing spouse over fraud-related relationship allegations.

Although damage claims for adultery have been ruled out by the 1976 Family Law Act, the potential for such suits in other civil jurisdictions has not been fully tested, Ms. Lanteri says.

The power of DNA testing is already having a huge effect on settling child support liabilities and Australian Family Association secretary Bill Muehlenberg says it could become a big factor in regulating sexual promiscuity.

Casual sex outside marriage or de facto partnerships threatens to become a bio-legal danger.

Do-it-yourself DNA test kits are available on the Internet and with the huge growth in divorce, more and more men, and women, are seeking the truth about lineage.

About 3000 paternity tests, mainly to establish child support liability, are carried out in Australia each year.

Those tests confirm up to 900 men are fathers to children who are not biologically theirs.

There are 470,000 children on child support; potentially 47,000 children who do not know their real father.

"There are pros and cons," Mr. Muehlenberg said. "On the one hand, you could say DNA is good to ensure honesty.

"The sexual revolution, launched about 30 years ago, has tended to be something for the benefit of men.

"DNA testing may at least make men and women more accountable and responsible.

"In the past, men could basically love women and leave them - DNA testing can tie them down. Whether it will slow things in terms of promiscuity or infidelity is hard to tell.

"But it raises some bigger, more fundamental questions.

"At the moment, marriage is probably one of the most easily broken contracts we have; it is harder to get fired from a job."

Mr. Muehlenberg said the advent of "no-fault" divorce was being readdressed in the UK and the US.

It was only a matter of time until Australian law turned again, with the DNA weapon, to assign some responsibility to marriage breakdown.

"There is a swing back on to more obligations, legally, in marriage," Mr. Muehlenberg said.

But, Ms Lanteri warned, before we got caught in punitive rewards and legal remedies in court, it was important not to forget the children and the impact judicial action had on them.

"The child has only ever known one person as the father, who treated them as their father," she said.

"To wake up one morning and find themselves rejected through no fault of their own is very hard.

"It's too easy to lose sight of the impact this has on the children

"It is a very devastating thing, if the person they think is their father just stops loving them."

SADLY, the true father is often either never known or does not want a relationship with a child born some years before and raised by another man.

Ms Lanteri said some men, after discovering a child is not theirs, want to continue a relationship with the child but are prevented from doing so by the mother.

After reporting the case on Tuesday, the *Herald Sun* has received calls from at least three other men willing to pursue similar actions.

Ms Lanteri also expects the Melbourne case to invite a rash of others.

"They might think it's worth a try, she said. "And I think the possibility of getting back not just the money they paid (to support a child) but something on top of that might be Of interest to a lot of people.

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