

Review of Family Court: the Views of Family Court Professionals.

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*'We are not doing perfect, we are not doing happy, we're doing "it will be all right".
(Family Court Judge).*

Executive summary

This paper responds to the consultation paper issued by the Ministry of Justice in September 2011. It reports some findings from a bigger project funded by the Law Foundation to inform responses in particular to the third point in the terms of reference:

- The role of professionals (lawyers, psychologists, mediators, counsellors and Family Court Coordinators) in the delivery of Family Court services.

Twenty eight professionals were interviewed. Findings are presented first in summary form that is relevant to some questions posed in the consultation paper. In-depth presentation of the findings follows, providing a context for the conclusions.

1. Formal Court Processes: lawyer for child, expert reports, Judges talking to children.

Q. 8 b. What criteria should be used to decide whether and when to appoint lawyer for child?

Lawyer for child is needed especially in complex cases such as alienation, relocation, and cases where there are abuse and mental health issues.

However lawyer for child is at times appointed too early in a case.

c. What are the main tasks that lawyers for children should undertake in proceedings?

Participants were unanimous in their view that lawyers for children should represent both views and wishes, and the best interests of children.

Participants agreed that lawyer for child was relied on too heavily to provide information and support for parties especially where they are representing themselves.

e. What are your views on using other professionals to obtain the views of children?

Concern was expressed about the risk of over-interviewing children, and there is a need for clarity about who talks to children and why. It is felt that in many

cases it is advantageous for Judges to talk to children, as a means of demystifying the processes for them, removing responsibility for decision making, and acquainting themselves with the children about whom they are making decisions. It was not advised that Judges should carry out evidential interviews.

2. ADR processes: Parenting Through Separation, Counselling, and Mediation

Q.11a. Should attendance at Parenting Through Separation be compulsory before making an application to the Court?

PTS was strongly endorsed as a key contributor to resolution of issues for separating parties. Almost all participants consider it should be mandated either before or during the Court process.

b. Should PTS be provided more widely in the community?

Although width of provision was not addressed specifically many commented that it is too short and is unable to incorporate information such as conflict resolution.

Q. 13a. If counselling is to remain how could it be targeted for example to people with children and who cannot afford to pay for it?

There is a strong view that counselling must remain as part of the processes available to separating parties, either within or outside the Court. Its success in resolving the large majority of cases ensures that most do not enter the formal Court system. In many cases it succeeds in keeping families together.

b. What role should counselling play in a broader ADR system ahead of Court? Is it appropriate to access counselling via the Court?

This is addressed in the later section on ADR.

Mediation is not addressed by specific questions in the consultation paper. It too is seen as a vital tool in resolving issues in a more formal way than does counselling. The expenses presently incurred by mediation within the Court might be reduced if it was provided by non-counsel mediators as part of an overall ADR system.

3. Pathways and Processes: ADR, Family Court co-ordinators, Expert reports, and Triaging.

Q. 28. How might specialist information for the Court be more targeted, focused, and timely? What criteria should be used to decide whether to request a specialist report?

Expert reports are seen as valuable when used in complex cases where psychological expertise is needed especially where there are psychological issues for children. Delay in finishing reports is attributed to the lack of psychologists available, partly because of the sometimes adversarial cross examination experienced by report writers.

The role of counselling is seen as educative, conciliatory, reconciliatory, and at times as mediating disputes. Its role in ADR is to solve the majority of issues, to prepare parties for the more formal mediation process, and to work with parties who go through the system to help them to make and keep agreements.

The point made most frequently in this project is the need for skilful *trialoging* in order to avoid fiscal and other kinds of waste. Regret was expressed that the role of Family Court Co-ordinators has changed so that they are neither resourced nor experienced in triaging although their skills in this regard were acknowledged in face of overwhelming workloads.

The need for ongoing ADR is emphasised as families become more complex. Whether it remains inside the Court or is moved out, it needs to be linked to legal processes within the Court given its preparatory role for making acceptable decisions and its role as the processes proceed in enabling parties to participate meaningfully. If ADR is not linked to the Court and funded for those who need it and cannot afford it, the subsequent costs of failed processes and lack of durable Orders will escalate as will the social and fiscal costs associated with unresolved issues in separating families.

REPONSES TO QUESTIONS RAISED IN THE CONSULTATION PAPER

This submission reports the views of professionals working in the Family Court. Because the interviews were open ended and semi structured, not all questions in any part of the discussion paper are addressed. In this section the findings are discussed within the framework of relevant questions. The section following this gives a detailed report of the findings of the study.

1. Formal Court Processes: lawyer for child, expert reports, Judges talking to children.

Q.8 part 2. What criteria should be used to decide whether and when to appoint lawyer for the child?

The view of participants is that lawyer for child is needed in complex cases such as alienation, relocation, and cases where there are mental health and abuse issues, but all cases benefit from their presence. Older children especially benefit from having an effective vehicle to express their opinion. They are needed in cases that because of their complexity have not been resolved by counselling or mediation, or have gone to the urgent track. It is evident that in many cases lawyers are appointed too early to be able to contribute to their resolution.

What are the main tasks that lawyers for children should undertake in proceedings?

Participants were unanimous in their view that lawyers for child are a key part of the Court processes. Everyone commented on the multitude of roles lawyer for child plays: social worker, mediator, lawyer, counsellor, evidence gather. Lawyers themselves felt that they were over relied on by the judiciary and parties. Lawyer for child is heavily relied on by some parties to provide information and sort minor disputes especially where those parties are representing themselves. It was suggested this could be reduced by lawyers keeping records of contact with parties, and parties having to contribute towards costs on this basis.

Participants were also clear that lawyers for child are able, and should, represent both the views and wishes, and best interests of, children. The division of these roles has led to what is regarded as needless appointments of lawyers to assist.

What are your views on using other professionals to obtain the views of children?

Some disquiet was expressed about the risk of over-interviewing children, who can be interviewed by lawyer for child, psychologists doing expert reports, and by Judges. The view was expressed that there is a need for clarity about who talks to children and why. This study focused on the question of Judges talking to children. Very few participants thought that Judges should be seeking children's views by interviewing them, with the possible exception of older children. Most, however, see the advantage for children to meet a Judge who can 'meet and greet' and thereby demystify the Court processes. They can, too, remove the responsibility on children for making decisions, and they can have decisions explained to them. For Judges, the advantage of meeting children lies in gaining an impression of the people about whom they are making decisions.

Some participants commented on the importance of lawyer for child having legal powers and being able to navigate the system, especially where it is a matter of best interests and not just views.

2. ADR processes: Parenting Through Separation (PTS), Counselling, and Mediation.

Q. 11a: Should attendance at PTS be compulsory before making an application to the Court? What might be the risks and benefits of such an approach?

PTS is overwhelmingly endorsed in this study as contributing to the resolution of issues for separating parties. It is seen as complementing and preparing parties for counselling and mediation. The recommendation from almost all respondents is that it should be mandated, or compulsory either before entering Court or during the process. The risks might be that it wastes resources in the cases of parties who are clearly unable or unwilling to learn from the programme (see recommendations about triaging).

b. Should PTS be provided more widely in the community?

The length of the programme was considered by many as too short, so it would be improved if it could be a longer course, incorporating information that at present cannot be included (e.g. conflict resolution tactics). Its uptake is not as high as would be desirable; if it was made compulsory it would be more widely used.

Q. 13a. If counselling is to remain, how could it be targeted for example to people with children and who cannot afford to pay for it?

Counselling is widely regarded by these respondents as important, taking therapeutic, educative, dispute resolution, and preparatory roles. Importantly it is seen as either avoiding escalation of conflict, or of de-escalating it. It is also seen as fiscally sensible as it resolves the great majority of cases and in the case of S9 counselling often keeps a family together. The clear view is that it should remain, in some form. By being as diverse as it is, it overlaps with PTS (educative) and with mediation (dispute resolution) and this suggests that its role might be more clearly defined. In the responses we received, targeting was perceived as being by means testing.

b. What role should counselling play in a broader ADR system ahead of Court? Is it appropriate to access counselling via the Court?

This question overlaps somewhat with Q.13 a, and presumes an earlier question, which is the place of ADR in relation to the Court, to be discussed later.

Mediation is not addressed specifically in any questions in the consultation paper, although it is discussed in the wider area of ADR. As noted above, it has some overlap with some forms of counselling, although it is more formal and outcome-focused. Although almost all participants see it as very successful, it is an expensive aspect of the Court, mainly because of the involvement of multiple counsel as both parties' lawyers, a mediator and lawyer for child.

If mediation is seen as part of an ADR system that exists before formal Court processes, it might be a less expensive exercise if run not by non-counsel but by well-trained mediators. However, it remains an important aspect of the Court process as well because of its ability to broker agreements with support of counsel, that are reached by parties themselves.

If ADR was to move outside the system there would need to be a process in place for which parties could turn their agreements into Consent Orders, or at least into a form that gives parties more security and certainty about their agreement.

Q. 28. How might specialist information for the Court be more targeted, focused, and timely? What criteria should be used to decide whether to request a specialist report?

It is the view of the participants that expert reports are valuable when used appropriately. They are needed in complex cases such as those where drug and alcohol abuse, alienation, mental health and violence issues are involved, and where psychological expertise and evidence is needed. They provide psychological evidence about children and at times about parties as well, information that can save costs by being available at later phases of the Court process. They become more focused when briefs are specific and short; there was some misgiving about inexperienced or adversarial counsel preparing briefs.

The issue of timeliness and delay was raised by most respondents, and the delay is seen as arising because of the paucity of psychologists willing and qualified to do them. One solution offered is to invite the College of Psychologists to encourage qualified members to undertake Court reports. Another solution might be to talk to training psychologists in university courses. Adversarial and/or inexpert cross examination of psychologists is seen as a deterrent, as is the likelihood of having formal complaints made by disgruntled parties.

3. Pathways and processes: ADR, Family Court Co-ordinators, Judges, and Triaging.

(This section is relevant to q. 17, screening applications; and more generally to ADR services and Court processes.)

Although ADR is successful in a large majority of cases in resolving issues, for some parties it will not succeed and the authority of Judges is needed in order for parties to come to agreement. One of the points made most persistently in this study was the need for triaging. There were varying views on when this should take place, but it is clear that participants see fiscal and other kinds of waste when triaging does not take place, or is rote and inflexible. So, for example, parties who are clearly unable to benefit from counselling should not be encouraged in that direction.

Triaging has in the past been a formal and not-so-formal role for Family Court Co-ordinators (FCCs). Most interviewees expressed their regret that the role of FCCs has in most cases become administrative, whereas in the past they were able to make accurate judgements about what parties needed and to direct them accordingly. Although it was not always the case that FCCs had specific qualifications, their ability to work directly with applicants was apparent, and valued. It was suggested too that triaging might involve other professionals such as psychologists who could help identify clinical needs of parties.

A major question addressed by the consultation paper is the role of ADR in the Court in the future. The Court was set up to have both a conciliation and a judicial role, and it is clear given the nature of its work that these two cannot be separated. Furthermore, as the consultation paper points out (p.85), the increasing complexity of family forms will lead to the need for more rather than less ADR. Legal decisions are made for and with parties who are often in need of preparation and some therapeutic intervention before they can make decisions and work with them in the interests of their children. Moreover, therapeutic intervention might be needed at more than one point in the Court's formal processes if those processes are to be successful. It is clear, then, that wherever it is located, ADR and counselling in particular need to be linked to the legal aspects of the work of the Court.

Opinion in this study was somewhat divided about the place for ADR. Many thought that it should be outside the Court system; others pointed out that a great deal of what happens in the legal processes is therapeutic (e.g. hearing a psychologist cross-examined). Others want it in the system but available before an application is filed. It was widely expressed that affidavits are damaging to the ADR process with one counsellor calling them 'grenades.'

If the ADR processes (including mediation) are located outside the Court, it remains the responsibility of the government to fund those processes. However, means testing and more skilled triaging will help at least to curtail, if not reduce, costs at the locus of ADR. If ADR is not linked to Court processes, then the subsequent costs of failed processes and lack of durability of Orders will escalate, as will the social and fiscal costs associated with unresolved issues for families. It was made clear by many participants that if ADR services are not provided by government, issues for these families will persist.

The “Parenting Orders in the Family Court’ Project.

This section reports the findings of an interview study carried out by A/P Jan Pryor and Elizabeth Major, done in order to elicit the perspectives of Family Court Professionals about the current processes and roles of the Family Court. It is part of a larger project entitled ‘Parenting Orders in the Family Court’, funded by the Law Foundation, that was undertaken in part in order to inform the discussion concerning the review of the Family Court. The other major strand of the project is a survey of parties who have used the Family Court, including those who have had Orders made and others who have not used the Court. Their views on the roles and functioning of the Court are being elicited via the survey, and findings from this part of the project will be reported later when analyses are complete.

Background

In September 2011 the Ministry of Justice released a public consultation paper entitled ‘Reviewing the Family Court’. The paper invites responses to the discussion. The study reported here is designed to contribute to the discussion and covers the results of interviews with five Family Court Lawyers, six Family Court Judges, six psychologists who provide expert reports for the Court, eight counsellors who work with the Court, and three Family Court Co-ordinators. The report responds in particular to point three in the terms of reference of the consultation paper:

- The role of professionals (lawyers, psychologists, mediators, counsellors and Family Court Co-ordinators) in the delivery of Family Court services.

The interview study

Participants were recruited through contacts held by the principal investigator and by word of mouth. Table 1 shows details of the interviewees.

Profession	Gender
Judge 1	Male
Judge 2	Male
Judge 3	Female
Judge 4	Male
Judge 5	Female
Judge 6	Female
Lawyer 1	Male
Lawyer 2	Female
Lawyer 3	Female
Lawyer 4	Male
Lawyer 5	Female
Counsellor 1	Female
Counsellor 2	Female
Counsellor 3	Male
Counsellor 4	Female
Counsellor 5	Female
Counsellor 6	Female
Counsellor 7	Female
Counsellor 8	Male
Psychologist 1	Female
Psychologist 2	Female
Psychologist 3	Female
Psychologist 4	Female
Psychologist 5	Male
Psychologist 6	Male
FCC* 1	Female
FCC 2	Female
FCC 3	Female

*Family Court Co-ordinator

Table 1: description of interviewees

For reasons of confidentiality, the areas in which the participants worked are not given. However the majority of the interviews were carried out in Wellington, Dunedin, Auckland and Rotorua. Findings should be interpreted as the views of Pakeha, in the main.¹ Interviews were carried out by the two authors, recorded and transcribed for analysis. Content analysis by topic was carried out. The questions were open-ended, and followed a structure that invited comment on the Parenting Through Separation programme, counselling, mediation, lawyer for child, expert reports, and the role of Judges. Results are presented by topic, giving first the views of the professional groups interviewed, and summaries of the findings. Although interviewees were not specifically asked about the role of Family Court Co-ordinators (FCC), there was frequent mention of this so a section is devoted to these views.

Parenting Through Separation

A four-hour course is offered by the Ministry of Justice for parties who have separated or are considering separation. It is available in most parts of New Zealand, and is run by trained professionals. Interviewees were asked their opinion on its role alongside the Family Court.

Psychologists

Psychologists were uniformly positive about the course, most considering that it should be mandatory:

People who've been through it usually I think are quite well informed, it's good. And they usually feel good about having taken that step too and I think those are people who are perhaps more open to whatever the Family Court has to offer, and actually making use of it. Yeah, and I think it should be mandatory. Yeah.

¹ Attempts were made to include Maori participants. The paucity of Maori working with the Court, and the short time frame available, meant that these efforts were unsuccessful. The survey data however include respondents from several ethnic groups.

Judges

Judges also see the course as an excellent programme, with all but one considering that it should be mandatory. The one who did not, considered that persuasion would work better than mandating the course. One Judge said the following:

'...it ought to be compulsory, no question about it. It's those messages about rendering the children central and acknowledging a high level of parental distress are both essential information. Enabling parents to understand that children's developmental needs in terms of division of time is essential. I would myself work a bit more on the curriculum about the difference between dividing children's time and sharing parenting.'

Lawyers

Most lawyers consider that the Course should be mandated. All see it as a positive aspect of separation:

'Parenting through Separation helps. Anything that can get parents thinking outside their own experience and thinking about it from the children's perspective and thinking about it from the other parent's perspective and giving them education and advice about the Family Court process and the limitations of it and what else is available as an option, good!'

One lawyer pointed out that on the course parties learn more about parenting than they do about resolving conflict.

Counsellors

Most counsellors also consider that the Course should be if not mandated, then heavily encouraged. Some counsellors have been involved in facilitating Parenting Through Separation courses, and were able to comment on some difficulties:

'...kind of two, two different ones. There were some that then, 'Well I've been, I've been to everything, I've tried everything I can, the other party is totally impossible and you can't teach me anything.' And they can be quite anti and quite disruptive in the course, you know, really angry kind of 'Oh yeah.. but' stuff. And there's been others who have been advised and

they see it differently, they see that they were advised by the Judge that it would be good to go as opposed to they have to be there, and they'll often get some real insight and progress and changes too.'

Another noted the value of parents being with other parents, which validated their own experiences and helped them to understand the perspectives of both mothers and fathers. Its synergies with counselling were, too, mentioned.

Family Court Co-ordinators

The three FCCs interviewed were strongly in favour of the course:

'I just think it's a critical step in the process because parents aren't educated. But the knowledge is out there the research is out there and parents need to understand how to do it in the best way possible for their children, and I think that programme is absolutely fantastic. It's not long enough and that is the feedback I get from so many people ... A lot of the feedback is it's not quite long enough. But really, really positive feedback from parents. I think it's one of the best things the Ministry has done [since]I've been employed as a Co-ordinator.'

Also noted was the fact that some parties who hold fixed positions will not be helped by it, and that the course needs to be longer.

Summary

There was overwhelming support for the Parenting Through Separation Course from all interviewees. It is seen as providing a child-focused, educative experience for parties that provides a basis of information for other aspects of the Court process, should issues not be resolved as a result of attendance. The majority of those interviewed think the Course should be mandated. The main criticism was that it is not sufficiently long. Some, too, pointed out that it is not suitable for parties who hold fixed positions and are inflexible in their attitudes to their separations.

While professionals praised the educational role that Parenting through Separation provides some queried the need for broader education in general. One Family Court Co-ordinator pointed out that many guardian disputes arose

because many parents do not know that the other guardian must be consulted on decisions. Lawyers also commented on the general lack of education in society as whole as to how to resolve disputes.

Counselling

Counselling is available to parties approaching the Court as a way of attempting to solve their own issues. It precedes the filing of applications for Orders, or is the first step following an application to the Court and is funded by the Court. Counselling can be accessed via the Family Court under a number of Sections. The Care of Children Act allows people to access counselling before proceedings and after proceedings have been filed where there has been a previous Parenting Order (s65(1)) or where the parties are both guardians (s65 (2)). The Family Proceedings Act also allows people to access counselling before proceedings have been filed. Section 9 allows couples who are either, married, have a civil union, or are in a defacto relationship to access relationship counselling which will deal with the question of whether or not the couple should stay together or split. These couples may or may not have children. After proceedings have been filed counselling is provided under Section 10 (4) of the Family Proceedings Act as a first step to the dispute. A registrar may dispense with counselling where they see fit and parties may attend 10(4) counselling after Section 9 Counselling if they have decided to split. Section 19 of the Family Proceedings Act allows Judges to order parties to counselling throughout the litigation process. This type of counselling is usually for specific purposes such as communication, or to help parties come to terms with the Order. Section 19 counselling is mostly carried out by psychologists rather than counsellors.

Psychologists

All psychologists interviewed see counselling as an essential part of the processes of the Court. They see its role as helping people to resolve matters and to deal with issues associated with their separation. They raised the question of readiness for counselling, noting that some people are not ready at the time they approach the Court, and the need to match people to appropriate counsellors

was noted. In this regard the need for triaging when people approach the Court was identified.

Some suggested that the quality of counselling at present is uneven. One suggested that counsellors should be direct and put a framework around what they are aiming for with each client.

Judges

Judges also view counselling as a key aspect of the Court process. In terms of the roles of counselling, their views were mixed with some thinking it should be therapeutic and others thinking it should not be. One Judge agreed that the framework for counselling should be more defined, while another suggested that counselling is too constrained in its scope:

'If counselling is to stay in the Court then there needs to be a clear expectation spelled out that they should be doing their job, and that they are an important part of the process to educate parents and to assist them in reaching conciliation and/or reconciliation.'

Several noted the efficacy of specialist counselling ordered under section 19.

Lawyers

The Family Court lawyers interviewed see counselling as a vital part of the Court system. Two pointed out the fiscal impact of counselling, and several referred to its filtering role:

'If properly resourced so there was a meaningful cohort of people who knew they could rely on a job as a counsellor it would be an even more useful resource and...a more cost efficient resource in terms of getting a higher proportion...of cases resolved without other types of intervention.'

'I think the impact is huge, because if you reach agreement at counselling it has so many spin-offs. First it's all over so the emotional cost is gone, and

you can just get on with parenting...without being in a war.'

Some lawyers, like psychologists and Judges, noted the variable quality of counselling, and commented on the potential for a mismatch between clients and counsellors.

Another concern was that under EIP, counselling is seen as a tick box to be done as a means to getting to mediation, which has legal involvement. The EIP system, in this view, has diminished the role of counselling and led to at times unnecessary expenditure for parties who are unlikely to benefit.

Counsellors

Not surprisingly counsellors see their role as vital to the Court. They stress its importance in empowering parties to make their own decisions, in preventing escalation or de-escalating situations, and as preventing further trauma. Counsellors, too, see the term 'counselling' as a misnomer. It has the potential to deter people, especially men, who don't want 'therapy'. They see the roles for counselling as therapeutic, educative, and preventative. Which role was required largely depended on the type of counselling. Section 9 and 19 counselling required more educative and therapeutic roles, whereas S65s and 10(4)s required the counsellor to take on a more of a mediator role as the main purpose was to find a resolution not to improve the relationship. Counsellors also feel that the process needs tightening up, and that counsellors should be able to screen for significant issues such as mental health problems and be able to indicate their presence.

Counsellors emphasised the importance and success of Section 9 Counselling in keeping families together and thereby avoiding the whole Court process.

Some counsellors expressed concern over the requirements to be a Family Court counsellor. Individual counsellors who seek Family Court work are scrutinised whereas counsellors within an agency that holds a contact are not. One counsellor who had been part of an agency with a contact said she felt

undertrained and left to take on further skills development before returning to the Court as an independent.

Family Court Co-ordinators (FCC)

FCCs also see counselling as critical to the Court processes.

'We have to look at the bigger picture, look at the big picture of costs so I'm a firm believer in the Family Court providing...counselling for people who otherwise can't afford to pay...and the social costs are much higher.'

One estimated that at least 80% of cases where counselling is involved are not seen again. On the whole FCCs lamented the lack of resources available for keeping statistics as they believe these would show outstanding success rates. Problems noted by FCCs included the need for counsellors to stay up to date with their field, and the need for procedures to be tightened.

Family Court coordinators also noted the importance of Section 9 counselling.

'I think the social cost of relationships breaking up is far higher than the cost of somebody in our community paying for the counselling and yeah. I mean again it's supporting relationships to stay together... Most of the people I speak to who phone up I actually ask if they have children in their relationship just as an indicator, a pretty high percentage do. So their relationship's but they're families as well.'

Summary and overview.

All interviewees agreed that counselling is a vital aspect of the processes of separation and divorce in the Family Court. The roles for counselling included reconciliation, conciliation, education, mediation, prevention of further trauma and conflict, filtering out issues that can be solved without formal processes, and for some but not all, therapy. The cost-efficient aspect of counselling was also mentioned, with approximately 80% of cases resolving during the process and not going on to further involvement with the Court.

Several problems were identified. One of the most pervasive is the naming of this form of Alternative Dispute Resolution. It appears to be an aversive nomenclature for many clients, and does not accurately convey the role of the process. In turn this is linked to the varied roles seen by interviewees for counselling.

Other problems identified were the uneven nature of the quality of counselling provided, and the mismatch of people to counsellors. These lead to several suggestions for improvement.

First, it is widely suggested that a triaging system be in place in order to avoid mismatches, to identify those who will not benefit from counselling, and to ascertain readiness for counselling. For several interviewees this meant a change in the role of FCCs, and this is addressed later in this report. For some, notably Judges, this triaging might take place away from the Court, as might the ADR processes generally.

Second, the need for counsellors to focus specifically on the role they play for individual couples was identified. This was described as a framework and a more confined approach to clients.

Third, the uneven quality of counselling was noted. Related to this is the suggestion that counsellors should (at the least) organise their own professional development and that those working under a service provider be equally scrutinised.

Fourth, the issue of whether or not counsellors should confine, or have confined, the issues they are to address with clients was raised. One Judge felt that the current situation means they are unable to use their full range of skills; at a more process level however others considered that narrowing and focusing on specific issues in relation to the role they are taking is to be recommended

Finally, psychologists, Judges and counsellors commented on the need for counselling to be extended to children. Although this has been passed into law, in practice it does not yet happen.

Mediation

If parties are unable to resolve their issues through counselling, a mediation will usually be arranged as the next step. Mediation is usually carried out by counsel, who are trained as mediators, but may be run by a Judge. It is usual for the parties' lawyers to be present, as well as lawyer for child. Mediation, like counselling, plays a key part in helping parties to reach their own resolution in keeping with the Court's Section 5 obligation. Mediation may result in an Order by consent, an Interim Order or an agreement.

Psychologists

Mediation is seen by psychologists as an important next step after counselling, to help avoid parties going further in the Court process. One commented that mediation has managed to get results in cases where it was almost certain they would otherwise end up in Court. It has a more directive ethos than counselling:

'I mean it's different to counselling isn't it? And it may be more of an opportunity for things to be very direct with parties. I'm kind of big on things being direct with parties. My experience is if things get waffly and start to allow to move over the place the only victims are the children actually.'

Some problems were raised. One psychologist pointed out that mediation does not deal with facts, so that it has the danger of further entrenching positions for conflicted parties. It was noted, too, that some parties may feel pressured into settling through mediation but be unable or unwilling to abide by the agreement. A further concern raised is the training of mediators; they need an understanding of child development in order to be effective. Concern about the involvement of children in mediation was also expressed. There are varied opinions about the wisdom of this but at the least it is apparent that a mediator needs a great deal of skill and experience if they are to involve children directly or indirectly. It was

suggested, too, that if parties were required to contribute to the costs the outcome might be more effective.

Judges

Judges also view counsel-led mediation as a positive part of the process in reaching resolution, enabling parties to come to decisions themselves:

'I think it's great... it's an important tool of the court, but philosophically I think it's great because it's the parties who know their kids better than anyone else making a decision about their kids, rather than a complete stranger imposing it on them.'

They see Judge-led mediation (settlement conferences) as necessary when a higher level of perceived authority is needed to enforce decisions and convert agreements into Orders:

'I know that if I provide information people sit up and listen because they believe it's accurate. And that's an advantage which the non-judge led mediators don't have.'

Several Judges commented on the desirability of counsel-led mediation taking place early in the Court process, with the triage system sending some people directly to mediation rather than going to counselling. They mentioned, too, that counsel-led mediation takes the burden from Judges who are unable to mediate in a timely fashion because of pressures on the Court:

'You've got confidence in using that [counsel led mediation] process because it's going to address it sooner rather than later and these ones generally want it. Why wait 3 months? Nothing is going to change in those 3 months except stress on the child.'

Opinion was divided on the wisdom of lawyers being mediators, with one Judge believing that because they come from an adversarial background they are not suited to mediation. Others suggest that because of their knowledge of the Family Court, counsel are best suited to mediation.

Opinion was also divided about whether or not mediation should be in the Court. Some believe it should stay within the Court process; others that it should be part of a separate ADR process. It is also suggested that mediation can sometimes usefully precede counselling, and identify issues for which counselling is needed.

Lawyers

Lawyers, too, have a positive view of mediation seeing it as part of the 'toolbox' for helping parties out of the Court with an agreement, and noting its ability to deal with a wide range of issues. On the whole they consider mediations to be very successful in reaching agreements. However they raised several caveats. It was pointed out that mediation is not suitable for all parents because of personality issues, or by coming too late in the process when positions are entrenched. Agreements reached through mediation were also questioned in terms of their durability, partly because clients are at times not well prepared for the mediation process, and also because some feel pressured into agreements that they later regret.

The time available for mediation was also seen as a problem:

'... you have the first hour of people talking and it's all nice and then you have another hour where it gets a bit sort of sticky, and then about in the last 20 minutes when the deal is done, and suddenly it's banged out and it's written down and it's signed off. And I'm not sure how, how well thought through that process is.'

This was compounded when the mediation was judge led:

'You've only got through the preliminaries and then these people are being told they have to make a decision that's going to affect the future of their children in the half hour you've got left.'

Lawyers also questioned the view that Interim Orders are not a successful outcome from a mediation. They find Interim Orders provide parties with the option to try out and potentially fix an Order. This is especially important given the time pressure element of mediations. In reality many clients never return

despite the interim nature and one lawyer suggested that perhaps Interim Orders should automatically become Final Orders following the passing of a year rather than making parties have to apply to make it final.

One lawyer is concerned about the tendency for parties not to take counselling seriously, but to go to mediation because they want their lawyers involved. Associated with this was the concern that people are sent too easily to mediation, and that triaging is a very important component of the Court process that would help to avoid either the wrong people, or people who have not tried counselling, going into mediation. The expense of mediation was also mentioned. The possibility of mediation being outside the Court system so that affidavits are not permitted was suggested by one lawyer.

Counsellors

Several counsellors noted the similarity between mediation and counselling, saying that counselling is sometimes a form of mediation. Others see mediation as a logical next step when counselling has solved some issues but not all:

'they come to be able to make some agreements. Now whether that's a slightly different forum, or whether it's because there's been that preparation through a counselling referral, whether it's because it's getting closer to more money and slightly higher stakes, lawyer, good lawyer input alongside them, all of that, you know different factors for different people probably.'

'I think the counsellors will probably soften people so by the time they get to mediation they're possibly two thirds or three quarters ready to get a resolution.'

Like lawyers, counsellors noted the time pressures on parties when they mediate, risking a situation where they have insufficient time to digest what is happening. This in turn can lead to agreements that are not durable. They also pointed out that mediation is not appropriate in situations where issues of violence and control exist and the need for effective triaging to ensure these cases did not go to mediation.

Family Court Co-ordinators

All FCCs interviewed saw mediation as effective and important, and as having high rates of success, although they often have to explain the difference between counselling and mediation to clients. One commented on its suitability for complicated cases:

'Not every family that comes through the Family Court is mum and dad and 2.2 kids. We have grandmas, we have aunties, we have uncles, there's lots of people. Sometimes especially here... we have large Pacific Island and Maori in the community, a lot of our mediators are just absolutely fabulous and will incorporate the decision makers because 9 times out of 10 they're not mum or dad.'

One FCC noted that mediation that occurs without affidavits being filed works well because positions have not become entrenched by affidavits being prepared. Another mentioned the problem of insufficient time, and another noted that the success of mediation depends on the work put in by lawyers in preparing their clients for the process. Judge-led mediation was of concern because of the limited training of Judges.

Family Court Co-ordinators also noted the importance of having the children's views at mediation either through the lawyer for child or an in person statement. It was thought that these get results.

Summary and overview.

Mediation was viewed by all interviewees as an essential part of the Court process, despite it being a relatively expensive one. The expense arises from the fact that often two, three or four lawyers are involved (lawyer for child, parties' individual counsel, and the mediator him or herself). Mediation is seen to take the burden off Judges, to be able to deal with a wide range of issues, and to manage the input of several parties (usually extended family members). The issue of individual suitability and the importance of triaging people into or away from mediation was emphasised. So too was the lack of time available for mediations, resulting in sometimes hasty decisions and ensuing lack of durability

of agreements. Overall, however, it was felt that mediation should remain as part of the Court processes, and that when used appropriately has a high rate of success in brokering agreements.

Lawyer for child

Lawyers for Child are appointed to explain the Court process to the child in a way they can understand, to represent the child in the Court process, and in any negotiations between the parties or other parties if there is a dispute about care arrangements for the child; to make sure the child's views and all issues relevant to the child's welfare and best interests are explained to the Court, and to explain the Judge's decision to the child and discuss with them how it will affect them. It is relevant to this report that in recent times lawyers have been directed to represent children's views, but not necessarily their best interests.

Psychologists

The impartial position of lawyer for child was emphasised by psychologists. They saw the role as involving someone without an agenda, and as giving the child someone with legal power and a voice in the process. One said that the lawyer for child can help parties to understand children's difficulties:

'I've found, I've found working with the lawyer for child, children good. They will be able to give a good view into the situation for the child and the dynamics that they see between the parents because then you know, they don't have an investment in either camp and I find it really helpful to be able to get, have some consultation with them, then be left to go and do what I need to do. But sometimes I need help to get the parents to agree to meetings or whatever and the lawyer for child is often helpful in that role.'

Issues to do with the increased costs of lawyers for child were discussed. They included the involvement of lawyers in mediation and the appointment of counsel to assist. The latter is related to the recent tendency for lawyers for child to represent children's views but not their interests; most psychologists felt that

lawyers can do both well.

Timing of appointments of lawyer for child was mentioned as problematic; it is felt by some that they are being appointed too early, which increases costs involved. One psychologist was concerned about the skills or lack of skills held by lawyers to interview children, suggesting that they have insufficient knowledge of child development and that having their own children does not serve as a qualification for interviewing other children in stressful circumstances.

Judges

Judges see lawyers for child as very important, well trained, and doing their job well:

'I think lawyer for child's position is essential. We rely on lawyer for child... Often when I get a file to read before going into Court the first thing I read is lawyer for child's report because that gives you a better overview on the dispute than starting from dad's position and mum's position and ah...So it brings a fairly good moderating effect on the file at our end and the lawyers are pretty effective in getting parties to settle if there's a settlement possibility.'

The problems that Judges see with the lawyer for child role include the need to clarify their role. Some do social work, others act as advocates, and the role is not always clear. Judges also feel that the views/interests distinction should be removed because of costs to the Court. Other problems mentioned are that they are appointed too early, and that they are used beyond their role.

Lawyers

Like psychologists and Judges, lawyers feel that lawyer for child can balance the roles of representing both views and best interests. One noted the fact that children appreciate having someone to represent them:

'I also know that kids appreciate knowing what's going on, the older kids do. That they like the idea that there is somebody there who is acting for them. I think that it does help to make it a less scary process.'

'They need to have somebody who's just looking at it from their perspective and whether that's advocating strongly for what those kids want, whilst at the same time telling them 'just because you want it doesn't mean you're going to get it because you're a kid.'

Lawyers mentioned the issues of the division of representing views and interests, and of being appointed too early.

'I think that if we were truly there to represent children views and their best interests, and I think we do need to wear both hats, in the litigation proper then that would be a far better and more prudent use of us as a resource. I don't like the fact that we are often appointed too early. Sometimes we're being appointed even before the counselling process has happened and I think that's wrong. I don't like the fact that lawyer for the child is appointed automatically where no thought has been given as to what the role of that person is.'

One lawyer said that by being appointed too early, lawyer for child can be in the position of having to sort contact issues before issues of domestic violence have been addressed.

Counsellors

One counsellor described the lawyer for child's role as 'a lovely neutral position in the system', reflecting the view that they provide an independent voice for children:

'[They have a role in] being able to be quite clear in speaking on behalf of the children and, and being quite clear to the parents about this is what the children are wanting and you know um... And often the children know, often the children have got the answers if anyone listens.'

Counsellors noted that lawyers have variable skills in their ability to talk to children, and one suggested they would benefit from having a counsellor with them to ask the questions. One also suggested that lawyers should talk to children in their own home, not in lawyers' chambers.

Family Court Co-ordinators

Court Co-ordinators pointed out the liaison role that lawyers for child play, co-ordinating with police, parties, and Child Youth and Family. They noted the long hours that some lawyers work, and do not think they should split the views/interests roles.

'And I can't think... I just can't imagine any case progressing with the aim to an early resolution, in the best interests of children, without a lawyer for child being appointed. Can't imagine it. And it's, they're not just there to represent the children's views, I'm sorry it's not that simple. It's definitely not that simple. You know they're getting information from the police, they're getting information from CYFs, they're liaising with both the parents, they're meeting the child or children, how do you do without that? Or how do you reduce the number of cases where that happens? I think there's a huge risk associated if there was any thought of not having lawyer for child appointed early on in cases where it's identified as necessary as we are now under the EIP urgent track.'

All FCCs considered that the lawyers for child they work with are of high quality.

Summary and overview

A strong theme through these interviews is that the lawyer for child role is pivotal to enabling children to be represented impartially. Children were considered to benefit, and to appreciate being involved with their own counsel. It should be noted that it is unusual in other jurisdictions for children to have their own legal representation.

A second theme that predominated was that splitting the roles of representing views and wishes and of advocating best interests is mistaken, mainly on fiscal grounds. It was widely felt that lawyers used to do both and are able to do so, and should return to that position.

Several interviewees including lawyers themselves considered that lawyer for child is at times appointed too early in the process, (again for mainly fiscal reasons) although in urgent track cases that was thought to be good.

Another concern was that the interviewing skills of lawyers is variable, especially with children. Psychologists and counsellors, who are trained in interviewing children, were especially worried about this aspect of their work.

Overall, it is clear that the lawyer for child position is considered to be valuable and indeed critical in the Family Court system. However it is acknowledged that changes need to be made in order to manage the fiscal increase over the last ten years.

Expert Reports

In cases where counselling and mediation have failed to resolve disputes, a Judge will sometimes, depending on the complexity of the case, request that an expert report be prepared about the case. These reports are usually written by psychologists appointed by the Court, who work for the Court and not for the parties in cases.

Psychologists

All psychologists who were interviewed write expert reports for the Family Court. They see the roles of the reports as dealing with complex cases, based on psychological evidence, focusing on the quality of the relationships in the cases, and being written to advise Judges. They noted, too, that expert reports can help to settle cases before they go before a Judge.

Problems seen with expert report writing included difficulties caused by the use of non-specialist and inexperienced counsel, and adversarial lawyers in the Family Court. They noted too the delays caused by reports being ordered because of the lack of psychologists available to write them. The quality of briefs provided was questioned, again especially by inexperienced lawyers. One psychologist questioned the clarity of the reports:

'So I think if we had, you know, clearer reports then that could assist in people settling things and, and transparent reports, you know, people are often trying to second guess what the

psychologist means or what they are you know, and they shouldn't have to do that, it should be really clear.'

Finally, it was noted that the writers almost never get feedback from their reports. Changes suggested by psychologists included improving briefs by making them more child focused; giving psychologists a role at the triage phase of a case; psychologists being able to talk the report through with parties, reports done earlier, and the promotion of Court work by the College of Psychologists.

Some psychologists raised the possibility that the ordering of a psychological report for the children was done as a roundabout way to analyse parents. There is no way to gather psychological information about the parents except for that which is put in by either party.

Judges

Judges see expert reports as important for particular issues faced by the Court such as alienation, relocation, and complex mental health and other psychological problems. Their usefulness in cases where children require therapy was discussed by several Judges:

'The really good role, is, is, assisting when there are, when there is an identifiable psychological issue. It might be educational, an educational psychologist. You know, if a child has educational difficulties, developmental difficulties and that field, it can be very helpful to have a psychologist who's able to focus on that child's individual needs and then that will help the judge to be able to assess how those needs can be addressed in relation to care arrangements.'

Delays in completion were seen as problematic:

'Problems... because... there is a delay factor. I'm sort of easily persuaded now that we shouldn't wait for specialist reports because it's going to delay the process 6 months. But when there is a specialist involved I rely a lot on their report. The um, the quality of the work we get from specialist reporters is good.'

Cross examination is also an issue for Judges, with some pointing out that inexperienced and/or adversarial lawyers cross examine either ineptly or aggressively. However, one saw the cross-examination process as helpful:

'and... in Court too for the parties to have to listen to a psychologist under cross-examination is something very therapeutic sometimes. You get some of the experienced ones... giving their views and the parents having to sit there and listen to it is very good.'

It was suggested that psychologists might be helped to understand better the cross-examination process in the Courtroom.

Lawyers

Lawyers identified the roles for expert reports as evidential, involving complex issues, and bringing a level of authority and impartiality to cases.

'It is usually very helpful to have the kind of evidence that only a person with the professional skill and the independence and the child centredness of a psychologist can give.'

Their concerns included delay, the fact that parties do not get a chance to have them explained clearly, the existence of confusing evidence about attachment, and variable quality of writing. Lawyers also mentioned the lack of cross examination skills in some counsel.

Although reports vary in their inclusion of specific suggestions to Judges, it was suggested that they would be improved if they did:

'Some of the reports that are the most helpful long term are those that actually comment on what needs to be done to fix this situation: 'Court, you can make an order, but these two do not communicate' you know, 'This is the sort of thing that needs to happen so that whatever orders you make will actually work.' And I think that that's where the psychologist can be really helpful because the Court can only say it's going to be these days, and these times and you can't change people's behaviour.'

Some lawyers also commented on the fact that a report was often ordered to gather information about a parent rather than child despite Section 133 stating that such report should be on the child. It was suggested by one lawyer that money may be able to be saved by information sharing between Government departments as often a report may already exist in Corrections, the Department of Health or Child Youth and Family.

Suggestions for improvement included involving psychologists in brief preparation, having shorter and more specific briefs, and having psychologists assess parents as well as children. They suggested, too, that lawyers would benefit from a better understanding of what is involved in writing a report.

Counsellors

Counsellors also noted the impartial role that expert reports have, and their importance in helping the difficult decisions that are made in the Court:

*'When you're making these kind of what is it, solomonic?
...These decisions that need the wisdom of Solomon, they have
to be informed, and I think some of the expert people need to
be on the scenes like psychologists...'*

Counsellors commented on the fact that there is no management of the information for parents, that counsellors do not see reports, and that reports can set up tensions between parties if they are seen to favour one or the other.

Where Section 19 counselling is ordered following a report often a counsellor will never see it. It was suggested it could be useful if a clear process was available whereby they could access the Court's report.

Family Court Co-ordinators

Family Court Co-ordinators see expert reports as relevant for complex cases, and as providing expert evidence. One also noted that it is informative for Judges to hear the cross examination of the psychologist.

'I think they have a major impact because the Court relies heavily on that expert evidence, and it, I mean that evidence like all other evidence is subject to cross-examination so the Judge is getting the benefit of not only that expert evidence but assessing what comes forth from cross-examination.'

They also commented on the shortage of writers available to the Court, that parties need a chance to talk to psychologists, and that report writers need protection from unfair cross examination. They suggested, as did lawyers, that it would be helpful for reports to have recommendations that would help settlement of cases:

'A lot of, a lot of report writers are now putting their recommendations in the report and so things are settling prior to a hearing. So, again dependant on good lawyers and non adversarial lawyers, but a really good lawyer would take a report sit down with their client and say 'look, this is what the report writer is saying... what can we do?' and they'll sit down and try and reach agreement.'

One Co-ordinator held the view that an expert report was for a Judge only and that if a case could settle on the basis of the report then it shouldn't have been ordered in the first place.

Summary and overview

There was broad agreement amongst interviewees that expert reports are essential to complex cases that involve issues of relocation, alienation, mental health and drug abuse issues. It was agreed, too, that reports bring a level of evidential expert evidence that is helpful for Judges in making decisions about such complex cases. However, several noted the problems posed by appointment of inexperienced non-specialist lawyers who are apt to prepare inadequate briefs, and to cross-examine in unconstructive ways. Cross examination more generally was seen as difficult for psychologists, and it can lead to defensive writing. It was suggested that they be helped to understand the process better.

Delay was another prominent problem for expert reports; the lack of psychologists available to do them means that resolution of cases is held up while a report is completed. It was suggested that the College of Psychologists should promote Court work as a rewarding field; another avenue for addressing this would be to work with graduate clinical psychology programmes to encourage involvement in Court work sometime during a psychologist's career.

A third issue identified by many interviewees was the lack of opportunity for parties to digest the material in reports, and to talk directly with the writers. It was felt by several people that the chance to do this would resolve many of the cases before they went to Court. Although reports can be released to parties, in the great majority of cases parents do not receive copies, but are able only to discuss the report in their lawyers' offices. Related to this unavailability of reports, psychologists and counsellors do not get feedback about cases that involve expert reports. Feedback would be helpful in understanding the impacts of their work and providing information that might help to improve it.

A fourth issue is the inclusion or not of recommendations for the Judge and parties, in the report. It is felt by interviewees that giving specific suggestions in reports is helpful in settling cases before an Order is made, and in giving long term guidance about what might be needed for children who would benefit from therapy.

Finally, several interviewees either noted that reports are called for less often in recent years, or that they can be used too often in cases where they are not needed.

In summary, all professionals interviewed agreed on the importance of expert reports for complex cases. They are seen as informing Judges by bringing expert, impartial evidence to bear on cases. They are also seen as a potentially important avenue for settling cases outside Court, if used properly. Discussion between psychologists and parties is widely recommended.

The Role of Judges

This section reports on the participants' views on the role of Judges in the Family Court, and in particular their interviewing of children.

a. The role of Judges

Psychologists

The role of Judges was seen by psychologists as both crucial and challenging. They see the Judge as representing a figure of authority that is needed by some parents unable or unwilling to make decisions themselves. Judges were seen as being thoughtful and insightful, and having the ability to ask deep questions.

' they're better questions. Like deeper, either deeper or more, they really are getting to the nut of the issue. And the Judge is, it's clear that these questions are coming from a person who isn't, who isn't promoting either parties interests they're just trying to really sort out what's best for kids. And the questions often are, you know, quite big and quite deep and really important ones. And certainly when I read, you know, when I read decisions I'm usually relatively impressed. I mean I, you know, I can't remember reading a decision where I think 'My goodness. How on earth did they get to there?' I don't think I've ever done that. They're usually pretty, you know... by the time you've read the rational, the law, and the evidence and yeah... it usually makes total sense.'

It was suggested that the Court processes would be improved for families if Judges became involved earlier in a case where it was clear that counselling and mediation were not going to settle issues. A Judicial conference in which Judges give their view of what is likely to happen is seen as a way to focus processes and to protect children from ongoing disputes.

It was also suggested by psychologists that one Judge should be assigned to a case rather than several being involved.

One psychologist emphasised the importance of Judges making findings. The ADR processes allow parties to accuse and deny without any decisions being made, often leading to people becoming entrenched in their positions. It was

suggested that if findings could be made at an earlier stage on some issues ADR processes may be more successful.

Judges

(Judges did not comment specifically on their role in Court)

Lawyers

Lawyers also made the point that some parties need judicial authority. They see Judges as having a challenging role, having to predict the future (in contrast to Judges in other Courts), and of being child focused. They also suggested that decisions need to be made 'in a timely way.' One lawyer noted the challenge for High Court Judges to know the field sufficiently well to make informed decisions when a case is referred to the High Court.

Another discussed the need to have one Judge to manage a case:

'I would like to see a Judge case manager from whoa to go... Because I think too often what happens is that there is slippage in the system where, you know, you have these call over days or judicial conference days where a different Judge deals with it either in a different way that sends it off the rails or it just, it just doesn't get their teeth into it. They don't move it forward.'

Counsellors

Counsellors made points that are similar to those of psychologists and lawyers including the observations that their work is child-focused that they provide a needed figure of authority for some parties, and that they face complex decisions. One added the fact that Family Court Judges work with a multidisciplinary model, and often have to manage a therapeutic outcome:

'Sometimes people need what you call leverage and a push from a legal...legally to compel them to enter into some work and do some things that they wouldn't otherwise do. ...in many regards the Judges are also managing a therapeutic outcome.'

Family Court co-ordinators

Family Court Co-ordinators pointed out that a great deal of work goes on in the background before a Judge sees a family. One suggested that there are roles for male and female Judges, and that female Judges are at times abused by misogynist men. Family Court Co-ordinators also commented on the need for Judge to make the difficult decisions.

Summary

The role of Judges is seen as that of a figure of authority that some parents need in order to come to agreement. The work undertaken by Family Court Judges is challenging and done well. There were two suggestions for change; the first that one Judge should manage each case, and the other that Judges become involved earlier in cases than they do at present.

b. The role of Judges in talking to children.

Psychologists

Most psychologists felt that Judges benefit from talking to children as they get an impression of the people about whom they are making decisions in Court. Two caveats seem to come through; that the role of Judges is to meet, rather than to interview, and that talking to children is particularly appropriate for older children.

'I think if a Judge is well versed or trained in how to talk with children and is aware of their position and how that's likely to impact...then I think that's really helpful..I would be worried about a Judge who did not want to meet the children.'

Concern was expressed that Judges are not trained to talk to children, and that they don't have time to establish rapport with them. This is particularly relevant if Judges are carrying out evidential interviews. Power imbalance was also mentioned as an issue, particularly if the Judge is attempting to carry out an interview.

Judges

All the Judges said that they do meet with children, one invariably, and others giving children the option. Judges emphasised that by talking to children they are demystifying the Court process, and assuring the children that the decisions made are not theirs:

'And I have seen kids come along to me burdened and anxious and really worried about the fact that they're having to make this decision and I just think we have to take the pressure off them... you know I'd rather say that 'I want to learn about you, I want to know what sort of person you are, but it's not your job to make the decision, I'm sorry pal, it's my job and you'll just have to live with it.' And so many times when I go through and I explain it to kids you can see the visible sort of relief and they leave and they often leave quite happy and they bounce down out of the interview.'

Judges also said that they find it helpful to get an impression about the child, so that they are not making a decision in a vacuum.

Lawyers

Two main points were made by lawyers. First, when the Judge talks to children he removes the impression the child may have that he or she is making the decision, an impression that might have been gained from talking to lawyers for child and psychologists:

'And for the Judge to give them the usual patter that seems to work particularly well which is 'Tomorrow I'm going to meet with mum and dad. Mum and dad both think that they know what's the right outcome for you and what the arrangement is. I'm not sure yet what that is because I won't be sure until I talk to mum and dad. It is my decision. It's not your decision, but as part of the decision making process I'm getting as much information as I can from as many people as I can. If you've got a view I'd like to hear what it is. I can't promise you that what you want is going to be what I do.' It's just so reassuring for kids to meet this person who really cares and who gives the impression that they're going to give everyone a fair go, everyone is going to be listened to, and that a decision is going to be made.'

Second, it was pointed out that the information children give Judges may be incorrect, because the child just wants the case to be over. This is relevant when Judges are interviewing children rather than ‘meeting and greeting.’

Lawyers also raised concerns about how the conversation should be reported back to the Court. They suggested that a standard country-wide procedure and guidelines would be helpful.

Counsellors

Counsellors also see the role for Judges in talking to children as ‘meet and greet’ for younger children, and as interviewing for older children. The process is seen as empowering for children, a way of letting them know they are important:

‘I think if they’re, if they’ve... If they’ve got the right sort of heart, if they’re coming from the right place then I think that that’s a very powerful way of letting children know that they’re important and encouraging them to speak up. But maybe by the time it gets to a Judge the seriousness of kind of what hasn’t been able to be resolved ... I don’t know what kind of place the children would be in. They’re not going to feel as though they’ve got a lot of say maybe by that stage.’

One counsellor pointed out that it might be difficult for children with their parents if, after they had talked to a Judge, they were interrogated about what they said. It was also suggested that Judicial interviewing can be ‘a bit hit and miss’, and that there is a need to clarify more generally who interviews children and why.

Family Court Co-ordinators

FCCs were agreed that meeting with Judges demystifies the ‘scariness’ of the Court, and that Judges take this role seriously. They suggested that a Judge may benefit from further training in how to talk to children.

Summary

The process of Judges meeting with children can work to the benefit of both. Judges gain a direct impression of the child or children about whom they are

making decisions. In turn, meeting a Judge can demystify the processes for children, remove the burden of responsibility for decision making, and have decisions explained to them. There was considerable caution expressed by interviewees about the role of Judges in *interviewing* children, although this was seen as possibly appropriate for adolescents. Lack of training in interviewing skills, not having time to establish rapport, and the way in which the information should be reported back to the Court were raised as potential problems. The need for clarity and guidelines in the Court about who talks to children and why was described.

Family Court Co-ordinators

Judges, lawyers and counsellors expressed their dismay that the role of the FCC in triaging has been reduced, and that their time is taken with increasing loads of administration:

'I remember in the very early days when I was a baby lawyer the calibre of the Court Co-ordinators was extremely high in terms of their therapeutic background rather than the administrative work. And now...there is a great deal less time for the Court Co-ordinator to actually do the triaging work.'
(Family Court Judge)

'those Court Coordinator roles have been sort of devolved or dumbed down quite a bit and I think that's a awful shame and I think also that we had, you know, some really competent people who weren't supported to do that really professional job. You know, we have situations where they had to do their own photocopying for example or do things that took away from their ability to actually get through the important work. We've still got a few really amazing Court Coordinators, but they're over worked and under resourced, but I think they were the sort of first port of call and they actually even saw people and interviewed them and sussed out what was going on and, you know? Those people were invaluable, and I mean it's not fool proof, and they're not always going to pick up everything, but I think they've pretty much were good at doing that and I think that's the pivotal thing.' (Psychologist)

'...we have had excellent Family Court Co-ordinators, really approachable, really um.... Like if I've got clients that have talked to the Family Court Co-ordinator they are always

really positive about how encouraging and understanding that sort of thing. And as, as a counsellor working in the field it's also great: they're so approachable, they're so easy to... So yeah it, I mean I actually think that's a really pivotal role. Um..... Because if that's, if you haven't got the right person there.... because I mean, she will bring them onboard, she will actually give them their, give them their options, often diffuses a whole lot of angst and upset and 'No, no, no there are things you can do, you know this can happen and...' and that sort of thing.' (Counsellor)

Family Court Co-ordinators themselves express similar views:

I think that there needs to be a different process and instead of parties just being able to come in and file applications I think there needs to be some way that you can talk to people and say 'there are other options, you don't have to go straight to court.' Now if I get the phone calls where people ring up wanting counselling for example I always talk to them about the benefits of counselling and mediation as opposed to going through Court. Whether, and I know one of the things that they're looking at through the Family Court Review is whether there is some process whereby we get an opportunity or the Family Court Coordinator gets an opportunity to talk to people who are considering going to Court and are given other options before coming to the Court process, because once you file that paper work basically my role from there on is just to appoint lawyer for child and a psychologist and a counsellor and all those other things as required. I mean I love the times that I have contact with the parties and you can make a difference if you get that contact prior to paper work being filed.'

The pressure they are under was also evident:

'It is a waste for us to spend hours and hours and hours doing administrative stuff. ...I end up working very long hours and...staying til 7 o'clock at night to get the stuff done that I need to get done. I think the Family court co-ordinator should be much more involved in dealing with the public.'

'I don't know how many phone calls I get a day and I don't know where they. ...how they get through to me because quite often it's asking for me by name and I suppose it's word of mouth and being around for a while. Talking with those people it's the first...they'll often want to tell you the nitty gritty but assessing whether there's risk, danger, you know, all that sort of thing...We are all terribly, terribly busy.'

' We got bogged down with admin and we were told that...you have certain quota, you've got to meet this and you've got to meet that... So it's like you're juggling the whole time all of that kind of thing...I got to the point where "No, don't tell me that the phone is going to ring again. No, don't tell me there is someone at the counter because I've got 50 things that I've got to do here on my task list.'

In sum, there is widespread concern at the reduction in the ability of FCCs to meet parties and to take a triaging role. At the same time, FCCs feel overwhelmed by the amount of work they are doing. However everybody commended the job that FCCs do and valued their position.

Summary

The roles of Parenting Through Separation (PTS), counselling, mediation, expert reports, lawyer for child, and Judges are all seen as making vital contributions to the work of the Family Court. Participants are aware of the need for reductions in costs of the Court, and made several suggestions. These include triaging at the beginning of the process and at crucial points along the way; making Parenting Through Separation mandatory; combining the roles of lawyer for child to include representing both wishes and best interests; appointing lawyer for child later in the process; confining the appointments of lawyer for child and expert report writers to complex cases; and reducing the number of counsel involved in mediation (possibly by moving some mediations out of the Court system).

Further and future analyses of the data from this project will be available to further inform the review of the Family Court.

