

Reviewing the Family Court Case File Sample

September 2011

Overview

The Ministry of Justice, in collaboration with the judiciary and court staff reviewed a sample of Care of Children Act 2004 (CoCA) and Property (Relationships) Act 1976 (PRA) cases to help inform the Review.¹ The cases selected were not intended to be representative of all cases involving applications made under these Acts but, instead, provide some insight into the nature of more complex cases coming before the Family Court.

Care of Children Act cases were selected as they relate to the welfare and safety of children and this case type presently accounts for the majority of substantive applications. Property (Relationships) Act cases were selected as these cases often take the longest to resolve. This is of concern when considering the significant monetary amounts involved.

Sample Criteria

The samples were selected to fit the following criteria:

1. **Case type:** Files with at least one disposed CoCA application in each file. Also files with at least one disposed PRA application in the file. All disposed CoCA files where decisions had been appealed.
2. **Date:** Files to be opened in 2006 - applications may be made from any time forward. Files opened in 2007 were included if 2006 did not produce enough files with the necessary attributes.
3. **Location²:** Files were located in the following courts: Whangarei, Manukau, Waitakere, Hamilton, Lower Hutt, Porirua, Rotorua, Invercargill, North Shore, Palmerston North.

¹ Applications to enable a search pursuant to Rule 427 of the Family Court Rules 2002 were made to each of the District Court sites selected to participate in the file sampling.

² Courts were selected based on the volumes of applications they are currently processing. Such volumes would be more likely to give us sufficient files to search plus they fitted the likely demographic make up of our future customer base. Christchurch was not included due to the disruption caused by the recent earthquakes. Dunedin and Tauranga were originally selected but for administrative reasons were replaced with Invercargill and Rotorua.

Of the files selected, the CoCA and PRA applications in each file were to ideally display the following characteristics:

- notice of an intention to defend
- appointment of Lawyer for Child
- ordering of specialist reports
- co-occurrence of other application types (eg, protection orders)
- occurrence of a defended hearing.

Sample selection and data collection

The file numbers of cases that fitted the criteria were selected from the Ministry's Case Management System (CMS)³ administrative database. Data collection sheets and spreadsheets with the relevant file numbers were sent to the ten courts. The data was extracted from the court files by Caseflow Managers in June 2011. Information was taken from:

- the information sheet accompanying any application
- any judgment issued
- any directions issued
- specialist reports
- Lawyer for Child reports.

Information was not extracted from affidavits or memoranda.

Sample size

Each court was requested to sample 20 CoCA files (200 in total), 10 PRA files (100 in total) and all CoCA appeal files. The actual total sample sizes were 173 CoCA files, 88 PRA files, and 6 CoCA appeal files.

³ CMS is the Case Management System used by the Ministry of Justice to provide administrative support for the General Jurisdiction Courts and some Specialist Jurisdiction Courts and Administrative Tribunals.

Property (Relationships) Act 1976 files

Number of adjournments (all levels)

| | Count | Percent |
|---|-----------|-------------|
| 1-5 | 16 | 18% |
| 6-10 | 26 | 30% |
| 11-15 | 19 | 22% |
| 16-20 | 12 | 14% |
| 21-25 | 9 | 10% |
| 25-30 | 4 | 5% |
| More than 30 | 2 | 2% |
| Total | 88 | 100% |
| Estimated Average number of adjournments | | 12.4 |

Reasons for adjournments of all events (including judicial and registrars' lists^{4 5})

| | Count | Percent** |
|---|--------------|------------|
| Awaiting information, reports, memorandum or result of settlement discussions | 63 | 72% |
| Delay caused by party or professional | 55 | 63% |
| Unavailability of party or professional (non wilful) | 29 | 33% |
| Timetabling issue | 19 | 22% |
| Requirement to schedule or reschedule a hearing/conference | 17 | 19% |
| Not stated | 10 | 11% |
| Further process step indicated due to application made | 6 | 7% |
| Need to appoint or reappoint a professional | 5 | 6% |
| Court Registry delay | 2 | 2% |
| Requirement to transfer proceedings to another court | 2 | 2% |
| Other proceeding to be heard first | 1 | 1% |
| Total | 209** | *** |

Each file may have multiple responses. *Percentages relate to the number of relevant files where each reason was given.

⁴ It is most likely that a Registrar's list will result in an adjournment as the Registrar has limited jurisdiction

⁵ The Family Court Caseload Management Practice Note relating to PRA anticipates adjournments by the Registrar to enable monitoring of service and filing of affidavits as to assets and liabilities. The Practice note specifies that where cases are being monitored in the Registrar's List, they will be allocated a judicial conference if the Registrar considers that delay warrants judicial intervention, or at the request of counsel or parties. Ordinarily the Registrar will allocate a judicial conference after two adjournments in the Registrar's List.

Main issue in dispute as identified by judgement

| | Count | Percent |
|---|--------------|------------|
| Matter requiring consideration of legal issue/s | 48 | 55% |
| Tenancy/Occupation | 20 | 23% |
| Determination of value/division/sale of property/assets | 19 | 22% |
| Settled and/or consent memorandum filed | 7 | 8% |
| Main issue not stated | 7 | 8% |
| Total | 101** | *** |

Each file may have multiple responses. *Percentages relate to the number of relevant files where each issue was identified.

Whether proposed % split of property included in application

| | Count | Percent |
|-----------------------------|-----------|-------------|
| Court required to determine | 62 | 70% |
| Stated in application | 24 | 27% |
| Not stated | 2 | 2% |
| Total | 88 | 100% |

Proposed % split of property as stated in application

| | Count | Percent** |
|---------------------|-------------|----------------|
| Applicant Up to 60% | 18 | 75% |
| Applicant 60-75% | 2 | 8% |
| Applicant Over 75% | 4 | 17% |
| Total | 24** | 100%*** |

Each file may have multiple responses. *Percentages relate to the number of relevant files where each proposal was given.

Nature of Property in dispute

| | Count | Percent*** |
|---------------------|--------------|------------|
| Residential | 65 | 74% |
| Chattels | 39 | 44% |
| Cash | 22 | 25% |
| Business | 14 | 16% |
| Investment Property | 14 | 16% |
| Shares | 13 | 15% |
| Trusts | 12 | 14% |
| Vehicles | 7 | 8% |
| Other property | 6 | 7% |
| Superannuation | 4 | 5% |
| Insurance | 3 | 3% |
| Other | 6 | 7% |
| Total | 205** | *** |

Each file may have multiple responses. *Percentages relate to the number of relevant files where each type of property was recorded.

Value of Property Relationship claims as stated in application

| | Count | Percent |
|--------------|-----------|-------------|
| \$0-\$30k | 3 | 3% |
| \$31-\$50k | 3 | 3% |
| \$51-\$70k | 2 | 2% |
| \$71-\$100k | 1 | 1% |
| \$101-\$200k | 9 | 10% |
| \$201-\$300k | 11 | 13% |
| \$301-\$500k | 16 | 18% |
| \$501k-\$1M | 21 | 24% |
| Over \$1M | 18 | 20% |
| Not stated | 4 | 5% |
| Total | 88 | 100% |

Number of adjournments (all levels) by reasons for adjournments

| | Total sample N=88 | Awaiting information, reports, memorandum or result of settlement discussions n=63 | Delay caused by party or professional n=55 | Unavailability of party or professional (non wilful) n=29 | Timetabling issue n=19 | Requirement to schedule or reschedule a hearing/conference n=17 | Further process step indicated due to application made n=6 |
|--------------|----------------------|---|---|--|---------------------------|--|---|
| 1-5 | 18% | 13% (8) | 15% (8) | 21% (6) | 5% (1) | 0% (0) | 0% (0) |
| 6-10 | 30% | 29% (18) | 27% (15) | 34% (10) | 5% (1) | 24% (4) | 0% (0) |
| 11-15 | 22% | 22% (14) | 22% (12) | 17% (5) | 26% (5) | 12% (2) | 33% (2) |
| 16-20 | 14% | 17% (11) | 15% (8) | 17% (5) | 21% (4) | 24% (4) | 17% (1) |
| 21-25 | 10% | 11% (7) | 13% (7) | 0% (0) | 21% (4) | 24% (4) | 33% (2) |
| 25-30 | 5% | 6% (4) | 5% (3) | 3% (1) | 16% (2) | 12% (2) | 0% (0) |
| More than 30 | 2% | 2% (1) | 4% (2) | 7% (2) | 5% (1) | 6% (1) | 17% (1) |
| Total | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

Care of Children Act 2004 files

Applicant's relationship to child

| | Count | Percent |
|-------------------------|------------|-------------|
| Mother | 97 | 56% |
| Father | 53 | 31% |
| Grandparent | 13 | 8% |
| Other family | 6 | 3% |
| Joint Mother and father | 3 | 2% |
| Step parent-partner | 1 | 1% |
| Total | 173 | 100% |

Ethnicity of Applicant

| | Count | Percent |
|--------------------|------------|-------------|
| NZ/European | 104 | 60% |
| Maori | 38 | 22% |
| Pacific | 6 | 3% |
| Asian | 2 | 1% |
| Other | 15 | 9% |
| Unknown/not stated | 8 | 5% |
| Total | 173 | 100% |

Ethnicity of Respondent

| | Count | Percent |
|--------------------|------------|-------------|
| NZ/European | 99 | 57% |
| Maori | 37 | 21% |
| Pacific | 10 | 6% |
| Asian | 1 | 1% |
| Other | 17 | 10% |
| Unknown/not stated | 9 | 5% |
| Total | 173 | 100% |

Total number of children (at date application filed)

| | Count | Percent |
|-----------------------------------|------------|-------------|
| 1 | 86 | 50% |
| 2 | 50 | 29% |
| 3 | 27 | 16% |
| 4 | 8 | 5% |
| 5 | 1 | 1% |
| 6 | 1 | 1% |
| Total | 173 | 100% |
| Average number of children | 2 | |

Age of children (at date application filed)

| | Count | Percent |
|---------------|--------------|-----------|
| Under 5 years | 112 | 65% |
| 5-9 years | 84 | 49% |
| 10-15 years | 43 | 25% |
| Over 15 years | 3 | 2% |
| Total | 242** | ** |

**Each file may have multiple responses.

Interpreter directed at any stage of proceedings

| | Count | Percent |
|--------------|------------|-------------|
| No | 168 | 97% |
| Yes | 4 | 2% |
| Not stated | 1 | 1% |
| Total | 173 | 100% |

Mental Health, Drug, Alcohol allegations (from either party)

| | Count | Percent |
|--------------|------------|-------------|
| No | 84 | 49% |
| Yes | 89 | 51% |
| Total | 173 | 100% |

Physical, sexual, psychological abuse allegations (from either party)

| | Count | Percent |
|--------------|------------|-------------|
| No | 49 | 28% |
| Yes | 124 | 72% |
| Total | 173 | 100% |

Self represented litigant at any stage of proceedings

| | Count | Percent |
|--------------|------------|-------------|
| No | 92 | 53% |
| Yes | 81 | 47% |
| Total | 173 | 100% |

Change of counsel for either of applicant/respondent/ or change of Lawyer for Child

| | Count | Percent |
|---------------|------------|-------------|
| No | 65 | 38% |
| Yes | 47 | 27% |
| Yes 2 or more | 60 | 35% |
| Not stated | 1 | 1% |
| Total | 173 | 100% |

Multiple parties

| | Count | Percent |
|--------------|------------|-------------|
| No | 141 | 82% |
| Yes | 32 | 18% |
| Total | 173 | 100% |

Cross applications⁶

| | Count | Percent |
|--------------|------------|-------------|
| No | 42 | 24% |
| Yes | 131 | 76% |
| Total | 173 | 100% |

Without notice parenting applications

| | Count | Percent |
|--------------|------------|-------------|
| No | 48 | 28% |
| Yes | 125 | 72% |
| Total | 173 | 100% |

CYFS Care and Protection proceedings at any stage

| | Count | Percent |
|--------------|------------|-------------|
| No | 155 | 90% |
| Yes | 18 | 10% |
| Total | 173 | 100% |

Complex legal issues – where judge required to interpret the law

| | Count | Percent |
|--------------|------------|-------------|
| No | 163 | 94% |
| Yes | 10 | 6% |
| Total | 173 | 100% |

Complex legal issues – where Judge required to interpret the law.

| | Count |
|--|-------------|
| S60/safety issues | 5 |
| Relocation | 2 |
| Conflict of religious belief | 1 |
| Father convicted of murdering mother | 1 |
| Reference to multiple case law in decision | 1 |
| Application for child to leave NZ | 1 |
| Total | 11** |

**Each file may have multiple responses.

Domestic Violence proceedings involving same parties

| | Count | Percent |
|--------------|------------|-------------|
| No | 84 | 49% |
| Yes | 89 | 51% |
| Total | 173 | 100% |

⁶ A cross application is where one party files a separate application in response to an application already filed

Summary of factors present

| | Count | Percent |
|--|--------------|------------|
| Cross applications | 131 | 76% |
| Physical, sexual, psychological abuse allegations | 124 | 72% |
| Without notice parenting applications | 125 | 72% |
| Change of counsel | 107 | 62% |
| Mental Health, Drug, Alcohol allegations | 89 | 51% |
| Domestic Violence proceedings involving same parties | 89 | 51% |
| Self represented litigant at any stage | 81 | 47% |
| Multiple parties | 32 | 18% |
| CYFS Care and Protection at any stage | 18 | 10% |
| Complex legal issues | 10 | 6% |
| Interpreter directed at any stage | 4 | 2% |
| Total | 810** | *** |

Each file may have multiple responses. *Percentages relate to the number of relevant files where each factor was present.

Issues in dispute as identified by judgements/directions, specialist report/s, lawyer for child report/s

| | Count | Percent |
|-----------------------|--------------|------------|
| Guardianship issue | 95 | 55% |
| Day to day care issue | 152 | 88% |
| Contact issue | 152 | 88% |
| Total | 399** | *** |

Each file may have multiple responses. *Percentages relate to the number of relevant files where each issue was identified.

Number of applications to vary parenting orders

| | Count | Percent |
|--------------|-------------|-------------|
| 1 | 38 | 31% |
| 2 | 32 | 26% |
| 3 | 15 | 12% |
| 4 | 13 | 11% |
| 5 or more | 10 | 8% |
| Not stated | 13 | 11% |
| Total | 121* | 100% |

*Total only includes files where applications to vary parenting orders were present.

Reasons for application to vary a parenting order

| | Count | Percent | Reasons by Applicant Count | Reasons by Respondent Count | Reasons by Child Count |
|--|--------------|------------|----------------------------|-----------------------------|------------------------|
| Change in marital status | 6 | 5% | 3 | 3 | - |
| Relocation | 30 | 25% | 23 | 7 | - |
| Medical reasons | 10 | 8% | 2 | 3 | 5 |
| Wish to extend period of contact | 72 | 59% | 34 | 38 | - |
| Wish to reduce period of contact | 35 | 29% | 20 | 14 | 1 |
| Allegation of abuse | 50 | 41% | 22 | 18 | 10 |
| Change of Primary day to day caregiver | 18 | 15% | 31 | 18 | - |
| Total | 221** | *** | 135** | 101** | 16** |

*Total only includes responses where reasons to vary a parenting order were noted.

**Each file may have multiple responses.

***Percentages relate to the number of relevant files where each reason was given.

Reasons for application to vary order – Other

| | Count |
|---|-------------|
| Change in care arrangements/inclusion of grandparents | 7 |
| Child(ren) request change | 2 |
| Travel/Christmas arrangements | 2 |
| Cancel contact/deterioration | 2 |
| Other | 3 |
| Total | 16** |

**Each file may have multiple responses.

Reasons given by Judge ordering parties to attend counselling: pursuant to Section 69 CoCA

| | Count | Percent |
|--|-------------|------------|
| Enhance communications | 34 | 55% |
| Recommended by lawyer for child/counsel to assist/specialist report writer | 20 | 32% |
| S10/standard referral | 15 | 24% |
| Likelihood of success | 8 | 13% |
| S19 | 6 | 10% |
| Reason not stated/other | 4 | 6% |
| On request by party | 4 | 6% |
| Total | 91** | *** |

Only includes responses where reasons were provided.

Each file may have multiple responses. *Percentages relate to the number of relevant files where each reason was given..

Reasons given by Registrar declining referral to counselling

| | Count |
|------------------------|----------|
| Complexity of case | 1 |
| Likelihood of success | 1 |
| Other – please specify | 1 |
| Total | 3 |

Specific purpose Court has appointed counsel to assist pursuant to Section 130 CoCA

| Data | Count | Percent |
|---------------------------------|-------------|-----------|
| Arrange Hui | 2 | 8% |
| Complexity of case | 9 | 35% |
| Mediation/facilitate resolution | 6 | 23% |
| Welfare/Hague/evidence | 3 | 12% |
| Best interests of child | 9 | 35% |
| Total | 29** | ** |

Total only includes responses where the specific purpose Court appointed counsel to assist was noted.

Each file may have multiple responses. *Percentages relate to the number of relevant files where each purpose was given.

Number of adjournments

| | Count | Percent |
|---------------------------------------|------------|-------------|
| 1-5 | 35 | 20% |
| 6-10 | 44 | 26% |
| 11-15 | 30 | 17% |
| 16-20 | 22 | 13% |
| 21-25 | 19 | 11% |
| 25-30 | 12 | 3% |
| More than 30 | 10 | 9% |
| Not stated | 1 | 1% |
| Total | 173 | 100% |
| Average number of adjournments | 14 | |

Reasons for adjournments

| | Count | Percent** |
|---|---------------|------------|
| Awaiting brief for specialist report, report or updated report | 537 | 23% |
| For judicial list, conference, hearing or fixture | 216 | 9% |
| Awaiting action by counsel/to obtain instructions from client | 177 | 8% |
| Consent to be considered/filed, negotiations underway | 169 | 7% |
| Monitoring | 150 | 6% |
| For lawyer for child to be appointed or awaiting lawyer for child action | 141 | 6% |
| Other proceedings filed which require consideration | 116 | 5% |
| Timetabling directions | 109 | 5% |
| Delay due to non compliance with directions, no progress or extension of time granted | 101 | 4% |
| Interim orders made | 99 | 4% |
| To enable completion of counselling/programme of FGC | 89 | 4% |
| Awaiting service or administrative process | 61 | 3% |
| For Mediation conference | 59 | 3% |
| Judge, party, counsel unavailable | 46 | 2% |
| Other | 41 | 2% |
| Parenting/final orders/orders made | 36 | 2% |
| Awaiting affidavits | 34 | 1% |
| Proceedings on hold, withdrawn, discontinued | 29 | 1% |
| s60 hearing required | 26 | 1% |
| For counsel to assist to be appointed or counsel led mediation | 24 | 1% |
| For formal proof | 15 | 1% |
| No agreement | 12 | 1% |
| For delivery of reserved decision | 9 | 0% |
| Varied orders | 7 | 0% |
| To Registrars list | 5 | 0% |
| Change of counsel or to instruct counsel | 4 | 0% |
| Total | 2312** | *** |

**Total includes all adjournment events and multiple responses per event, and excludes not stated.

***Percentages relate to each reason as a percentage of the total number of reasons given, where this is known. Note the large proportion of missing data.

Person initiating adjournments

| | Count | Percent* |
|------------------------|----------------|----------------|
| Judge | 1032 | 57% |
| Lawyer for Child | 312 | 17% |
| Counsel for Applicant | 247 | 14% |
| Counsel for respondent | 173 | 10% |
| Applicant | 11 | 1% |
| Counsel to assist | 12 | 1% |
| Respondent | 12 | 1% |
| Total | 1,799** | 100%*** |

**Total includes all adjournment events and multiple responses per event, and excludes not stated.(Note the total differs from the total included in "Type of event adjournment occurs at" due to the large proportion of unrecorded data).

***Percentages relate to each party as a percentage of the total number of parties initiating adjournments, where this is known

Type of event adjournment occurs at

| | Count | Percent*** |
|----------------------|----------------|----------------|
| Registrars List | 1130 | 48% |
| Chambers/on papers | 352 | 15% |
| Judges List | 324 | 14% |
| Judicial Conference | 303 | 13% |
| Fixture | 186 | 8% |
| Mediation Conference | 78 | 3% |
| Formal Proof | 4 | 0% |
| Total | 2,377** | 100%*** |

**Total includes all adjournment events and excludes not stated.

***Percentages relate to each event type as a percentage of the total number of event types, where these are known.

Adjournment by consent

| | Count | Percent*** |
|--------------|----------------|----------------|
| No | 453 | 31% |
| Yes | 1,013 | 69% |
| Total | 1,466** | 100%*** |

**Total includes all adjournment events and multiple responses per event, and excludes not stated.

***Percentages relate to each adjournment type as a percentage of the total number of events, where this is known. Note the large proportion of missing data.

Appeals relating to Care of Children Act 2004 files

Key themes of grounds for appeal

| | Count |
|---|-------------|
| Weight of evidence/inconsistencies with evidence/evidence out of date | 6 |
| View of child(ren) not taken into account | 2 |
| Serving best interests of children | 1 |
| Change of circumstances | 1 |
| Other | 4 |
| Total | 14** |

**Each file may have multiple responses.