

Specialist Report Writers submissions to the Minister Of Justice review of the Family Court and to the NZ Psychologists' Board (31 August 2018)

Introduction:

The situation with specialist report writers (SRW) is at crisis, with fewer than 100 (many being part-time) to service all of New Zealand and with more and more work coming our way (both more and more complicated work). The outcome will be vulnerable children, the Courts' clients and perhaps vulnerable women/families will be more at risk. This is already apparent, as there many unallocated reports across NZ, with a major shortage of report writers in the South Island.

Specialist report writers in the Family Court work from a private practice. They generally work under s133 of the Care of Children Act (CoCA) or s178 Of the Oranga Tamariki Act and Children and Young Person's Well-being Act (1989). There are also appointments under the Protection of Personal Property Act and the Hague Convention but these are less frequent.

The psychologist specialist report writer (SRW) acts under a brief from the Family Court Judge, which in the standard brief (under legislation covers issues such as assessment of the child's relationship with parents, siblings and other key persons in the child's life; effects of parents parenting skills on the child; risk factors around the child (not limited to family harm and substance abuse); and exploring options for the future care of the children. The two Acts have different foci, with CoCA being about what in other legislations is known as private family law disputes (should the state be involved is a common argument though this denies children having any rights and promotes parental rights); and OTA being about children who the state considers need care and protection.

That a family is referred to a SRW is significant and worthy of an assumption that there is high level parental conflict and the children are the "pawns" in the middle. Thus our role as SRW is one of assessment, not therapy, though we may be asked to make therapeutic recommendations. The child is our focus though, of course, parents attitudes and capabilities have the greatest impact on the Court's client. As a result of our report, where we identify strengths and weaknesses, it is highly likely that a parent (and their supporters) may feel aggrieved as their story is challenged (not believed) but this is not our role – we are not Judges.

Other roles for SRWs can include: specialist counselling under s46G which can be used to assist parents to make Court Orders work; and/ or reunification therapy. These roles are not the primary focus of our submission today, but need to be

recognised as they also take time and energy and specialist therapy skills (beyond the already recognised specialist assessment role).

Context of our work

SRWs are essentially working across two professions, those of psychology and the law. It is important that the Review understands just how important this work is. It protects extremely vulnerable children whose issues are extremely complex. Report writers are commonly working with cases where the (correctly) assessed risk to vulnerable children, the Courts' clients, is extremely high. It is skilled work that in reality cannot be done by anyone else. It takes years for SRWs to really gain the level of skill and expertise needed as there are many facets to the complexity of children and their family's lives e.g. developmental; family systems; power and control; substance abuse; forensic risk; legal to name a few). Whilst SR writing is a specialty we would suggest that we are also generalist specialists in more areas than other aspects of specialist psychological practice.

There is an increasing complexity in family structures. Few of our families have two parents (and extended maternal and paternal family) and two children. Much more frequently there are step-parents; multiple children to different parents (and each parent's extended whanau); and multiple allegations each of which needs a competent family risk assessment within the family structure.

Working in private practice we provide all our own resources (including interview and office space and resourcing this (including staff, power, phone, paper and pens etc), training, supervision, memberships and indemnity insurance – see below for more information here). Contrast this to people who work in the public service e.g. psychologists with DHB and Corrections and support around them (very few complaints as have in-house complaints systems) vs psychologists in highly litigious parents in Family Court where there is no way for resolution prior to the Board (except through the Court which the parent also often distrusts).

In our view, the situation has been made markedly worse by the lack of any attention by MOJ (not even replying to letters (see Appendix A), not paying any attention to the expert advice given over changes to COCA etc) and by the lack of an organisational structure for us to work within. There is no national coordination of SRW, not even a national list, no way for Courts to access people with specialist expertise, no way we as a group can pass on information about training or resources. We are in the process ourselves of trying to set this up but only MOJ actually knows who does this work (or do they?).

Why do we do this work

We have developed specialist skills that we can see give value to families who have been distressed by dysfunction. Many family cases resolve as a result of our reports.

We care about the children and those people who are disadvantaged in NZ society.

We are reasonably well-remunerated. We do note that there is no agreed way for reaching agreement about our remuneration and this is also a feature of the lack of a coordinated approach by MOJ to our work.

We like being able to manage our lives without the constraints of working day by day in a bureaucracy.

The 2014 reforms: what has gone well/ badly:

We do not believe the 2014 reforms have assisted vulnerable children and their families in any positive way. From the forms which do not often provide information in a way that is easily accessed to the increase in without notice applications as a way of getting some input to the increased stress and expectations on Court staff, in our view these reforms are breaking a system that had lots of potential and was once considered to be at the forefront of Family Law in the world. The saving grace is the people who work in the system from Court staff to the Judges to the professionals who all do their best, individually and collectively, to increase the likelihood that children will not be further harmed. However, in saying this, MoJ is not solely responsible for vulnerable children and we acknowledge the broken down child protection service which has also been reformed with more issues and difficulties apparent as a result.

Provision of a 2018 practice note with NO consultation with SRWs or (to our knowledge) with the Psychologists' Society or the College. This practice note was implemented in July with no circulation to SRWs, Family Court coordinators. As of 18 August 2018, this July 2018 practice note does not appear on Google search. The 2016 practice note remains.

No consultation with the College of Clinical Psychologists, or we think the NZ Psychological Society (at least) over the ministerial review. As a SRW we must belong to one of these groups and be registered with the Psychologists' Board.

OTA (s191) requires Lawyer for the Child to release the report to a child over 10 or 12 years of age (s191a says reports will be supplied (unless under s192) the Court

prohibits) to every person who is entitled to appear; and this includes the children (s11 child's participation and views (s 5d) – this is a current legal issue being argued through the Courts). This is deeply concerning to us. There was no expert consultation with us about this¹. In saying this, we are not advocating for the protection of children by a patriarchal society, rather we believe it is in children and young people's interests (remembering that these children are vulnerable by virtue of being in state care) for release of the report to be very carefully considered.

Removal of resources:

Removal of Counsel from being able to represent parents, unless the application is made without notice (increasing number which is part of the overwhelming of the system) = increase in self-representation = anecdotal reports of increased complexity (beyond increased complexity of family structure). This has been clearly established in research on the impact of the reforms (Henagan 2018- and information provided to the Otago University research group currently being analyzed).

Removal of counselling: Removal of 6 (or more) counselling sessions at early phase of dispute – different to FDR (for which there are a number of exclusions; and parents have to pay (or get an exclusion)). FDR is dispute resolution not a process for helping people deal with the immediate trauma and dislocation of separation.

Risks to SRW that occur in the course of their work (apart from complaints):

SRWs have been knocked out (concussion); spat at; locked in by people to an unsafe gang home; exposed to verbal abuse and threats of physical harm to self and family; professionally threatened (i.e. I will complain about you if you don't); homes threatened, practices physically attacked and damage and face hostile and negative postings on the internet. We do not complain or lay charges as we believe this will not assist the resolution of the family dispute and it will add another layer of complexity.

Exposure to advocacy groups e.g. Backbone Collective – effect on professional's personal feelings of self-worth and repeated discussions of incorrect information or partially correct information.

¹ This response does not address issues with Oranga Tamariki about which many report writers, some of whom are clearly and recognizable experts in respect to this area of work, have grave concerns. Attempts to engage Oranga Tamariki in offering access to international experts we have brought to NZ have met with no success.

A number of us are single practitioners being main/ sole income earners and we travel widely around NZ attending families who are geographically and culturally diverse.

Burn-out: as there are a very significant number (on an ongoing basis) of unallocated SRW reports, we are pressured/ cajoled and begged to take on work; and to prioritise work – care arrangements for a baby may take a priority over those for a 10 year old girl, but if the girl is being sexually abused vs a parent using alienating behaviours to lead to a resist/ refuse case, then we also know that time is the friend of the favoured parent. These are “bread and butter” cases which we consider regularly.

We are required to cover our own professional indemnity insurance costs. Because of the very significant increase in complaints which involve the Family Court (about 30-40% of all complaints to the New Zealand Psychologist Board are in relation to Family Court matters, given there are about 93 Family Court Psychologists and between 2000-3000 registered psychologists in NZ this is an indication of the disproportionate level of complaint) the costs of this insurance have gone from \$500-\$700 per year to now many \$1000 (as much as \$7,000) of dollars especially if you are the subject of complaint.

Complaints

1. We believe that approximately 30% of SRWs have complaints against them at any one time. Our conception of this is that if 30% of say cardiologists had a complaint to the medical council against them there would be a public furore. But there is no real or apparent concern shown with respect to SRWs.
2. We are especially concerned with changes to COCA which now lead to complaints but are also changes which were advised against by those psychologists used as experts.
3. Changes to the Practice Note (and the 2016 Practice Note which was not amended as we were promised in 2018) issues include:
 - (i) the reporting time (set for 6-8 weeks currently). This is a wholly unrealistic time frame. The reality is that many psychologists are accepting files for six months hence. We may take weeks to get the documents from the Court and accurate contact details. We then need to negotiate to obtain the parents’ consent before we can see the children. Delays in reports are very rarely the fault of the psychologist, except when other more urgent work is placed on their

list with no consultation e.g. an upcoming court date for which there is no discussion.

- (ii) The issue of release of our notes and the management of the data we collect. We do not ever collect data on one person so the release of any of our material means that privacy may be breached, including the child's privacy. It may put people and children at risk. We would refer to the Paper provided by Dr Blackwell which outlines our professional opinion, again ignored.
- (iii) confusion in the COCA Act itself(which we have tried to raise with MOJ). We note that Sec 133 (1) defines Second Opinions and Critiques as

second opinion means—

- (a) a critique of a psychological report; and
- (b) a report covering the same matters as those covered by a psychological report.

At Sec 133: 10-12 the process to be followed is then outlined.

We would note that, as we understand it, there is currently no vehicle for there to be a second report put before the Court as seems to be indicated by (b) and that generally it would be considered unethical to subject parties (such as children) to be required to have to cooperate in a second report.

No one has been able to provide us with a clarification as to whether these terms are in fact interchangeable or (as we would believe) mean separate processes (as is reflected in the professional literature and professional practice documents). This definition is at variance with both the Practice Note and the guidelines for the profession (Seymour, F; Blackwell, S. and Thorburn, J. 2011. *Psychology and the Law in Aotearoa New Zealand*. The New Zealand Psychological Society. Wellington). We (have) sought advice from the (then) Principal Family Court Judge as to the difference between a 'second opinion' and a 'critique' which appear to be used interchangeably in this section. He advised he could not provide any clarification as to the meaning intended by this section or how it should be interpreted by professionals working in the area.

We note that the lack of clarity in this section has led to report writers facing complaints in respect to their practice because they have sought to adhere to guidelines such as the Practice Note and as a result at least one

experienced and well-regarded report writer has now decided to end working for the Court. This situation has also involved the Court involved in spending its time trying to address the issues which arose.

We believe that these changes should be urgently repealed and MOJ start a new consultation process. We believe there should be urgent attention to our issues with the Practice Note.

- Disclosure of notes to a party or a lawyer - who is responsible for breaches of privacy?
4. When a complaint occurs, and the Board releases information to the complainant, who protects the privacy of the information released. We are aware of Family Court information that has been placed on social media.
 - a. Concern for the children
 - b. Concern for other people we may have used as collateral data
 - c. Concern for other family members
 - d. Our reputation being trashed and building a distrust.
 5. The often incorrect or partially correct but slanted information from 'interest groups' or advocates and the lack of understanding of the complexities further "muddy" the waters and lead to complaints.
 6. The Complaints Process is at least a double jeopardy situation for us i.e. review by Court and possible cross examination of us, the Board (and its numerous processes) and possibly the HDC. We would note the following in the Oranga Tamariki legislation: Oranga Tamariki **7.Immunity for delegates outside Public Service.** Section 86 of the State Sector Act 1988 applies to a person outside the Public Service acting under a delegation referred to in section 7B or 7C as if the person were a Public Service employee. Section 7G: inserted, on 1 April 2017, by section 7 of the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Act 2016 (2016 No 98).
 7. Complaints are often used to derail a process i.e. to remove a report writer from the file. This leads to a time delay as another report writer needs to be found, have the time and be instructed. This then leads to 2 report writers attending the Court case etc....
 8. Some clients who feel disadvantaged by the Court's finding then complain after a Hearing or when they have chosen (they blame their lawyers for not pursuing) not to go to a Hearing. The Court process is finished and the complaint comes in. Some complaints are a direct attempt to force a report

writer out by complaining once they have started their work. This is abusive to other parties and the child.

9. Methodology: complaints are often about our aide de memoire notes and the accuracy of these. Some clients/ counsel have insisted on taping of our interviews. This is placing the report within a “criminal setting” where people are guilty or innocent. In our view the Family Court is inquisitorial and trying to resolve dysfunctional families with an emphasis on children’s well-being and we support this. In addition we note the difficulties in terms of needing then to provide acceptable recordings and transcripts (a significant extra cost in each case, perhaps thousands of dollars) and the very complex issues of privacy as each Family Court report involves information about and from many people and notes contain information provided which is not used. The complex issues of the privacy of various individuals is a matter that, should taping be allowed would need to be addressed by the Privacy Commission as we are not experts in privacy. The costs of allowing this would then have to be factored into our fee or be a charge on the litigants.
 - a) We note the K and K judgement said we get to determine our methodology. As an aside we note that this decision occurred under the old Act (prior to CoCA so reference is made to s29a reports which are similar in focus to CoCA s133 reports.
 - b) We believe there is a lack of recognition of the increasing complexity of these cases. We do not believe there is a recognition of the reality that children are being harmed by the failures of this process and we are not just talking about exposure to family violence e.g. when alienation is afoot and time delays feed the alienator.
 - c) There is a lack of recognition of the costs that have to be covered in this kind of work (it is still seen as if we are doing individual therapy with a single client and have a one hour appointment (50 minutes plus notes) once a week).

Outcome of the current complaint process

The primary issue is retention and recruitment primarily due to losses associated with complaints and issue recruiting, though we are also acutely aware that SRWs are also aging out of the system. Currently we simply cannot adequately service the Court due to a lack of SRWs. The issue about having a complaint is not that the Board then finds something seriously wrong as this is actually extremely rare. However, the costs involved as a result of the process the Board is legally

required to undertake (time and money) mean that the work is not financially viable for most psychologists who only want to do a few reports a year. 80 hours of time responding to a Board process is your four reports (for which you will get \$20,000-\$28,000 returning a net loss (since each report is costed at 20 hours -30 hours at a range of hourly rates which can be between \$150-\$230 sometimes+ GST). We would note that we are now having to pay upfront between \$5,000 and \$7500 to the insurer for the service we have to have should there be a complaint.

We are simply the Courts expert witness and while there is all of a sudden a lot of obvious support and engagement over our issues we are not their employees.

What we are seeking:

1. A consultation process with psychologists who practice in the field to address the issues above and to streamline the inter-relationship between Court and psychologists. This would demonstrate that we are respected and our views matter, rather than all decisions being made by others who do not have our expertise and experience in working with vulnerable children and their families.
 - To achieve this we recommend that the MoJ and the Board connect with an expert group of psychologists who are currently practicing in the Family Court to manage and streamline the complaints process. We accept that if someone has breached the ethical code, then there should be Board oversight, but if it is about Court issues, the matter should end there.
 - We agree that what constitutes an ethical breach is complicated and we could see the simple allegation that someone was unprofessional, was not respectful or was abusive might then be the way in which litigants continued to seek to harass the report writers. Again such allegations which are more likely to arise in Family Court processes and need to be addressed differently from matters where a complaint like that arises in the context of a therapeutic relationship.
2. That we all consider what skill set is required for starting psychologists.
3. That we develop akin to an apprenticeship, a training process for new psychologists in this area to gain the expertise needed. This would include money being allocated for the high level of supervision required and perhaps to support the new psychologist into the system. It would also require some sorting of the matters so the new clinician does not start with a family who is clearly identifiable as being highly complex.

4. We consider it vital that there is a clear understanding that a report writer in the Family Court is not acting in a 'treatment' capacity but also alert the Review to the need to consider that those providing therapy in this context are also, according to overseas evidence, at serious risk of complaints also. It is really essential that proper attention is paid to protecting all service providers in this setting from unfounded complaints from a litigant party.
5. Family Court report writers are the Court's Expert, but when faced with complaint we have no support from MOJ or, in effect, from the Court. The majority of psychologists in New Zealand work for state agencies or DHBs and are supported through complaints by Managers, Practice Leaders, HR staff and lawyers working for the organisation. We do not seek such support but note this is likely why so few complaints come to the Board in respect to psychologists in those settings.
6. We request that s133 of CoCA be amended to allow examination of the parents attitudes, capacity and style of relating to the world as this can be significant for the outcomes for the children. Nicholas Bala at AFCC Adelaide (August 2018) stated that perhaps 10% of the population has a personality disorder but this increases for parents who are presenting in high conflict and at the Family Court psychologists' door (60%+).
7. Parents' expectations are often that their views about their children and well-being are correct and not open to challenge. So there's a conflict between Court expert and parent expert that may be a fundamental tension and hence lead to a complaint.
8. That the brief is better focused to the issues at hand: s 5 CoCA; s 6 OTA (Best interests of the child) – rather than the current process of almost automatically providing the full standard brief (as in legislation) and then lawyers adding to this. In our experience a brief with 9 to 15 items does not allow focus on the issues for the children, rather it is a focus on the adult dispute which is driving the Court process.
9. That, following an assessment, parents are provided with say 2 hours counselling (would require 3 hours professional fees so professional could read the report and formulate the approach) to discuss the report with a social science expert or their lawyer who is on legal aid rates. This would be especially important for self-represented parents.
10. That when the Court refers a family for assessment, parents/ adults/ lawyers/ the Court is responsible for giving any SRW the correct contact details so we can make contact.

11. That when a file is briefed the negotiated date between the Court and the SRW is put on letters sent to the parties or even better, the Court is mute about this date (so as not to raise expectations).

There is a process being trialed in the UK for high conflict cases, which is soon to be reported on. The research is in the links below (this is a practical tool).

<https://vardags.com/family-law/crackdown-on-divorcing-parents-who-alienate-children-from-former-partners>

<https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/high-conflict-practice-pathway/>

Dr Sarah Calvert, Chair Northern Region Specialist Report Writers Group.

Kath Orr. NZCCP.

Kate Burke.

We note that many other report writers have contributed to this document.

Appendix A

18th April 2017.

Rajesh Chhana.
Deputy Secretary- Policy.
Ministry of Justice.
Box 10-167.
Wellington.

Dear Rajesh,

Re: Concerns of Specialist Report Writers.

I am writing to you at the suggestion of the Chief Family Court Judge, Judge Ryan. I am the Chair of the Northern Region Specialist Report Writer's Group, the largest such group and one with significant links across all report writers in New Zealand. This letter is in respect to some issues which we have corresponded with his over. By way of background you may (or may not) be aware that Specialist Report Writers are in very short supply (there is an overall shortage of psychologists anyway). A major issue in recruiting new report writers is the high level of complaints made to the New Zealand Psychologist Board in this area of work. Most of those complaints do not proceed beyond an initial investigation by the Board but they are none the less very time consuming and distressing to the psychologist (who bears all the costs of their having to respond). Because of this we as a group of specialist professionals work very hard to minimise areas which might lead to complaints and difficulties for us.

We wish to raise two issues which have arisen as a result of changes to COCA in the last few years. Firstly there is the on going issue in respect to Critiques/Second Opinions. We draw your attention to what the Act says

second opinion means—

- a)
a critique of a psychological report; and
- (b)
a report covering the same matters as those covered by a psychological report.

We believe that this is unclear and that it has always been understood (and we draw your attention to the section in Psychology and the Law in Aotearoa, Seymour, Blackwell and Thorburn, 2011) that the only way in which another psychologist can/should comment on the work of the Court's expert is by way of a Critique. There has never been any inclination to allow a further report as in (b) which would involve seeing the parties, including the child. We think this is very unhelpful and inconsistent with practice. We note that report writers were never asked about this change.

Secondly we are concerned at the suggestion in the Act that reports would be completed in 6-8weeks. We again note there was no consultation about the time frame and whether it was realistic. It is the view of report writers that this is not a realistic time frame. Judge Ryan has agreed that 12 weeks would be much more realistic (which we agree with). We note the following issues. Firstly it often takes at least a week to send out the documents once we have agreed to accept a Brief. Secondly we find that contact details for parties are often incorrect and we have to go back to the Court for help in finding parties. Thirdly many reports are expected to be done over periods like school holidays, including the long school holidays. This further complicates contacting people and making the necessary arrangements for Data collection. Some reports are multi-location and most, these days, are complex. Many will require the gathering of collateral data from the Police, CYFS, Schools etc. This all takes time and may take significant time. While report writers have been assured by Judge Ryan that extensions will always be granted (and they are) we believe that it is helpful for us if the Act reflects practice because this protects us from unnecessary issues for complaint.

As always report writers would be happy to engage in discussions with the Ministry about our work.

Yours sincerely,

Sarah J. Calvert. PhD.
Chair. Northern Region Specialist Report Writers Group.