

**EVERY REPORT TELLS A
FAMILY'S STORY,
INCLUDING THE
CHILDREN'S STORIES**

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[I flirted with naming the paper 'Raising the Titanic', 'Refloating the Titanic' or, '25 years of working on a leaky boat!']

This paper represents my attempt, undertaken with the kind assistance of some legal and social sciences colleagues, to re-consider the purpose, the process, the content, the focus, the language and the place of the family report in Family and Federal Magistrate Court proceedings in the context of the new Shared Parental Responsibility Bill 2006

They waited patiently for what seemed a very long time, stamping in the snow to keep their feet warm. At last they heard the sound of slow shuffling footsteps approaching the door from the inside. It seemed, as the Mole remarked to the Rat, like someone walking in slippers that were too large for him and down at heel; which was intelligent of Mole, because that was exactly what it was.

There was a noise of a bolt shot back, and the door opened a few inches, enough to show a long snout and a pair of sleepy eyes.

'Now the very next time this happens', said a gruff and suspicious voice, 'I shall be exceedingly angry. Who is it this time, disturbing people...? Speak up!

'O' Badger', cried the Rat, 'let us in please. It's me, Rat, and my friend Mole, and we've lost our way in the snow'.¹

(1) The use of the extract from the Wind in The Willows is to remind us that, whilst this paper is concerned with the adult topic of Family Reports and whether and how they might now be undertaken differently in the context of the new legislation and most especially the principle of a presumption of shared parental responsibility, there is a timelessness and an immutability to the consideration of children's needs, wishes, views and stories, including their stories to the Family and Federal Magistrates Courts through Family Reports. Family Reports have been telling parents and, more importantly, children's, stories for some 30 years. They are the only medium or vessel for children to talk to Courts and, in some manner, to talk further and more clearly to conflictual parents. The Byron Bay Family Law Conference held earlier this

¹ Grahame, Wind in the Willows, 1992; UK Wordsworth Classics Ltd pp.69-70

year did actively re-raise the matter of whether Judges could or should conduct direct interviews of children as part of hearing children's matters with prominent Irish, English and New Zealand jurists talking in favour of the practice and revealing that it is something they undertake quite regularly. While it has not been a common practice in Australia to date it is a matter that is apparently being actively re-considered in some quarters.

(2) The most common ending to children's stories through the ages has been-

AND THEY ALL LIVED HAPPILY EVER AFTER'.

It is accepted that this is not the case with most Family Court and Family Report stories. Most children's stories more usually include a handsome prince or dashing and brave hero and a beautiful princess or a woman of great personal nobility or quiet dignity. As we know all too well, by the time a matter has entered the Family Law system and been referred for a Family Report the prince is considered to be and is sometimes described by the princess as being, in the words of Rick the anarchist sociology student from *The Young Ones*, "a complete and utter bastard!" and the princess is considered and sometimes described by the prince as being, in Biblical terms, "the whore of Babylon", a Jezebel and a harlot. It is hardly surprising that the prince, or bastard's, and the princess, or whore's, children feel as if they have been jolted from a fairy tale to a nightmare. Happily ever after turns to children feeling as if they are have become the prizes and victims of a never-ending emotional and psychological tug of war with their mother and father pulling them apart, pulling furiously one way and the other.

(3) Queensland Social Work consultant, Yvonne Darlington, in her 1990's Doctoral studies conducted in-depth interviews of young adults who, as children, were involved in Family Court Family Reports. There were a range of responses offered by these young adults as to their remembered or perceived experiences of contact with the Court and involvement in reports, including their advice, as intact or damaged survivors of the experience, to counsellors and Court decision makers. These advices included that, "children need more information about divorce and legal proceedings"; there is a, "need to listen to what children are saying they want to have happen"; "children need some external support". One young female respondent stated, "I wish that someone could actually tell kids what's going on. That it's mandatory that people have to explain to kids. I don't mean parents... but someone from the Court...no one bothers to tell you what's going on and is going to tell you the truth".

(4) Garrity and Baris in *Caught in the Middle*² offered a description of 4 basic positions taken by the children of high conflict separating and divorcing parents. They suggest that they are-

<u>Manoeuvring</u>	<u>Equilibrating</u>
Tends to be manipulative	Is diplomatic
Switches between sides	Tries to be fair
Is often defensive	Takes/assumes responsibility/blame
Could act as spy	Hides their true feelings
<u>Merging</u>	<u>Diffusing</u>
Is involved in the adult conflict	Is Highly reactive
Takes one side/enjoined	Is confused
Has no sense of self	Is anxious
Rejects one parent	is overwhelmed

(5) Sometimes, in desperation at trying to engage some parents in mediation and counselling into some greater empathy for and insight into their children's experience of the multiple losses and traumas of the dismantling of the family unit as well as the imposition of their uncontained adult acrimony on them, I borrow from the story of the '3 Little Pigs'. I also use variations of the '3 Little Pigs' story a great deal with abusive men to help them understand their former partner's pattern of fleeing and hiding from them by leaving an unsafe home of *straw* to go to a refuge more often out in the *sticks* and finally going to a *brick* Courthouse to gain some orders. Further, we talk about the similarities of the promises or entreaties of abusive men, '*Little pig, little pig let me in*' and their threats, '*Or I'll huff and I'll puff and I'll blow your house in*'. I talk to parents about their children's limited emotional and psychological options in where to go and what to do with the losses and hurts imposed on them and their need to find a place, more often a psychological space and place of safety, that allows them to survive the huffing and puffing around them. Garrity and Baris are more eloquent in their descriptions of these issues but essentially are saying, the worse you parents make it for your children the worse are their chances of surviving this experience intact and undamaged.

² Garrity, C & Baris, M. 1994. *Caught in The Middle: Protecting the Children of High Conflict Divorce*. NY. Lexington

(6) Garrity and Baris also offered some research-informed findings on types of care arrangements, the style of co-parenting and the levels of parental conflict present and imposed on children and or degrees of loss of relationship with a parent and the children most at risk of a poor post-separation outcome. Their findings can be illustrated in the following model-

<u><i>Inclusive/exclusive</i></u>	<u><i>type of care</i></u>	<u><i>level of conflict</i></u>	<u><i>loss of a r'ship</i></u>
shared	regular & flexible	low	low
cooperative/inclusive	regular & flexible	low	low
cooperative/inclusive	regular & rigid	medium	low
<u><i>parallel/equal</i></u>	<u><i>regular & rigid</i></u>	<u><i>high</i></u>	<u><i>low [most at risk]</i></u>
exclusive	irregular	sporadic	medium
absent	occasional/none	low	high

(7) Such research may be important to bear in mind when looking at the new Shared Parental Responsibility Bill 2006 in terms of, where there is equal time for the children in both parent's care or at least significant and substantial time with one parent and the children live with the other, and these arrangements are Court prescribed and hence, are externally imposed rather than being grounded in a parental agreement and goodwill, such arrangements may not be in children's best interests. That is, where a form of shared responsibility and care is prescribed in a high conflict co-parenting relationship the children's emotional and psychological welfare may well be at risk if the findings of Garrity and Baris are valid and reliable. That is, to continue to plagiarize from others the Court cannot make a silk purse out of a sow's ear.

(8) It would seem that Darlington's then 9-16 year old Family Report survey respondents shared the same experience and needs as Kelly and Wallerstein's³ US study participants in believing that "obtaining information [is]...a good starting point". That is, the children want to tell their story, be listened to and be included rather than being left out in the cold. It is stressed that children ask to be included in a blame-free, neutral and constructive manner. Kathryn Cronin, then Australian Law Reform Commissioner, in her 1997 joint paper with the Equal Opportunity Commission, asserted that her agency's study found children to be "excluded" and "silenced" in many legal processes by a "paternalistic approach to young

³ Kelly & Wallerstein, 1977; Brief Interventions with Children in Divorcing Families. American Journal of Orthopsychiatry, 47, pp23-29

people”. Further, that, “if children are to participate appropriately and effectively with legal processes, adult participants ...need to focus on and engage directly and respectfully with children”. This study was reported on in the Courier Mail 19 May 1997, p5].

(9) As is no doubt the case for many of you, I have worked with innumerable families; children, half-siblings, step-siblings, parents, step-parents, grandparents and other significant parties, going through a Family Law process after an adult separation and have heard many variations of similar stories. What of the story of Family Law? We are all aware that, prior to 1975, we had separate State Courts dealing with Matrimonial Matters which more usually included issues of blame and fault and decisions for children grounded in theories such as the ‘tender years’ and the ‘maternal preference’ principles of young children being deemed to be more attached to and dependent on mothers and mothers being considered to be more, if not exclusively, equipped to meet the emotional needs of young and dependent children. The Court matters then featured visceral accounts of “abandoned” women and children and “adulteress” husbands and wives. Lurid photographic evidence of the described drunkenness and adultery often accompanied applications and made titillating headlines in the local paper. There were attributions of fault and blame in the parties’ stories and in the Courts’ judgments. Without meaning to be sacrilegious some might talk of pre Family Court Family Law matters being dealt with in an Old Testament manner where attributions of good and bad were assigned and judgments, sometimes accompanied at least by verbal fire and brimstone, were offered up about wrong doing and evil doers.

(10) We then travelled to a new land or if you will allow a New Testament treatment of Family Law with slightly different stories and characters as the federal system, grounded in the specialist Family Court and the Family Law Act, was instituted in 1975/76 with terms such as ‘custody’, ‘access’ and ‘guardianship’ being the semantic branding irons offered to practitioners and imposed on families. Decisions were guided by ‘no-fault’, ‘gender neutral’ and ‘best interests of children’ principles and further informed by conventions such as the international rights of the child.

(11) A further generational review and another change in the story was then undertaken in 1995/96 with the discovery of, to perhaps stretch the metaphor beyond a reasonable point, The Lost Scrolls, known more commonly as the Family Law Reform Act which was further informed by the discarding of the by then weary semantic branding irons of custody and

access and their replacement with the new user-friendly, less possessive, labels such as 'residence' and 'contact', as well as 'specific issues' being introduced into our language and intended to be reflective of a new way of describing and making decisions. As an alternative to Court orders, parenting plans were also offered up in what was suggested to be a simplified and more user-friendly system where parents had 'responsibilities' and children had 'rights' and families were to be empowered more in their participation in the system. The 1996 legislative reforms were also followed by institutional change with, regardless of the political undercurrents perhaps informing and shaping events, the Federal Magistrates Court being brought into being in 2000.

(12) The ever-changing and evolving political and societal climate of Family Law and the Family Law storybook has more recently been reflected in or expressed through the 2003 Inquiry into 'Child Custody arrangements in the Event of Family Separation' and the 'Every Picture Tells a Story' Report which informed the new legislative shift to, among other things, the "presumption of shared care" in the Shared Parental Responsibility Bill 2006 which is the context and cause for our meeting and telling stories to each other again.

(13) From 1975/76 to the present, 2006, one of the ancillary processes employed by the Court, apart from counselling, conciliation and mediation, has been the Family Report, ostensibly an assessment designed to assist the parties, solicitors, LAO in-house or external Child Representatives, now Independent Children's Lawyers, and ultimately the Court, further consider post-separation care options and arrangements for children. During my in-house time with the FCA between 1987 and 1999 the Court had a proforma format for Family Reports developed in the 1970's by Geoff Smiley, the initial Director of Counselling of the FCA Brisbane Registry, and further through the 1980's under the guidance of his successor as Counselling Director, Ian Goldsmith, before his 1987 departure from the Court. It is noted that in July 2002 the Court issued a 47 page Guideline for the Preparation of Family Reports to its counselling and mediation in-house staff as well as to its external Regulation 8 Welfare Officers.

(14) The generic family report proforma found in the in-house FCA counselling section for some 25 years had standard section headings such as-

Introduction [who the report is concerned with; the subject parents, children & family]

Background [brief historic overview/chronology of significant events and issues]

Applications [the mother & father's or applicant & respondent care aspirations]

Issues [the foci of the report; seminal matters to be considered and discussed. Almost all reports contained the core issues of the children's attachments, wishes and needs and the factors influencing these and the level of cooperativeness or conflict in the co-parenting relationship]

Households & parties [the circumstances of the major parties; children, parents, partners & families]

Parents [the parent's families of origin, adult relationship histories, matters regarding criminality, DV, DCS, mental health, alcohol or drugs, their perception of the relationship with the other parent and their post-separation adjustments]

The Parent's Relationship [consideration of the parents' abilities and willingness to cooperatively co-parent or to what extent they were entrenched in conflict or incapacitated by unresolved grief & loss reactions]

The Parent's relationships with the Children [the functionality, nature, dynamics and quality of the mother-children and father-children relationships]

The Children [the children's separate and shared perceptions, wishes, needs and attachments and the positive/negative factors that seem to inform and shape them, their sibling relationships and commentary on their ages, developmental stages and capacities to render reliable and valid wishes and perceptions]

Significant Others [more usually concerned with the extended paternal and maternal families, parents' new partners and sometimes others]

Options [more usually the options sought or described by the parents and or further options identified and described by the report writer]

Summary [the abbreviated or abridged version of the report events, issues and relationship and conflict dynamics]

Discussion [the hopefully logical, sequential and congruent discussion of the adult and child parties and their relationships, perceptions and aspirations, as well as their conflict dynamics]

Recommendations [initially the discussion of options and their apparent benefits or deficits without the report writer presuming to advise the Court which option it should

take up and later recommendations which swore the issue and made concrete recommendations. Recommendations were more usually concerned with residence/contact proposals and to what extent forms of inclusive or shared care were considered to be possible in the context of the pre-existing care status quo and history]

(15) The 2006 Bill offers a number of substantive changes to the Court's management of matters through the legal process as well as semantic changes to describing the content of orders and of parenting arrangements. The major changes, as I am advised by others more expert and comfortable in approaching an understanding of the major legislative changes of the 2006 Bill, are-

- Shared parenting provision
- Family Relationship Centres
- New Procedure in parenting cases
- Terminology changes such as 'lives with', 'spends time with', 'communicates with' etc
- The role of family consultants and family dispute resolution practitioners
- The re-numbering of sections such as Section 68F becoming Section 60CA
- Changes to Contravention provisions
- Children Representatives becoming Independent Children's Lawyers
- The Interrelationship between Family Law orders and family violence orders
- The jurisdictional shifts in the Federal Magistrates Court's role
- Changes to definitions such a 'Aboriginal Child', as well as other major changes which because of time limits and the focus of this paper I will not note at this time

(16) The objectives of the new legislation are noted to be-

1. Ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent considered within the child's best interests;
2. Protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect of family violence;
3. Ensuring that children receive adequate and proper parenting to help them achieve their full potential; and

4. Ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

(17) It seems that the Section 64B of the 2006 Bill contains the major changes in terminology to be employed in describing Parenting Orders and that these are

1. the person with whom the child will:
 - live
 - spend time with or
 - communicate with
2. the allocation of parental responsibility or a component of parental responsibility
3. what consultation the parties must have with each other; and
4. the procedure to be taken before a person can bring an application

(18) My role in this paper, as I understand it, is to consider whether and how the new legislation impacts on my role and those of my other colleagues in private practice who, while perhaps being accredited as Regulation 8 Welfare Officers or undertaking reports as the Court appointed Experts, prepare Family Reports for the Family or Federal Magistrates Court. This task has caused me to consider or re-consider matters in relation to Family Reports, such as, What are they, what is their purpose, who are they written for, who are they about, Who writes them and how are they done?

(19) In order to attempt an understanding or locate some definitions of these preceding points, I will employ the Court's 2002 Guidelines for Family Reports while also acknowledging that Legal Aid prepared Best Practice Guidelines for 'Family Report Writing' also dated 2002.

The FCA 2002 guidelines say that-

A Family Report is a professional appraisal of the family from a non-legal and non-partisan perspective, independent of the case presented by either party to a dispute. This comprehensive and impartial social science perspective is otherwise not available to the Court, and has a functional value of contributing to informed and child-centred judicial decisions. I noted for the first time in many years of scanning items like this that this FCA definition talks about an appraisal of the case presented by either *adult*

party and does not make any inclusive statement about the children's role, participation or case

(20) The FCA guidelines also added that-

It was important that when reports were ordered, the following criteria should be used-

- (a) There was a dispute as to the wishes of children and they [children] were of sufficient maturity for these to be significant.
- (b) There was a dispute about the relationship between the children and either or both parents or other significant persons.
- (c) Circumstances were such that a report was the best method of obtaining evidence of significant facts important to the welfare of the child and which required expert assessment within a counsellor's field of expertise
- (d) If a child was at risk. That is, where there were allegations of neglect of child abuse; physical, sexual or emotional.

(21) To digress for a moment it is acknowledged that a tension in the Court guidelines is that it implies that the report was undertaken to assist the Court while many report practitioners also attempted to write reports in a manner that might, additionally, serve other purposes. Many report writers hoped their assessments would assist the parties' lawyers to negotiate an outcome between their clients without going further through Court. Report practitioners also often held the additional hope that the report would act as a form of therapeutic letter for the adult parties. That the parents would form some insights and learnings about themselves, their children and their conflict through its contents, including making attitudinal and behavioural shifts that would benefit them, their co-parenting relationship and their children. Similarly, it is been my experience that many legal practitioners seek reports, including before filing applications, as a means of having an instrument that enables them to contain and manage a matter outside of litigation and in order to shape or re-shape their clients' expectations and or assumptions about post-separation care.

(22) In locating further definitions of who writes reports and how they were to be done the 2002 Court Guidelines stated that-

Family Reports were to be prepared by family & child counsellors and welfare officers appointed under Regulation 8 of the Family Law Regulations who were required to

express an opinion as to the nature of the relationship of the child with each of the parents and with other significant persons in the child's life, the effect on the child of any separation from either parent or other significant person with whom the child had been living, so far as the effect on the child was concerned, the capacity of each parent or other significant person in the child's life to provide adequately for the needs of the child, including emotional and intellectual needs of the child, their attitude to the child and the responsibilities of parenthood demonstrated by each of the child's parents and the impact on the child of any family violence involving the child or a member of the child's family

(23) The report process, almost invariably practiced, with some small differences between in-house and externally located Family Report practitioners and from report to report from the mid 1970's up to the present time, has been something approximating the following-

- Interview with the non-custodial/non-residence parent, possibly also with their new partner and or the children's grandparent/s, if applicable
- Interview with the custodial/residence parent, possibly also with their new partner and or other grandparent/s, if applicable
- Collective interview of the subject children
- Separate interviews of the subject children
- Joint interview of parents, perhaps in the company of new partners and or grandparents or separately from the other attending adults
- Joint interviews/observations of parent-children interactions

(24) One practice that has been approached markedly differently by various report practitioners has been that of how and when to deal with the rendered written material and whether, how and when to hold discussions with third parties such as doctors, teachers, extended family members and others. Some practitioners prefer to read the supplied material prior to the report interviews and others prefer to read it after conducting the report in-person interviews. Some decided on how to deal with the written material depending on whether there was a Child Representative in the matter or whether one or both parties were legally represented or self-represented. The treatment of the inclusion or exclusion of 3rd parties has also varied markedly.

(25) Apart from the separate and or joint interviews I conduct with parents where I ask them to describe their care proposals and aspirations, to walk me through their individual account of the adult relationship and separation and their version of the post-separation conflict, there is a standard checklist of questions I put to parents and their partners in order to try to gauge their personal, relationship and parenting functioning. This checklist is as follows and is filled in by me while talking to the parties rather than having them fill it in. I find that follow-up questions often contribute to a more fulsome account and allow greater details to be drawn out. I also find it helpful in that it covers most of the contentious areas that seem to surface time and time again in Family Law matters such as DV, child abuse or neglect, alcohol and or drug abuse, criminality and psychological health issues. It would be my belief that the grounds upon which people will rely to rebut Shared Parental Responsibility are more often likely to come from one or some of these areas and or from the matter of the cooperation or conflict to be found in the post-separation co-parenting relationship. Perhaps even more so where there is a pronounced imbalance in the power differential in the parents' relationship which leaves one parent prone to abuse and intimidation by the other. To reduce the complex to the simple parties will, as they always have with a no-fault Family Law jurisdiction, make negative attributions about each other and or others related to them being bad, mad or sad, or all of the above. Section 61DA nominates 2 of the areas I have described, those of child abuse and family violence, as being bases for a rebuttal of the presumption of Shared Parental Responsibility.

(26) After having written some reports in the context of the 2006 Bill I still find the core items in the checklist to be helpful and relevant but I am also finding that I am seeking further details about extended family member's personal and relationship circumstances and the subject children's history of contact or communication with them. I am unsure as to how widely or not the practice of locating and describing children's extended paternal and maternal families and others in their relationship landscape has been undertaken previously by most report practitioners but it would seem that some greater active attention to extended families and other significant relationships is now required. I am aware that a number of colleagues have previously elected to omit descriptions of extended families in an attempt to limit the length of reports as a response from pressure from the Court or others to produce more succinct reports.

(27) **Parental / adult checklist**

A. Name-----address-----
contact phone no's-----; living arrangements and
plans-----

Where born-----DOB -----Age-----

B. Primary & secondary schooling at -----, left school at age after
Grade ----, working in/as-----

I have worked as-----

I am currently working as/am supported by -----

C. Apart from the relationship I shared with the other party in the dispute other
significant or live-in relationships I have been involved in have been with-

-----from-----to-----
-----from-----to-----
-----from-----to-----
-----from-----to-----

Apart from my children from the relationship I shared with the other party in this dispute
I have the following other children from my relationship(s) with -----

There were the following miscarriages / terminations from my relationship with-----

D. I identify with the -----religion, Church or spiritual group.

I identify myself as having -----racial heritage or ethnicity.

E. My general physical health is *good / apart from* -----

I have had the following contact with members of the helping professions in relation to
my emotional and psychological health -----

And have been prescribed the following medications-----

I *have / have not* engaged in self-harming behaviour. If yes, the details are-----

I *have / have not* engaged in suicide attempts. If yes the details are -----

F. I *have / have not* got a criminal record. If yes, the details are-----

I *have / have not* been involved in DVO, AVO or Protection Order hearings. If yes, the details

are-----

I *have / have not* had dealings with the Dept of Families. If yes, the details are-----

G. My current use of alcohol is -----

My previous use of alcohol was-----

My current use of recreational/illegal drugs is -----

My previous use of recreational/illegal drugs was -----

H. My family of origin includes-

Mother-----Aged----yrs/ Father-----Aged----yrs

1.Sibling-----Aged----yrs 2.Sibling-----Aged----yrs

3.Sibling-----Aged----yrs 4.Sibling-----Aged----yrs

5.Sibling-----Aged----yrs 6.Sibling-----Aged----yrs

7.Sibling-----Aged----yrs 8.Sibling-----Aged----yrs

I. Mum and Dad remained together and are living in/at-----

and I have regular/irregular contact and intact/fractured relationships -----

OR

Mum and Dad separated in ----- & Mum re-partnered with-----

Aged -----yrs

Mum’s new partner had the following children their previous relationship-----

She and ----- then had the following children in their relationship-----

Dad re-partnered with----- Aged ---yrs. Dad’s new partner had the

following children their previous relationship-----

He and ----- had the following children in their relationship-----

J. Sibling 1. is partnered to -----They have the following children-----

-----aged-----

-----years of age respectively. This family lives in/at-----

[Similarly for sibling 2, 3, 4 and so on]

K. The following family of origin members have had psychological and emotional health

issues-----

The following family of origin members have a criminal record-----

The following family of origin members have been involved in DVO, AVO or Protection Order hearings-----

The following family of origin members have been involved in illegal drug use and problematic alcohol use-----

The following family of origin members have been involved in DCS child abuse or neglect matters-----

(28) I also include here the standardized Questionnaire I employ in my individual discussions with children in reports. I am not finding, after 3-4 reports written with the new legislation in mind at the time of this paper, that the content or process of discussions with children has shifted to any significant degree. I realize that the 2006 Bill requires report practitioners to locate and describe children's views but have found, to date, that views is a blend of thoughts and feelings, perhaps encapsulating children's perceptions and experiences. It is generally the case that in my practice I meet with the children collectively before I talk to each child separately. The separate interviews are to ensure that each child has the opportunity to render their thoughts and feelings, or if preferred views, free of the influence or inhibition of siblings and the concern that a brother or sister might report back to a parent. The collective interview is to give the children the opportunity to get used to the face and the place of the report and to build some rapport while discussing introductory and neutral matters before approaching the more difficult substantive matters.

(29) Part of my introductory chat is to let the children know that their mother has some good ideas and their father has some good ideas but their ideas are different and where parents have different ideas and difficulty agreeing or making a decision they ask a Judge or the Court to help make a decision. This is an explanation that avoids the labelling of one or other parent as being bad or having bad ideas. In short a neutral or blame free explanation. Further, that the Court will listen to their mother and father's ideas but is also interested in the children's ideas

which is the core role that I am taking in talking to the Court on their behalf. I inform the children that there are no good or bad or right or wrong answer, that I cannot promise them that what they want is what the Court will decide, that they have choices in whether I share with their parents their thoughts and feelings on the day of the report, and I inform them of their rights to decline to enter into discussions; that is, to empower them in the process.

(30) The template questionnaire that follows is a guide to the standard type of questions that I would use in discussions with children in a report setting. The use of the various specific questions and the way they are worded and or put will vary from report to report and from child to child, perhaps depending on variables such as children's ages, maturity, developmental stage and levels of anxiety, as well as the issues in each matter. It is also often the case that the questions listed below might be introductory in that a number of sub or follow-up questions could evolve from the initial question such as, 'Why do you think that is?', 'Did you always feel/think that way?', 'Who else in the family sees it that way?', 'What would need to happen for you to change the way you feel?' or 'If you didn't think that way, what might be another way to explain what happened?'. It is acknowledged that there are generally two questions most, at least I hope most, report writers will not directly ask a child in a report interview and it similarly hoped that parents would not confront their children with these questions. These are, 'Who do you love more?' and 'Who do you want to live with?' These are ugly confronting questions that, in my opinion, can and should be avoided from the position of duty of care for the child. Most children do not want to choose between their parents and these questions more often serve an adult purpose rather than serve a child's agenda. They would also appear to be contrary to spirit of the new legislation with its emphasis on sharing parental responsibility and achieving inclusive rather than exclusive care. I would like it to be noted that the children are not given these Questionnaires but the it is filled in by the report writer as they are talking to the subject children.

(31) **Questionnaire for Children in Family Reports**

Who I am

My name is-----I am ----- years old and am in Grade -----
 at -----School. My teacher's name is -----
 My best friends are-----

My favourite sport and hobbies are-----favourite video /DVD-----
----- TV show-----favourite book -----
-----My favourite food is -----Food that I don't like is-----
-----My favourite child in the whole world is-----My
favourite grown up in the whole world is-----The child that I find it
hardest to get on with is-----My hero is -----
The grown up that I find it hardest to get on with is-----
When I grow up I am going to be-----The best thing about being
me / about my life is-----
The hardest thing about being me / about my life is-----

When my family was together

A happy memory I have of when my Mum & Dad and our family was all together is-----

A sad memory I have of when my Mum & Dad and our whole family was all together is-----

Mum and Dad are/are not friends. I can tell this because-----

Our family separation

I found out that my Mum & Dad were separating when-----

When I found out that my Mum & Dad were separating I felt-----

What I said or felt like saying when I found out that my Mum & Dad were separating was

How I mostly felt toward Mum when I found out that my Mum & Dad were separating was

How I mostly felt toward Dad when I found out that my Mum & Dad were separating was

Mum says that they separated because-----

Dad says they separated because-----

I think Mum & Dad separated because-----

Sometimes I feel like blaming-----because -----

If I could fix things I would-----

The changes

The biggest change for me with having Mum & Dad separated is-----

The hardest thing for me with Mum & Dad being separated is-----

The person that I worry most about since Mum & Dad separated is -----
because-----

The best or a good thing for me with Mum & Dad being separated is-----

When Mum talks about Dad now she sounds [normal / angry / sad / other] and says things
like-----

When Dad talks about Mum now he sounds [normal / angry / sad /other] and he says things
like-----

The way that Mum has most changed since she and Dad separated is-----

The way that Dad has most changed since he and Mum separated is-----

My advice to parents who separate is or What I would really like the Judge to tell my parents
for me is-----

My advice to kids whose parents separate /to a friend whose parents break-up would be whose
parents separate is-----

Pretend that....

If my family were animals I would be most like a-----, Mum
would be like a-----, Dad would be like a-----,
My brother would be like a-----, My sister would be like-----

If I could use magic and make 3 wishes come true I would wish for-----

If I could use magic to get rid of 3 worries or sad things in my life I would get rid of-----

I like & I don't like

The favourite thing I like about my Dad is-----

-----The thing that I would change about my Dad to make him
nicer or better is-----

The favourite thing that I like about Dad's new girlfriend / wife is-----

-----The thing that I would change or make different
about Dad's new girlfriend /wife is-----

-----The favourite thing I like about my Mum is-----

-----The thing that I would change about my Mum to make her nicer or better is-----

-----The favourite thing that I like
about Mum's new boyfriend / husband is-----

The thing that I would change or make different about Mum's new boyfriend / husband is

If

If I was hurt and had to go to hospital and stay the night and I could have one person stay with
me I would want ----- to stay.

If I had a nightmare and I needed someone to hop into bed and cuddle me and make me feel
safe I would want -----to do that.

If I had a really big worry and I needed to tell a grown up who would believe me and help me
I would talk to-----.

Now

Mum & Dad are now fighting about-----

Mum wants and hopes that-----

-----Dad wants and hopes that-----

-----What I really want most of all for me is-----

What I really want most of all for Mum is-----

What I really want most of all for Dad is-----

What else

I wished you had asked me about-----

I'm glad that you didn't ask me-----

(32) An example of the responses of some children to the types of questions described in the Children's Questionnaire is as follows. As part of the background context of these particular children's circumstances it is offered that their mother and father separated some 3 years ago, they have lived with their mother and have spent time with the father on weekends and holidays. The mother remains single and the father has re-partnered with a woman who also has 2 children. The father has been asking for more inclusive care since shortly after separation and the mother has declined this. She seeks to relocate interstate.

(33) ***'Penny'*** is 7 years of age and is in Grade 2/3 at Chalk State School where her teacher is Mr O and friends include K, E, A, D and R. She explains that her favourite activities are, "being with Mum and Dad and going to the movies with Mum and Dad and going out to dinner with Mum and Dad". Her favourite TV shows are Barbie and Bratz and favourite book is Rainbow Magic which is, "about fairies". She likes KFC and McDonald's spaghetti, but not mushrooms. According to Penny, her favourite child is D as, "she's pretty, she's nice to me and she knows all my other friends and her parents and her mother's friend Q are her favourite adults. The child does not nominate an adult or a child that she finds it hard to like or to get on with while stating, "I've got a little brother whose like that or maybe both of my little brothers ['Zac' & 'Bob']". She tells me the things that make her happy are, "sort of like going to the movies, getting sweets, spending time with Mum and Dad" while the things that makes her life hard or sad are, "when I don't get to see Dad or Mum much. It hurts inside". When asked to help me draw her family, Penny included her parents, Ms Schilling [father's partner], Ms Schilling's children Halfpenny and Zac, some of her pets and also included Ms Schilling's brother and his daughter.

(34) According to Penny, a happy memory from before her parents separated is when, “we had a big blue and red house and I named it ‘Yellow’ because I had a friend called Yellow even though she bit me in kindy” while a sad memory is, “when my dog ‘Fang’ jumped up and almost bit my face but there was a door in the way and I told Dad and Fang was in trouble and I was in trouble for teasing him”. She offers that she was first aware that her parents were separating when, “They were fighting with each other. There were lots of fights which made me cry. They yelled and shouted. After that Mum and Dad started crying and I had to get them tissues without them asking”. The child adds that, “I felt like I did something to make them split up and then I read a book and in the book the child felt it was her fault”. Penny indicates that her feelings toward her mother at the time were that, “I was sad for her and a bit angry. When I learnt it wasn’t my fault, I thought it was her fault and then I found out it wasn’t” while her feelings toward her father were also ones of sadness and anger and, “I thought it was Dad’s fault and then I learnt it wasn’t”. The child indicates that her mother has explained the parental separation in terms where, “She thinks it’s Dad’s fault and I learnt that one of them is lying to me and she says things to get Dad into trouble” and her father has explained that, “Mum’s trying to get him into trouble and I have to work out who’s lying. Dad says when I’m older he’s going to let me read the letters [Court papers] to work it out”. Penny thinks her parents separated because, “They wasn’t happy in their marriage” and she does not now blame either of them. If she could fix things the way she wanted, “I’d make Mum and Dad back together and make it so Bob isn’t mean to me when I get upset about Mum and Dad and Ms Z could be my aunty and Halfpenny and Zac could be my cousins”.

(35) The hardest thing for the child about the current situation is, “moving to different houses. I’ve moved 3 houses with Dad. I haven’t moved with Mum. We live in the yellow house” and the person in her family she worries about the most is, “Dad because he misses me all the time and he doesn’t get to see me and Mum says no”. Penny offers that when her mother talks about her father, “She sounds normal” and she says a mixture of “nice things” and “nasty” things. “I hear her yelling at Dad, on the phone”. She offers that her father talks about her mother, “the same as Mum”. As far as Penny is concerned her parents are not friends. “No because they fight with each other and they don’t speak to each other anymore”. It is also the child’s perception that her mother and Ms Schilling are nicer to each other than the parents are to each other about while she does not here her stepmother talk about her mother, “I know she says bad things” about her. If she had the opportunity to advise the Court on what needs

to be said to her parents, the child would like to tell them to be told, “That I’m going to see Mum and Dad the same amount...because Dad won’t miss me anymore and I won’t feel sad for him and it makes me happy too” to see more of her father while, if she were asked to advise other children in a similar situation, Penny would tell them, “Just tell them the truth to your Mum and Dad or to a special meeting [FR] like we did”. If she had magic and make wishes the girl would wish, “for candy, to see Mum and Dad one week each, to be famous and gets lots of money and to be an inventor. I invented a bed with hands for breakfast in bed”.

(36) In response to being asked to describe what she likes about her parents and her father’s partner and what, if anything, she would change about them the child offers the following. In regard to her father, “He spoils me, gives me lots of presents and tells me that he loves me more than Ms Schilling”, while she would change him to, “spoil me even more with presents”. In regard to Ms Schilling, “She gives me lots of clothes and I get new bangles and she takes me special places and includes me unless I’m at Mum’s” and, “I don’t know” what she would change about her. In relation to her mother, Penny says, “ she spoils me sometimes and tries to get me to be very healthy and lots of other things” while, “I’d make it so she’d ask me if I want a new kitten or a new puppy”. Penny offers the following regarding Halfpenny and Zac. In relation to Halfpenny, “She plays Barbie and Bratz with me. I don’t need to tell her [how to play dolls]” while she would like it if, “She would stop asking me so many questions. I’m older. I have 2 little brothers and a little sister”. In relation to Zac, “he plays with me and he’s really nice” while she would change him so that, “he’d play with me more and I’d make him a girl”.

(37) The child was asked to nominate who she would like to have available to her or who she would turn to in the event of different scenarios such as being sick or injured and going to hospital, waking from a nightmare frightened and needing comforting or having a big worry she needed to talk over with someone who would listen and help her. The child nominates her mother, father and Ms Schilling as all being people she would turn to, depend on or need. Penny understands that the current dispute is about, “seeing me and Bob more because Mum won’t let Dad and Dad wants more”. It is her perception that her mother, “likes it the way it is” while her father, “wants it the same as me”. Penny reveals that she is aware of the proposal for a relocation to ‘some place’ and explains that, “one way it would be happy. I could see my cousins more and if I was sick I’d go to Euro and Stirling’s but I won’t get to

see Dad as much and I'd miss the dog and cat". She is unwilling or unable to share her thoughts and feelings with her parents on the report interview day and tells me that she is worried that one or both may be, "a bit angry" and that the last time she tried to talk with them about these matters, "I cried when I talked to Mum and Dad. It was hard".

(38) **Bob** is 5 and in Chalk pre-school where his teachers are Miss H and Mrs R and his best friend is said to be B. He explains that his favourite activity is playing games. His favourite TV shows are The Simpsons and ABC Kids, his favourite book is Bartholomew. He likes Red Rooster, McDonalds, KFC and Hungry Jacks and says, "That's a bit hard to answer. There's too many" when asked to nominate his favourite child. His parents are both nominated as his favourite grown-ups. N at pre-school is nominated as being the child he finds it hard to get on with or be friends with while Q is nominated as being the adult he finds it hard to like or get on with, "because it's just that there's lots of things she needs to do and she doesn't really play with me. She looks after me when Mum goes to work". When he grows up Bob may become, "a Police and one of those, a doctor" He offers that, "People being nice" makes him happy while the things that makes life hard or sad are, "when people don't be nice, everyone usually be nice".

(39) According to Bob a happy memory of when his parents were together is, "that they both was together and they both read me stories at night" while a sad pre-separation memory is when, "sometimes when they didn't say goodnight". He offers that he first realized that his parents were separating when, "I was upset and heard Mum say get out of my house this minute [to his father] in the yellow house, the smallest" and that he felt "sad" but says that has forgotten how he felt toward or about his mother and father. The child indicates that when his mother talked to him about the adult separation she explained that it happened because, "they were being mean to each other" and when his father talked to him about his perception of the separation, "He said the same thing". Bob does not think the parental separation was anyone's fault and happened because, "they were being mean" to each other while, if he could fix things the way he wanted he would, "make them get back together and Penny would like that and Mum and Dad".

(40) Bob is unwilling or unable to describe what might be the biggest change or the hardest thing for him about the current situation and says that he does not worry about anyone in the

family. He offers that when his mother talks about his father and his father's partner she sounds normal but tends to say, not nice things about Daddy. What the same they fought about" and his father and Ms Z are described as saying some, "not things" about his mother. As far as the child is concerned his parents are, "not really friends. They fight a lot. That's when they're not together. I hear and see them. All the time they fight when they seen each other. They shout. Both. They both is angry". If he was able to prompt what the Court should say to his parents and tell them something important to him, Bob hopes that it would be, "To get back together because it makes me sad sometimes they broke up". If he had magic to make wishes Bob would, "make them get back together and I'd never get sick and I'd never trip over and hurted myself".

(41) In response to being asked to describe what he likes about his parents and what, if anything, he would change about them the child offers the following. In regard to his father, "That I always do what he sees. I go out with the dogs and play games" while he would change him so that, "he would do everything with me and he would do what I say instead of me do what he say". In regard to Ms Schilling, the child says, "She's nice and let's us go to her work. She has stamps and we make post-cards" but he would change her so that, "she would let us go to her work more like today". In regard to his mother, the boys indicates that, "She's nice but she sometimes tells me what to do and be nasty". Bob also offers the following about Halfpenny and Zac. He says that she, doesn't tease me" and he would like it if, "she would go everywhere I go" while, in relation to Zac, Bob says that, "he sometimes tells me what to do" and can be "bossy" and he would like him to be less "bossy". The child was asked to nominate who he would like to have available to him in the event of different scenarios such as being ill or injured and going to hospital, waking from a nightmare frightened and needing comforting or having a big worry he needed to talk over with someone who would listen and help him. In relation to a hospital admission or a big worry he would turn to either his mother or father while he would turn to his mother in the event of a nightmare as, she has a really big bed for 2 people". He asks, "what if someone was over and sleeps in her bed? It would be mean if I pushed him off wouldn't it?" "Sometimes Mum has someone sleep in her bed. Different man and different ladies".

(42) Bob understands that the current dispute is because his parents, "keep on fighting". It is his perception that his mother, "wants everyone to stay like normal. She say's she's going to

move to 'some place'. That makes me sad and I won't see Dad very often". The boy believes that his father wants, "and we want to get to see him really often". "Going to 'some place' makes me not so happy. I only see Dad in school holidays. That's not very long". Bob tells me that he has told his mother about his views but she, "didn't listen". In helping me draw his family, Bob includes his parents, Ms Schilling and her children and offers that, "there some people in 'elsewhere' and, "Aunty V, Uncle K, Euro and Stirling in 'some place'". He asks me to not tell his parents his thoughts and feelings as, "they might get upset" and this may be even more the case with his mother as, "She wouldn't get her own way".

(43) What then of Family Reports, by way of their content or process, and might they be undertaken differently in response to the Shared Parental Responsibility Bill 2006? The previous Family Law statutes of 1975/76 and 1996 were the vessels carrying post-separation care decisions. So what do we make of the newest vessel? The Family Law 2006 vessel. Is it a Titanic launched into the seas of familial separation, divorce and post-separation children's care arrangements that will more safely and surely deliver its passengers? Has it been built to be unsinkable or is it another purpose built vessel created in an evolutionary process of vessel making which is undertaken according to the climate and conditions of changing times? Will it float on mother earth's seas while lasting the test of father time? To what extent has it been built to appease the 'men's rights' groups and disenchanted fathers angry with it and the Child Support Agency [CSA] and does it represent a turning of the back on women's groups and others' concerned with DV and child abuse matters in its provision of punitive responses to parties by the Court where abuse and violence allegations are deemed to be malicious and or unfounded? These, to me, seem like relevant questions and so, of course, I will avoid them assiduously. My job remains to describe the deck chairs on the Titanic not the vessel itself. These questions will continue to be debated far and wide, or high and low according to waterlines, just as they have been debated in and out of Parliament and in and out of the Family and Federal Magistrates Courts. They are noted here however, as part of the context for the proposition that, while there is a new ship in port that is said to have improved features, the seas into which it is sailing, it is suggested, are essentially unchanged.

(44) What has not and is unlikely to change are some apparently timeless and immutable dynamics found in post-separation conflict dynamics. Let us note some of the more salient immutables into which the 2006 Bill is sailing-

- Women have, for some 30 years more often initiated marital and relationship separations. Wives more often reject husbands. Wives have given up on relationships and or on their men. In about 2/3 of marriages the women have experienced problems in the relationship, have started or largely gone through the loss & grief process prior to separation and have turned to separation as being a possible solution. There is a deal of literature available that talks to gender differences in relationships and separation which help explain and dissect this statistic.
- Conversely, men have more often been the rejected and dejected party who have largely entered or begun the loss & grief process at or after separation and hence, have been the markedly more often visibly confused, angry and hurt party. This is shaped by the perception that regardless of the relationship's problems, separation has presented itself as being a far more impactful and unwanted problem. For the man, reconciliation might have been seen to be the solution, often to be pursued through the twin barrels of promises and threats. It might be said that many men are more often the passengers in the relationship and separation journey. It is noted that men also replace relationships, in terms of re-partnering, more often than women lending credence to the maxim that women are in relationships and try to repair them while men do relationships and more often replace them. In the separation context Biddulph assists us in his observation that, "Girls ask for help, but boys often just act for help".⁴

(45) Michael Leunig's poem, to revisit our nautical theme, seems applicable for many men at the point of separation-

The Tiny Boat

God bless this tiny little boat

And me who travels in it

It stays afloat for years & years

And sinks within a minute

And so the soul in which we sail

Unknown by years of thinking

⁴ Biddulph, S. 1997. Raising Boys: Why Boys are different and how to help them become happy and healthy and well-balanced men. Sydney; Finch

Is deeply felt & understood
*The minute that it's sinking*⁵

(46) Research in the Brisbane Registry of the Family Court in 1997/1998 found that men more often, perhaps as part of their need to do something, an action response to problems, initiated Court applications than did women [men 55% & women 45%]. Further, that while women might more often propose or initiate pre-separation relationship counselling, in the face of separation men [53% to 43% with 4% being joint initiations] sought post-separation reconciliation counselling more frequently than did women.

(47) A 1996 Family Court research report into DV and domestic homicide by Hore, Gibson and Bordow⁶ examined the extreme responses of some men at separation. And please remember the contextual frame in which studies like this were undertaken and the male population being studied and the comment of then Chief Justice Nicholson who was quoted by Young⁷ as saying, "...these men are angry, not interested in their children but are obsessed with control and power". Hore, Gibson and Bordow found that the risks of violence and spousal homicide are most pronounced where-

- The relationship has a large age disparity between the parties
- The relationship is of shorter rather than longer duration
- The relationship involves conflict over children or property
- The relationship included step-children
- The separation is initiated by the woman
- The man presents with low self-esteem
- The man is emotionally dependent
- The man is prone to jealousy/is possessive and has a need for control

(48) Further factors noted were-

- Higher DV rates amongst unemployed, rural, Aboriginal & overseas born populations
- It is acknowledged that the weapon of choice for a man murdering a spouse was found to be a gun and the weapon of choice for a woman killing a spouse

⁵ Leunig, M. 1992. A Bunch of Poseys. Sydney. Angus & Robertson

⁶ Hore, Gibson & Bordow. 1996. FCA Research Report

⁷ Young, B. 1998. The Mediation Myth. National Forum on Men & Family Relations. ACT. P 123

was found to be a knife. The matter of familial death by murder or suicide was examined by Belgium sociologist Durkheim in 1897. He found that, if one was a not a member of a family, he or she was more prone to suicide while, if one was a member of a family, he or she was more likely to be murdered by a fellow family member.

(49) Whilst no doubt well known and understood by many, I would like to acknowledge the Stages of Separation and the disparate experiencing of the Separation Process by the genders in terms of the setting of most marital separations.

The Stages of Separation as proposed by the Court are-

SHOCK: Denial and disbelief, confusion and a non-acceptance of loss(es) through an inability to comprehend / accept what has happened. Sometimes there are degrees of denial where reactions are muted or blunted. Perhaps parties use minimization and rationalizations to blunt or as degrees of denial.

ANGER: Directed toward ourselves which is perhaps experienced as blame [internalized as guilt] or directed outward toward the other partner [externalized as attributions of fault and blame]

SADNESS: a reduced self-esteem and self-belief and a loss of trust in others and even in our own capacity to make good judgments. Where this worsens and is extended it might be more accurately described as depression.

MOVING ON: or Adjustment. A gradual acceptance of the loss or losses, a coming to terms with events and degrees of re-organizing our lives including making some future plans or attempting to restore or establish new relationships

(50) The disparate separation process is represented as being the same, but taking place at different times and at different speeds for the 2 separating relationship partners and not necessarily in the order described with people sometimes re-visiting earlier stages and especially more so at salient times like anniversaries, birthdays, Christmas and the like. The general theme of the disparate separation process as described previously is that it is more often women who are already going through the separation stages at or by separation or are sometimes more resolved about separation while it is more often the men who are shocked

and in denial when separation occurs and who then go through the loss and grief process post-separation and often at the time they and their former partners are grappling with post-separation children's and property matters. Think of the fable of the Tortoise and The Hare in that they represent the contrasting apparent speeds at which the respective parties seem to go through the loss and grief process and arrive at a stage of adjustment and being ready to move on or are still slowly going down the early stages of the process. For example-

Partner A

Denial Frustration Dissolution Sadness Anger **SEPARATION** Relief Guilt Sadness Adjust...

Partner B

SEPARATION Denial Confusion Shock Anger Sadness...

(51) It is suggested that it is more often the case that parties who enter the Court system and sustain a prolonged acrimonious dispute regarding their children and or property are not in the Court system because they have an inability to think or to act but more likely because one or both are encumbered by strong unresolved feelings of hurt, anger and mistrust. Remember Shylock's famous soliloquy in The Merchant of Venice and if you will allow substitute the word 'Man' or 'Woman' for Jew in recalling a particularly spiteful post-separation dispute you were involved in or aware of where it seemed as if one or other party was intent on 'getting their pound of flesh' and it appeared that it did not matter whose or what amount of 'blood was spilt' in exacting their retribution on each other. It is accepted that the party more often exacting their figurative pound of flesh and spilling figurative or literal blood are men.

I am a Jew. Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, fed with then same food, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die and if you wrong us, shall we not revenge? If we are like you in the rest we will resemble you in that

(52) The essential dynamic that I have found in Family Law cases over some 25 years of practice in and outside the Court is one grounded in parties' unresolved feelings, ongoing angst and their separate and shared hurts and angers. I would like to share with you the templates that I believe represent and will continue to represent the core dynamics of Family Law conflicts. The dry version of a description of the core conflict dynamic is what is labelled

as ‘triangulation’ based on Bowen’s system’s theory. The more entertaining version can be represented in children’s fables and stories. Whichever version you find to be the more memorable it is my suggestion that Family Reports, prior to and following the 2006 Bill, will be dealing with the core dynamics of the triangulation construct.

(53) In triangulation, as is the case in the bulk of fables and stories, there are 3 essential core positions, characters or caricatures

1. The *perpetrator*; the bad guy or girl; he or she wears the black hat in cowboy movies and shoots people in the back; is the bully, the meanie, the standover merchant, is powerful. Often categorized as being *bad* or *mad*.
2. The *victim*; the innocent, the naïve, the blameless; has been treated unfairly or unjustly and they have suffered. The victim is powerless. They are more often categorized as being *sad*.
3. The *rescuer protector*; the hero the saviour of the downtrodden and oppressed who right wrongs, returns order out of chaos and redress unfairness and power imbalances.

(54) Some examples of the 3 core positions or characters in stories include-

- a. The Sheriff of Nottingham [think of a Basil Rathbone or Peter Lory], The people of Nottingham [think peasants and common townsfolk] and Robin Hood [think Errol Flynn].
- b. The Big Bad Wolf, Granny & Little Red Riding Hood and The Woodsman.
- c. Lex Luther, The people of Metropolis and Superman.
- d. Goliath, the Jews and David or Pharaoh, the enslaved Jews and Moses.
- e. Cinderella’s stepmother and stepsisters, Cinderella and The Fairy Godmother.
- f. The Wicked Witch of The West, Dorothy, Toto & the Munchkins and The Wizard of Oz.

(55) In the Family Law and Family Report setting the parents or conflicting parties present with their template stories which are subject to some variations in colourfulness, language, content, issues and setting but which more usually follow the constructs of triangulation. He might say that she is the Wicked Witch of The West who did terrible things to me, Toto or a Munchkin, before and after separation, in how she initiated separation, in what she asks for herself and in what she offers regarding the children and property and the wise Wizard of Oz,

report writer, should acknowledge that this is the core dynamic of the matter and redress it [ie. melt her!]. She might say that he is The Big Bad Wolf who did terrible things to her, Little Red Riding Hood, before and since the separation, in what he asks for himself and in what he offers regarding the children and property and the brave Woodsman should acknowledge that this is the core dynamic of the matter and redress it [ie cut his head off]. Let us remind ourselves that The Wicked Witch of the West and The Big Bad Wolf's children are also being actively or passively exposed to or invited to share these stories and to identify the character of their mother and father according to these scripts.

(56) If you ever visit the Pentagon in Washington DC you might be note that when they conduct visits the guide walks backwards for the entire tour while talking to the tourists. That way they can keep an eye on them and no one goes missing or into places that they should not go. I have, in a sense, walked backwards through this paper in order to discuss the core business of the Family Report and how it may or may not be different as a result of the Shared Parental Responsibility Bill 2006. I would like to make brief mention of one or two things that may be different in how I go about a report in accordance with the new legislation but I would add that this is an evolving process for me as I am sure it is for most report practitioners. It will become clearer as to what or how reports might shift in their content or process as we use the new legislation over an extended time but I believe the core business of the report remains the same, the dynamics of disputing parties remain the same and the need for the report to tell the parents and children's stories remain the same.

(57) Just as I mention the Pentagon guides walking backwards, I would suggest that whereas reports were previously constructed, in that they built toward a discussion and set of recommendations they now, if you will allow, are deconstructed to some measure. That is, the report writer will need to start with the presumption of Shared Parental Responsibility and consider the contents of 65DAA and 60CC with its Primary and Additional considerations in a reductionist style to comment on whether shared parental responsibility is appropriate or not and what care regime would then seem to be indicated or if shared parental responsibility is not appropriate what care arrangement would best meet the children's needs and be congruent with the co-parenting relationship's currency or efficacy. I would offer the proposition that reports have more often previously addressed these matters but have come at them in a less structured manner and from a different direction.

(58) The core role of the report within the new legislation, as I perceive, is to assess and describe the sometimes competing axis of-

- the benefit or cost to the child of having a meaningful relationship with both of the child's parents
- the need to protect the child from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence, including unresolved and uncontained parental conflict
- the parents' separate and shared capacities to fulfil their responsibilities and to communicate and cooperate in a child-focused co-parenting relationship
- to locate and describe the children's views, needs, wishes and perceptions for the Court and the parents' consideration

In short, the report still assists parents and children tell their stories to the Court and through its assessment of the parties and interpretations of their information and views, provides some insights into the conflict dynamics of the dispute and describes care options and their relative costs and benefits, hopefully in the context of the children's best interests.

'What Ratty, my dear little man!' exclaimed the Badger, in a quite different voice. 'Come along in, both of you, at once. Why you must be perished. Well I never! Lost in the snow! And in the wild wood, too, and at this time of night! But come in with you'.

Keith Sedgman

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