

**CHILD CARE AND CONTACT EVALUATIONS: PSYCHOLOGISTS'
CONTRIBUTIONS TO THE PROBLEM-DETERMINED DIVORCE
PROCESS IN SOUTH AFRICA**

by

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DOCTOR OF PHILOSOPHY

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PSYCHOLOGY

at the

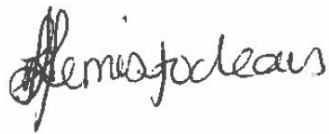
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June 2017

Declaration

I declare that '**Child Care and Contact Evaluations: Psychologists' contributions to the problem-determined divorce process in South Africa**' is my own work and that all the sources that I used or quoted are indicated and acknowledged by means of complete references.



Nikki Themistocleous

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June 2017

Dedication

To the Children

My Family



Drawnby: M

Age: Three years, eight months old

Position in family: Only child

Parents: Married

Acknowledgements

Μέσω του Μεγαλωδύναμου όλα είναι δυνατά

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Abstract

Disputes concerning care and contact arrangements for the minor children of divorcing couples present special challenges for professionals in the legal and psychological professions. Care and contact (custody) disputes, which are complex undertakings, are a point of debate in the professional arena in South Africa. Clinical psychologists are often included in the professional cohort that assists the high court, as the upper guardian of minor children, in the decision making process regarding contested care arrangements of children. This field is further challenged by the lack of training programmes and practice guidelines, the intense adversarial nature of disputes and litigation processes, as well as the increase in board complaints levelled against psychologists at the Health Professions Council of South Africa. These challenges contribute to the reluctance of psychologists to become involved in care and contact matters. This study therefore aimed first to explore the current practices and contributions of clinical psychologists in care and contact disputes in South Africa, and second to evaluate the procedures used by clinical psychologists to inform their recommendations to the court. In such matters, clinical psychologists adhere to the *best interest of the child (BIC)* principle. The final aim of the study was to identify and propose guidelines for a model of better practice. The study was guided by a Constructivist Epistemology and a Social Constructionist paradigmatic framework. A qualitative research approach was employed. Data were collected through face- to-face interviews with clinical psychologists and advocates and were analysed using Thematic Network Analysis of Attride-Stirling. The findings, which indicated that that the practices of psychologists are plenteous, revealed significant shortfalls in current practices. In addition, the findings designated that creating a universal model for care and contact evaluations to fit with the legal professions' empiricist tendency poses a paradigmatic dilemma and a practical challenge. A position of observer-dependence and a reflective position on the part of the psychologist is instead indicated.

KEY TERMS

Best interests of the child, care and contact (custody) disputes, Children's Act (Act 38 of 2005), clinical psychologists, family dispute resolution, forensic psychology, intersubjectivity, problem-determined system

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My Family



Drawn by: D
Age: Five years, seven months old
Position in family: Second of three children
Parents: Married

Chapter 1

An Introduction to Disputed Care and Contact and the Ensuing Evaluations of a Problem-Determined System

“The child custody evaluation process involves the compilation of information and the formulation of opinions pertaining to the custody of parenting of a child and the dissemination of that information and those opinions to the court, litigants, and to the litigant’s attorneys”

(Association of Family and Conciliation Courts, 2006, p. 6)

Childhood, which is an important developmental phase in life, can be fraught with concerns and conflictual family dynamics, especially in the context of adversarial divorces where the care arrangements of the minor children are disputed. Often parents who separate under antagonistic circumstances, are embroiled in their own turmoil and find it difficult to take steps to become a new family (Lund, 2015). At present in South Africa, no divorce may be finalised until the High Court Judges (upper guardian of all minor children) are satisfied with the care arrangements of the minor children involved. Decisions made with regards to the care of minor children are meant to be in line with the *Best Interests of the Child* (BIC) principle, which is an essential component of the South African Constitution (Children’s Act, Act 38 of 2005). Given the far reaching psychological consequences of such divorces, psychologists have increasingly become a part of the professional cohort involved in such matters to assist the High Courts in making decisions in line with the best interests of the minor children (Allan & Louw, 2001; Kaufman, 2011; Krüger, 2004; Pepiton, Zelgowski, Geffner, & de Albuquerque, 2014; Stolberg & Kauffman, 2015; Zimmerman et al., 2009; Zumbach & Koglin, 2015). In view of this, care and contact evaluations attempt to determine the best care arrangements to best serve the children’s needs (Brandt, Swartz, & Dawes,

2005; Budd, 2005; Horvath, Logan, & Walker, 2002; Krüger, 2004; Martindale & Gould, 2004; Sandler, Wheeler, & Braver, 2013; Stolberg & Kauffman, 2015; Votruba & Braver, 2014; Zumbach & Koglin, 2015).

As will be discussed, the concept of custody, more recently referred to as *care* and *contact* in South Africa, has reached a stage in many societies where the fundamental principle guiding any custody arrangement is the physical, psychological, emotional, academic and overall well-being of the children involved. The value and contributions that psychologists provide to custody matters have been debated extensively amongst professionals (Allan & Louw, 2001; Kaliski, 2006; Melton, Petrila, Poythress, & Slobogin, 2007; Stahl & Martin, 2013; Thompson, 2012). In addition, Thompson (2012, p. 2) indicated that psychologists, who conduct custody evaluations, are faced with a “double edged sword”. On one hand psychologists’ services are requested by the judicial system, while on the other hand their services are simultaneously criticised and disregarded (Thompson, 2012). The criticisms of the psychologists’ involvement are plentiful, and are apparent in the South African context in which formal guidelines and protocols to guide practice are lacking. This has largely contributed to the deleterious reputation that psychologists have attained in recent times. In view of this, this study aimed to explore the current practices of clinical psychologists in care and contact (custody) evaluations, to investigate how these practices work towards making recommendations in the best interest of the minor children, and to formulate guidelines for the efficacy of such practices.

Background and Significance

According to Statistics South Africa (Stats SA), there has been a significant decline in the number of registered marriages between 2007 and 2014, as well as a decline in the overall divorce rate. This decrease in the divorce rate; however, seems to be explained by, not only the decrease in marriages but also by the lack of administrative processing of these divorces

rather than by any other factors (Stats SA, 2012; Stats SA, 2016). In the 21st century, the stigma around divorce has dissipated significantly but the impact of divorce on the family members has not. In South Africa the majority of divorces involve minor children who are still in need of parenting (*Family Dispute Resolution: Care of and Contact with Children*, 2015; Kaliski, 2006). According to Stats SA, 54.7% (2012) and 55, 4% (2016) of the total divorce rate included children (Statistics South Africa, 2013, 2016). The sequelae of divorce have a powerful impact on all family members involved and so exploring this topic has merit (Goldenberg & Goldenberg, 2013; Lund, 2015; Pepiton et al., 2014; Pickar, 2007). It is to this end that the breakdown of a marriage, and the subsequent separation and/or divorce is not viewed as an isolated event, but rather as a process that begins long before a parent leaves, or before a family member seeks out the assistance of professionals (Dallos & Draper, 2015).

In South Africa divorce was previously regarded as adversarial; however, the Divorce Act (Act 70 of 1979) introduced ‘irretrievable breakdown’ as grounds for divorce. Despite this shift, aimed at minimising the negative repercussions of divorce, it is still a difficult and often complex process. At times the separation of unmarried parents, or the divorce of married parents is uncontested, yet too often the divorce process is fraught with conflict and intense litigation with specific reference to the care of the minor children, which has a direct longitudinal impact on their development (Kaliski, 2006; Kelly & Ramsey, 2009). Due to the high levels of conflict and emotional turmoil, it is usually the minor children who suffer the untoward effects of such adversity (Lee, Kaufman, & George, 2009). It is here where experts are increasingly employed to become involved in the different stages of care and contact proceedings, and it is this specific context that is the focus of the study. Psychologists are increasingly relied upon by the judiciary to provide expert opinions regarding families and how a parent’s behaviour in the past, present, and foreseeable future may impact a child (Erickson, Lilienfeld, & Vitacco, 2007a). In this study, I explored the involvement of clinical

psychologists and their mandates in the evaluation of contested divorces (or care arrangements of minor children in the case of separated unmarried parents) (Fasser, 2014), and how these evaluations ultimately lead to the formulation of care and contact recommendations of the minor children involved. As is deliberated in depth in Chapter 2, the significance of embarking on this topic, which is widespread with several pertinent factors, contributes to the development of the research statement. Psychologists who are involved in care and contact disputes potentially play a momentous role in shaping the care arrangements for the families involved. This is a delicate, and at the same time noteworthy and influential position to occupy. Despite the respectful and esteemed perception this work may hold, there is potential for great error that may, ultimately carry the risk of contributing to an already difficult, problematic and adversarial process. In addition, when parents are involved in substantial conflict, the arrangements that are in the BIC are often less than apparent (Sandler et al., 2013). For these reasons, many psychologists, and in my opinion, clinical psychologists specifically, are reluctant to be involved in this work, and those who do, are continuously faced with being reported to the statutory board, the Health Professions Council of South Africa (HPCSA). Added to this is the worrisome lack of guidelines and formal training programmes aimed at equipping psychologists with the necessary skills and abilities to conduct fair, relevant and accurate evaluations. As is elaborated on in the proceeding chapters, these reasons contributed to the topic formulation and sparked a critical exploration into the context of care and contact disputes.

A Prelude to the Context

Regardless of whether parents are married or not, separation and divorce have a far reaching impact on all involved, particularly the children. The ramifications of divorce and the impact on children have been extensively researched over recent decades (Amato, 2010; Clarke-Stewart, Vandell, McCartney, Owen, & Booth, 2000; Sandler et al., 2013; Taylor,

Purswell, Lindo, Jayne, & Fernando, 2011; Wallerstein, Lewis, & Rosenthal, 2013; Weaver & Schofield, 2015). As mentioned, when the separation or divorce is amicable and parents are able to establish a new parenting regime and co-parent effectively, the influence on children is advantageous and guards against adverse consequences. In a study by Ahrons (2007), it was found that “no single factor contributed more to children’s self-reports of well-being after divorce than the continuing relationship between their parents” (p. 58). In line with this, research suggests that low levels of parental conflict during separation or divorce may minimise the negative effects of such separations (Sandler et al., 2013). On the other hand, contested divorces characterised by ongoing turmoil and adversary may have deleterious and painful impacts on children, and could lead to a multitude of emotional, psychological, scholastic and interpersonal complications. Literature suggests that children from divorced families are at a higher risk for developing behavioural problems, social difficulties, emotional distress, and poorer academic performance (Amato & Cheadle, 2010; Clarke-Stewart et al., 2000; *Family Dispute Resolution: Care of and Contact with Children*, 2015; Sandler et al., 2013; Votruba & Braver, 2014).

The well-being of children is a priority in many societies. In South Africa, and in line with many international standards, the BIC principle, which guides both the work done by psychologists and legal professionals practising in the Family Law context, is at the heart of formulating the care arrangements of minor children (Burman, 2003; Goldstein, 2016a; Heaton & Roos, 2012; Stahl & Martin, 2013; Thompson, 2012). All care arrangements of the minor children must be to the satisfaction of the High Court, which is the upper guardian of all children in the country. If divorce proceedings and care arrangements are uncontested, and are in the best interests of the minor children, the process is finalised without litigation. However, when divorce is contested and there is dispute around the care arrangements of the minor children, it is not uncommon for a litigated process to unfold. In such instances,

psychologists are often mandated to provide various services. These services are aimed at assisting the court to make decisions in the best interest of minor children (this is further discussed in Chapters 2 and 3). Figures 1-1 and 1-2 respectively summarise the alternate processes of an uncontested and contested divorce.



Figure 1-1 *Process of an uncontested divorce*

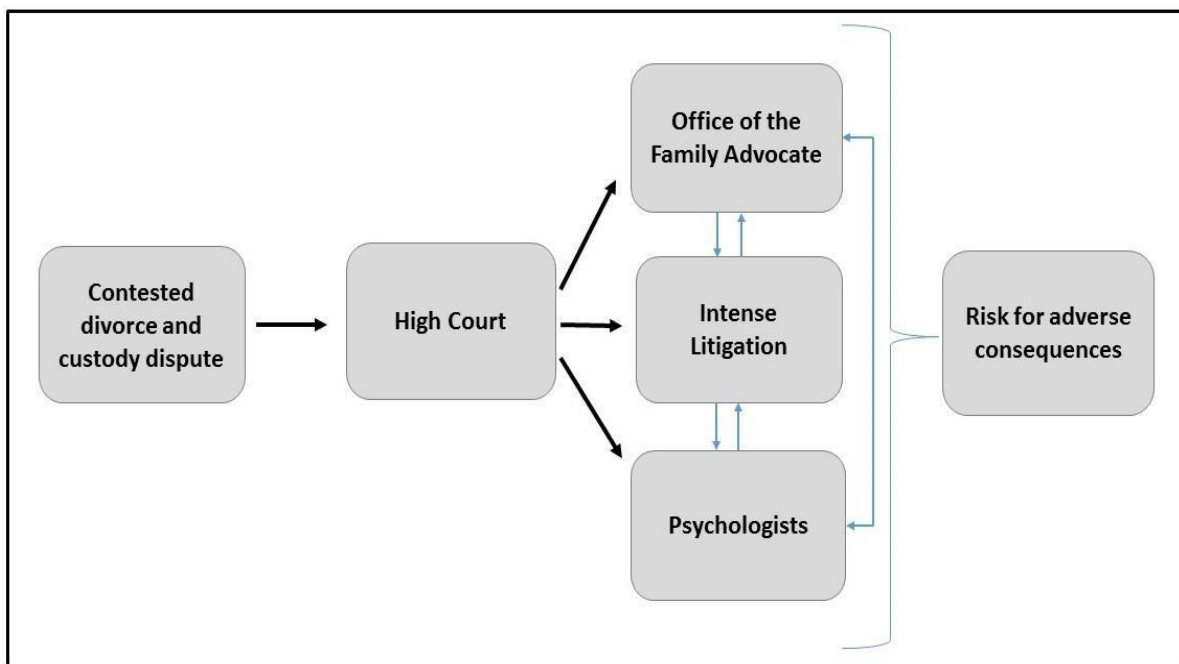


Figure 1-2 *Contested divorce and risk of adverse consequences*

Applications for custody are heard by the High Court and investigations by psychologists may be used to assist the court in reaching decisions (Krüger, 2004). However, according to the South African Law Commissions Issue Paper 31, titled *Family Dispute Resolution: Care of and Contact with Children*, the South African court system is fragmented and does not always contribute in effective dispute resolution:

It has been argued that South African society fails to manage divorce effectively and that there is no coherent procedural family law system in place. As a result, a patchwork of piecemeal measures in response to short-term demands and resource crises is applied. The result is an unstructured dual and fragmented court system that is confusing and burdensome to users, expensive to operate and fails to satisfy many.
(p. vi)

In line with the identified need for debate from the South African Law Reform Commission, I believe it is an essential and appropriate time to explore child care and contact disputes. Based on my own clinical experience, there is noteworthy reluctance amongst psychologists in South Africa to embark on a career in forensic psychology. The reluctance is predominantly the result of several factors common to custody disputes, including but not limited to, the highly adversarial processes and the real potential of being reported to the governing body, the Health Professions Council of South Africa (HPCSA) (Krüger, 2004; Nortje & Hoffman, 2015; Pickar, 2007). In addition, care and contact evaluations remain controversial, and although psychologists have been involved in this work for decades, there are no formal South African guidelines to inform practice. Furthermore, there is a dearth of South African academic works. According to Garber (2009, p. 39), what is needed instead is an “empirically sound model of child and family development which lends itself to reliable measurement and valid predictions of healthy outcomes”. Embedded in the Health Professions Act (Act No. 56 of 1974), is the provision for psycho-legal (forensic) practices in

South Africa, although they remain general and are not specific to custody evaluations. The ethical guidelines as stipulated in Chapter 7 of the Act remain inexplicit and are summarised as follows:

1. A psychologist who conducts psycho-legal work shall maintain competency, and base his or her work on appropriate knowledge and competence in the areas underlying such work, including specialised knowledge concerning specific populations.
2. Psychologists shall ensure that their assessments, reports and recommendations are based on information and techniques that substantiate such findings.
3. A psychologist may provide written or oral psycho-legal reports or testimony with regards to the psychological characteristics of a client only after he or she has conducted an examination of the client.
4. Psychologists' work shall encompass truthful testimony.
5. A psychologist shall avoid having multiple relationships with clients and fulfilling dual roles.
6. A psychologist shall be aware of the conflicting demands from the court system, and shall attempt to resolve such conflict (pp. 36-37).

Further to this, the aim of the South African Law Commission's Issue paper was to initiate and stimulate debate amongst professionals regarding reform for the deliberation of family dispute resolutions. The intention of the investigation was to further develop the family justice system to be oriented towards the needs of children and their families. According to the Commission (p. vi), there is a recent premise that the "coldness of a courtroom and an ensuing court order are neither the best venue nor the best vehicle to resolve matters affecting children, who are often relegated to being innocent bystanders between two warring factions". Ultimately the goal of such debates and evaluation of

practices would be to refine and develop processes and procedures to minimise the conflict and resultant effects on the children as a result of the adversarial breakdown of parental relationships (*Family Dispute Resolution: Care of and Contact with Children*, 2015). In this study, I add to the debate and contribute to the ongoing professional discourse for the betterment of the care and contact milieu.

In line with the relatively new Children's Act, as well as the South African Law Commissions Issue paper, there has been a significant change in South African Family Law. With these a new perspective of children's rights and well-being has emerged. Despite the shift towards propagating the rights of children, both in South Africa and internationally, the concept of children's rights remains amorphous (Mailula, 2005). This characteristic vagueness was alluded to decades earlier by Porter (1950, p. 47) as the "psychological climate" in which child care and contact disputes are situated. As would be expected with the procedural, legislative and theoretical changes over time, there have also been changes in terminology that warrants brief mention.

Definitions of Terms and Concepts

Due to the recent changes in the legislature regarding the Children's Act (Act 38 of 2005) new concepts have been introduced. The following concepts will be referred to throughout this text.

Care: The Children's Act (Act 38 of 2005, p. 11) defines *care* in relation to minor children and includes numerous factors. These factors include providing the child with a suitable place to live, living arrangements that are conducive to the child's well-being and the necessary financial support. Furthermore, the child needs to (a) be protected from maltreatment, abuse, neglect, discrimination and exploitation or other harm; (b) be guided and receive appropriate education and upbringing in accordance with his/her age (c) have a sound relationship with the parent who will guide behaviour in a humane manner; and

accommodate any special needs of the child. This concept of *care*, in South Africa, has replaced the previous term ‘custody’. However, due to the reference to *custody* throughout the international, and previous South African literature, both terms are used interchangeably.

Contact: The Children’s Act (Act 38 of 2005, p. 11) defines *contact* in relation to maintaining a personal relationship with a child. If a care-giver or parent is the non-residential parent, communication, which includes in-person visits, through the post or telephonic forms of communication, is maintained on a regular basis. The term *contact* replaced the previously referred to concept *access* (*Family Dispute Resolution: Care of and Contact with Children*, 2015).

Custody: Prior to the Children’s Act (Act 38 of 2005), the terms used to denote the care arrangements of minor children were *custody* and *access*. According to Krüger (2005, p. 295), custody refers to the legal right to keep, control, guard, care for, control and supervise a minor child. This term, however, has been replaced since the introduction of the Children’s Act, with *care* and *contact*.

Guardianship: As explained in section 18 of the Children’s Act, guardianship refers to the duties of parents to safeguard their children and their interests. This includes administering and safeguarding their children’s property, assisting the child in administrative and contractual matters, and providing or refusing consent for a child’s marriage. In addition, guardians can give consent for the child to be adopted, removed from the Republic, to apply for a passport and to sell any immovable property.

Primary Residency: Primary residency, which falls within the ambit of care and contact arrangements, refers to the child’s primary residency. The parent with whom the child does not reside is referred to as the non-residential parent (*Family Dispute Resolution: Care*

of and Contact with Children, 2015). This concept is often confused with guardianship and parental *rights* and *responsibilities*.

Parental Rights and Responsibilities: Section 18 of the Children's Act (Act 38 of 2005) addresses the acquisition and loss of parental rights and responsibilities. These rights and responsibilities include the responsibility and right to care (as defined above) for the child, to maintain contact (as defined above) with the child, to act as guardian of the child, and to contribute to the maintenance of the child (p. 25). Biological mothers, whether married or unmarried, have full parental rights and responsibilities with respect to their child. Fathers, if they were married, or not, and were living with the biological mother, at any point during conception, birth or any time in between, or identify themselves as the biological father also have full parental rights and responsibilities.

Parenting Plans: The Children's Act, Section 33 (1) stipulates that the co-holders of parental rights and responsibilities, may agree on their respective parental duties in the form of a parenting plan. The concept of a parenting plan mirrors the shift from a child custody system towards a more progressive system that recognises that both parents play a significant role in a child's life (Children's Act 38 of 2005; Mahlobogwane, 2013).

Problem Statement, Rationale and Research Aims

Family Law proceedings encompass a broad range of issues including custody, maintenance, visitation and relocation (American Psychological Association, 2010). Several professionals often work simultaneously on a case; however, not always harmoniously. Care and contact evaluations are multifarious and have unique difficulties that are not present in other evaluative contexts. Rohrbaugh (2008) indicates that 'regular' psychological evaluations for psychiatric purposes or psychotherapeutic purposes are vastly different from those performed for custody evaluations (p. 19). Some of the differences are that:

1. Clinicians are often not properly trained to deal with the complexities of child custody evaluations;
2. The psychological tests involved cannot be applied to child custody evaluations;
3. The standards for sufficiency are lower in clinical evaluations than in forensic evaluations;
4. The audience varies (psychiatric context versus the Court, or legal context);
5. Health insurance (medical aid) can be used for clinical evaluations, but cannot be used for forensic matters (Rohrbaugh, 2008, p. 18).

Against the background provided above, and the current lack of formal registration categories or qualifications, the complaints made against psychologists at the HPCSA and the resistance of psychologists to work within the forensic context, the following aims guided this study:

1. The first aim was to explore the current landscape in South Africa in order to illuminate the practices of clinical psychologists and the roles they fulfil (with a specific focus on child care and contact disputes) within the forensic context.
2. The second aim was to evaluate the procedures used by clinical psychologists to inform their recommendations to the Court in such matters, and in so doing, adhere to the *best interest of the child (BIC)* principle.
3. The final aim was to identify or work towards formulating guidelines and identifying areas that need further investigation and revision in order to promote the proficiency in the conduct and evaluations of clinical psychologists.

In light of this, the specific **research questions** are:

1. What are the current psychological practices of Clinical Psychologists working within the forensic context, specifically in child care and contact disputes?

2. How do the evaluation procedures used by clinical psychologists inform their recommendations to the Court in such matters, and do they adhere to the *best interest of the child* principle?
3. What are the current pitfalls, or areas of concern, in child custody evaluations? Are these taken into consideration when developing guidelines and/or frameworks to assist clinical psychologists working in child custody and access disputes?

The objectives of the study were therefore to: Explore the current forensic practices, psychological assessment strategies and evaluation procedures, conceptual understanding of psychologists and the overall involvement of clinical psychologists working with child custody evaluations within a South African context and to contribute towards identifying methodological, procedural and ethical guidelines that enhance the proficiency in the forensic psychology field.

To successfully achieve the aims and answer the research questions of this thesis, a qualitative research approach was employed which was guided by a Social Constructionist paradigm. To ensure that the project was conducted with rigour, several data sources were used. Data were collected via face-to-face interviews and analysed using Attride-Stirling's (2001) thematic network analysis (detailed in Chapter 6).

Outline of Thesis Chapters

Chapter 2 discusses the literature regarding the work of psychologists in the forensic context and highlights care and contact evaluations. Despite the paucity of literature applicable to the South African context, there is a vast amount of international information. The vastness of the topic is a challenge, and so the necessary literature has been summarised and condensed. In addition, this chapter addresses the main concerns pertaining to care and contact work.

Chapter 3 augments Chapter 2 and focuses on the specific roles that psychologists fulfil in care and contact evaluations. In addition, the efficacy, appropriateness and challenges embedded in the various roles are addressed. The chapter concludes with considerations for the ethical practices rooted in the care and contact milieu.

Chapter 4 summarises the history of law in South Africa, and places the care and contact evaluations in context within a larger legal domain. Although South African Law is not my area of expertise nor the focus of this study, it is necessary to provide a backdrop to the current legal context in which psychologists provide services. Reference is made to Family Law in South Africa and the applicable legislation is highlighted.

Chapter 5 describes the research design of the study and discusses the paradigmatic scaffolding and theoretical orientation that guided the study. The nature of psychological practices is paradigmatically different from those in the legal profession, and so this chapter introduces the reader to this dilemma.

Chapter 6 expands on the research design with a discussion of the research methods used. This includes a description of the respondents interviewed, selection strategies, as well as the data collection and analysis techniques. In addition, Chapter 6 teases apart the measures taken to ensure the trustworthiness of the study, as well as the ethical considerations that guided both the content and processes of this study.

Chapter 7 begins with a brief description of the respondents interviewed in this study, which is followed by a detailed discussion of the findings elicited from the analysis process. The findings are presented over two chapters (Chapters 7 and 8) and are interrogated in conjunction with the literature reviewed.

Chapter 8 describes the second part of the findings that are discussed in conjunction with relevant literature.

Chapter 9, which concludes the thesis by integrating the findings and literature, culminates in answers to the research questions.

Chapter Summary

The use of mental health experts in care and contact matters remain a controversial topic. (Erickson et al., 2007a). Care and contact evaluations, which serve a dual purpose, provide the court with objective neutral information while at the same time assist the families to reach a custody settlement. In this way parents, ideally, focus on the children's needs rather than on the conflict and their interpersonal difficulties (Lund, 2015). It has; however, become increasingly apparent that care and contact evaluations are fraught with contextual, procedural, methodological and ethical challenges.

As mentioned, the HPCSA has not as yet formalised a forensic psychology category that provides psychologists with guidelines for child custody evaluations, a field of work that falls within forensic psychology. This creates not only an ethical dilemma, but a professional crisis within the field of psychology. This chapter provided an introduction to the topic and a prelude to the context of care and contact evaluations.

My Family



Drawn by: A

Age: Six years old

Position in family: Eldest of two children

Parents: Separated

Chapter 2

A Contextual Description of the Problem-Determined System

“Hearing children’s voices is such a challenge. What to do with children’s voices is such a challenge”

(Philip Stahl, personal communication, 2016)

Introduction

Care and contact disputes, previously referred to as *custody* and *access in child custody disputes* in South Africa, are embedded in an area of psychology that is deemed to be a specialist field of expertise, *Forensic Psychology*. The field of Forensic Psychology assists in the decision making process within the context of law, and despite professionals practising actively in this field for decades, there have, until recently, been no formal training and registration categories for this in South Africa. The Department of Health released a Government Notice dated 2 October 2014 that serves as an amendment to the *Regulations relating to the qualifications which entitle psychologists to registration* section of the Health Professions Act (Health Professions Act, 2014). The gazetted amendment identifies two South African Universities as the primary institutions that offer a qualification in a Master of Arts Degree in Forensic Psychology and a Master of Arts Degree in Neuropsychology. How this process came about is unclear and has led many in the profession to respond with disparity. Nevertheless, we find ourselves at a critical juncture in the profession where the opportunity for reflection and change is great. It is an appropriate and a critical time to engage with this topic, and hone in on the important roles psychologists play in custody disputes. In this chapter, I discuss relevant literature that relates to several aspects of Forensic Psychology, both internationally and locally, with a focus on the care and contact (including primary residency and contact) disputes as a sub-speciality. I illustrate how the input of

psychologists is heavily relied upon when decisions are being made in court with regards to the care of minor children (Bow, Quinnell, Zaroff, & Assemany, 2002; Greenberg, Martindale, Gould, & Gould-Saltman, 2004; Kelly & Ramsey, 2009). I also discuss some of the problems associated with this context that inspired me to embark on this study.

A Contextual Description

Psychologists who practise in the forensic context often serve as the interface between psychology and the law (Greenberg et al., 2004; Kaufman, 2011). The legal field in South Africa is distributed into several divisions, each with its own field of study. Figure 2-1 below, although not exhaustive, provides a schematic breakdown of the divisions of law in which psychologists provide services.

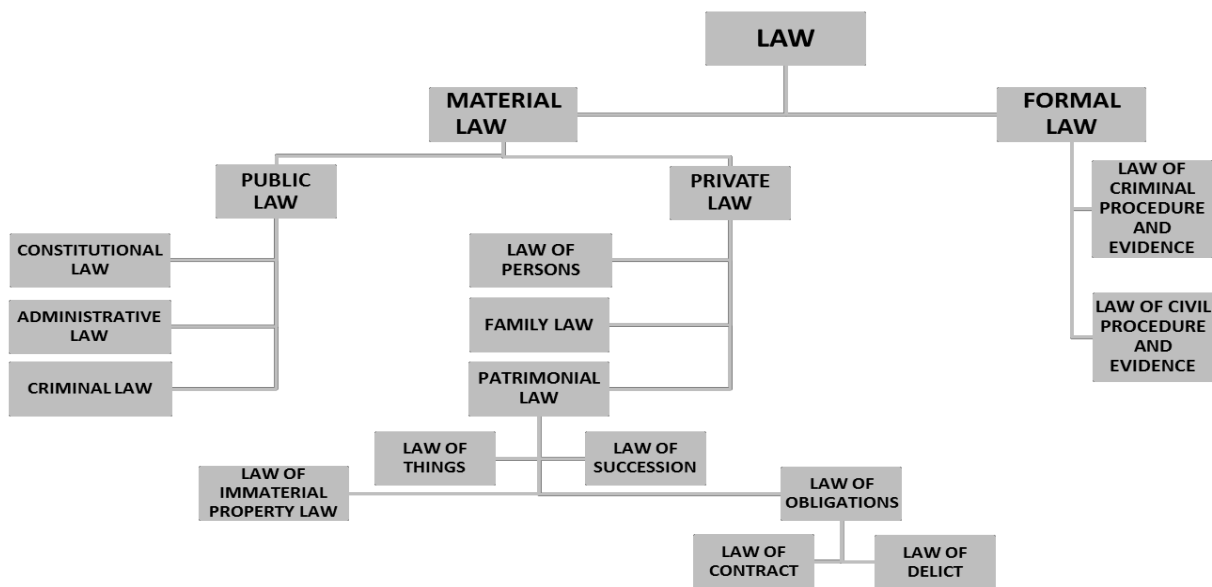


Figure 2-1 *Divisions of Law* (Roos & Vorster, 2009, p. 9)

Forensic Psychology is a broad field and is applicable in many divisions of the legal system as seen in Figure 2-1 above. Psychologists could, for example, become involved in child custody matters, child sexual abuse cases, employment litigation, Road Accident Fund matters, personal injury, workman's compensation, diminished capacity and criminal sentencing (Allan & Louw, 2001; Roos & Vorster, 2009; Varela & Conroy, 2012). In the broader context of forensic matters, care and contact, or primary residency and contact (PRC) evaluations are embedded within the Family Law division. All divorce agreements pertaining to the care of minor children are heard by the High Court, and if the care arrangements are not to the satisfaction of the presiding Judge, who is considered the upper guardian of all minor children, an investigation can be ordered. These investigations are usually referred to the Family Advocate Offices that were instituted to assist the courts in these matters and act as the children's legal team (Burman, 2003; Kaganas & Budlender, 1996). Investigations involving primary residency and contact are focused on the care arrangements of minor children and are guided by the Best Interest of the Child (BIC) principle (Children's Act, Act 38 of 2005).

Despite the fact that several professionals often become involved in such evaluations to assist in minimising the emotional pain of family members (Lund, 2015; Pepiton et al., 2014; Pickar, 2007), and to aid the Courts in reaching decisions as to the best interest of the minor children, it is more often than not an intensely adversarial process that no doubt impacts on the wellbeing of all members of the family, and in particular, the children (Brandt et al., 2005; Kirkpatrick, Austin, & Flens, 2011; Pepiton et al., 2014). One characteristic of the problem-determined process, which is explained substantially in Chapter 5, is the amplification of premorbid adversarial patterns in the nuclear and extended families that existed prior to evaluation. Custody disputes are "often portrayed and experienced as cataclysmic" (Brandt et al., 2005, p. 132) and psychologists, who fulfil various roles in this

context, are often embroiled in the adversarial nature and may find themselves at the centre of the conflict. This presents its own challenges as the nature of psychology, unlike the legal profession, is not antagonistic and adversarial. According to Fasser (2014, p. 445), the “ability to dilute the influence of competing legal teams ... as well as the ability to work within such a powerful legal system requires the investigator to constantly be self-reflexive and self-reflective.”

It is important to mention that this study focuses on just one part of a complex ecology, a “snapshot” of custody evaluations and of families’ lives (Stahl, 1994, p. 142). I acknowledge that the families who are involved in forensic processes have complicated histories and interpersonal dynamics that, although not ignored, are not the focus of this study. Instead, I address a portion of the larger evaluative context and do not assume that the care and contact disputes and subsequent evaluations are the sum total of the families’ ecologies, but are rather significant parts of the process. This is illustrated in Figure 2-2 below.

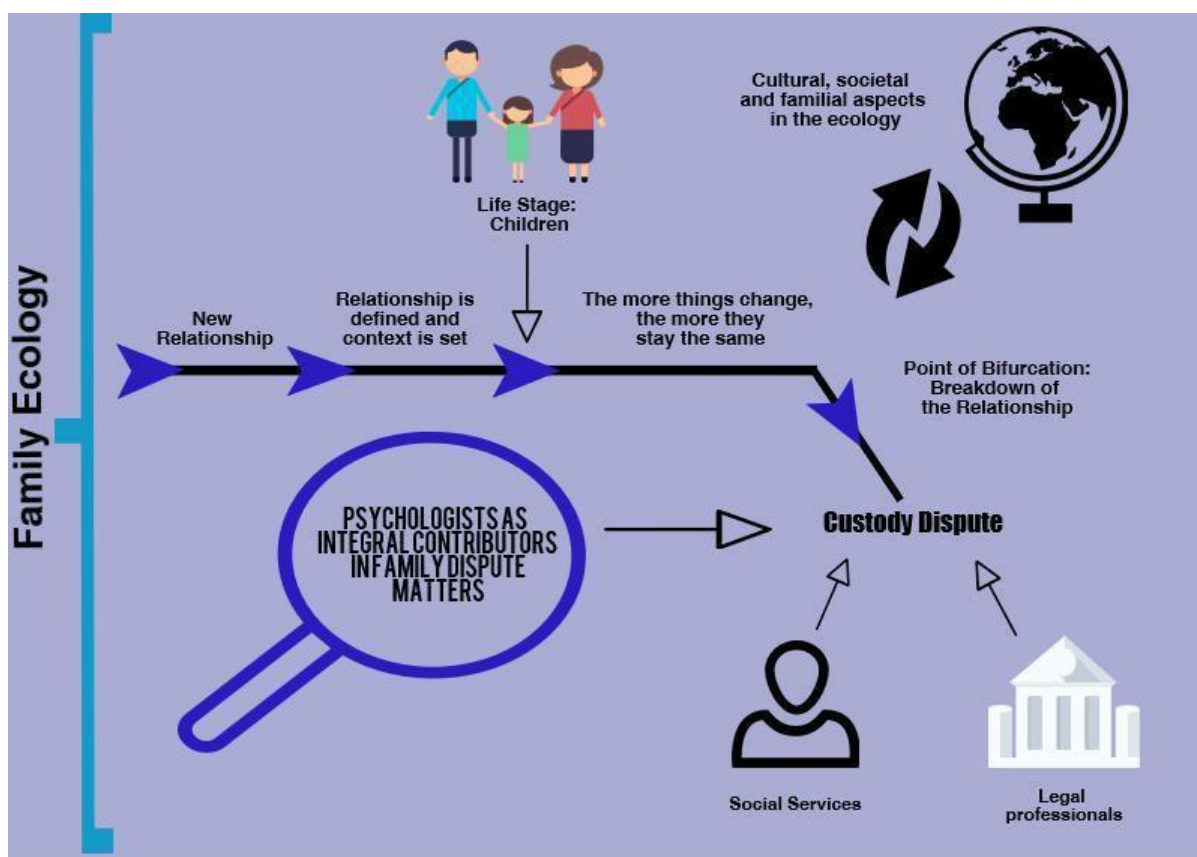


Figure 2-2 *A contextual journey of a family in crisis*

I feel it necessary to sensitise the reader at this point to the seemingly polarity between the fields of psychology and law. As both a researcher and a clinician, I am often faced with, and challenged by, the vacillating nature between (a) content and process and (b) of objectivity and subjectivity. I argue that although many of the roles psychologists fulfil require neutrality and objectivity, total objectivity is not possible, and instead a participant-observer position best reflects the status of psychologists. From a psychological perspective, total objectivity is seen as a “myth” (Allan & Louw, 2001, p. 18). Cohen and Malcolm (2005) described this position succinctly in that psychologists act in a particular political and cultural context and may struggle to maintain their objectivity. This suggests that psychologists who act in a purely scientific, objective manner raise the risk of overlooking the impact that their

bias and subjective perceptions may have on their work (Cohen & Malcolm, 2005). This is echoed by Fasser (2014) who states that an ‘expert’ who does not learn, does not question their thinking, and who does not take a curious, critical stance in the field runs the risk of becoming vulnerable to error. My intention is not to find a solution to this tension, but rather to dialogue about the complex nature of care and contact disputes and to move between these positions with some flexibility. This suggests a position of reflexivity and reflectivity as researcher and clinician. A discussion of the epistemological and ontological position is, therefore, required. This is elaborated on in Chapter 5. Although the participation of psychologists in care and contact disputes is but a part of a larger context, psychologists’ roles tend to have a major impact on the outcomes of cases, and the courts generally rely on the opinions of psychologists in assisting with decision making (Allan & Louw, 2001; Eve, Byrne, & Gagliardi, 2014; Kaufman, 2011; Meyer, 2016; Pepiton et al., 2014; Pickar, 2007). Having said this, the profession does not always have a positive reputation amongst the legal professionals. Allan and Louw (2001) found that the overall perceptions of lawyers, with regards to the contributions psychologists make, were rather negative. It is for this reason too that I embarked on this study, and which drives the content of this chapter, in which the goal is to clarify the forensic context and the complex roles psychologists fulfil.

Forensic Psychology

According to Gould (2005) Forensic Psychology is built upon the foundation of Clinical Psychology (p. 50). The term *forensic* indicates a reference to the courts of law (Krüger, 2004, p. 296) and thus the practices within Forensic Psychology are concerned with the collection, examination and presentation of evidence for judicial purposes. Bartol and Bartol (2014, p. 4) suggested that Forensic Psychology refers to the “production of psychological knowledge and its application to the civil and criminal justice systems.”

According to the American Psychological Association’s (APA) (American Psychological

Association, 2013, p. 7) definition, Forensic Psychology refers to the professional practice of psychologists within any sub-discipline when “applying the scientific, technical or specialized knowledge of psychology to the law to assist in addressing legal, contractual and administrative matters.” Roos and Vorster (2009, p. 1) stated that Forensic Psychology can be defined as the “application of psychological knowledge to the legal field.” These definitions are all relevant, applicable and appropriate to this study, but what must be highlighted, and in fact emphasised, is the position of the professionals, who apply their expertise *to* the legal profession, in *psychology*. This is fundamentally different from psychologists positioning themselves as pseudo-paralegals. Kirkland (2003) indicated that it is essential to recognise the interactions between mental health and legal professionals in order to work towards a collaborative relationship. This was echoed by Tredoux, Foster, Allan, Cohen, and Wassenaar (2005) who suggested that the disciplines of psychology and the legal profession are vastly different, and so it is pertinent to acknowledge the interwoven relationship between the fields of psychology and law. This necessitates that the professional individual working within the forensic context be aptly knowledgeable about both fields.

Broadly speaking the field of Forensic Psychology can be viewed from two main perspectives: A *research* perspective as well as a *professional practice* perspective that encompasses both Criminal as well as Civil Law (Bartol & Bartol, 2014). During my review of literature, it became evident that, despite the few psychologists who practise Forensic Psychology in South Africa, there tends to be more focus on professional practice than on research. Perhaps the lack of formal research is in line with the heavy reliance on international standards that guide the practice of psychologists in South Africa. Although Forensic Psychology dates back to the 1900s, it has only recently expanded sufficiently to warrant sub-category specialisations such as child custody, divorce, deprivation of parental rights, criminal competencies and many others (Burl, Shah, Filone, Foster, & DeMatteo,

2012; Gould, Martindale, Tippins, & Wittmann, 2011; Rodolfa et al., 2005; Varela & Conroy, 2012; Weiner & Otto, 2014). The field of psychology can, and does, contribute a great deal to various legal topics and the collaboration between psychology and the law has increased exponentially over the last few decades where psychologists are called upon to act in different capacities within the legal context (Hess, 2006; Jameson, 2001; Martindale, 2007; Rosenfeld & Penrod, 2011; Stahl & Martin, 2013; Varela & Conroy, 2012). Although I have found no formal data as to the frequency that psychologists' services are employed in the legal context, several authors have suggested that it is increasing significantly (Allan & Louw, 2001; American Psychological Association, 2013; Austin, Dale, Kirkpatrick, & Flens, 2011; Cohen & Malcolm, 2005; Emery, Otto, & Donohue, 2005; Fuhrmann & Zibbell, 2012; Hess, 2006; Kirkpatrick et al., 2011; Martindale, 2007). The growth in the forensic field, over the last three or so decades, necessitates the development of competencies needed to practise Forensic Psychology (Varela & Conroy, 2012). Both internationally, and in South Africa, Forensic Psychology is a relatively new branch of Applied Psychology. It was recognised as an area of speciality by the American Psychological Association in 2001 and was recertified in 2008 (American Psychological Association, 2013; Bartol & Bartol, 2014; Roos & Vorster, 2009). Perhaps the 'newness' of the field relates to the theoretical writings available; however, in practice the field has been alive and functioning for quite some time. Stahl and Martin (2013, pp. 44-45) indicated that although custody evaluations are in their early stages, they have reached a certain level of maturity in that there is an expectation that evaluators meet a 'certain standard of care'. According to Scherrer and Louw (2003) specialisation both within the field of psychology and the law is a necessity given the complexities of both fields. Indeed, the current trend of specialisation has become the norm in the 21st century. This is echoed by the standards set by the Association of Family and Conciliation Courts (AFCC) (Association of Family and Conciliation Courts (AFCC), 2006).

To ensure that the field of Forensic Psychology and specifically forensic practitioners, maintain an ethical foundation, the American Psychological Association developed the *Speciality Guidelines for Forensic Psychologists*. The goal of these guidelines is to ensure the quality of forensic services and to safeguard that the services benefit both forensic practitioners as well as the recipients of these services (American Psychological Association, 2013). In addition, the Association of Family and Conciliation Courts (AFCC) also developed standards for custody evaluations (Association of Family and Conciliation Courts (AFCC), 2006; Kirkpatrick, 2004). The AFCC's guidelines were developed in order to contribute to the continued education of evaluators, to promote good practice and to provide information to those who receive the services (Association of Family and Conciliation Courts (AFCC), 2006).

At present, there is no formal registration category for Forensic Psychology in South Africa. The governing body for psychologists, the Health Professions Council of South Africa (HPCSA), currently recognises only five categories of registration in psychology: Clinical, Counselling, Educational, Industrial and Research. However, this has not prevented qualified psychologists from working in the forensic context, including both the criminal and civil arenas. The lack of formal guidelines for those working in the field poses a potential risk for both forensic practitioners, as well as those receiving their services. In essence methodological practices are designed by the professional involved, and so tend to vary greatly from psychologist to psychologist (Greenberg et al., 2004). One begins to question whether these practices address the same psychological constructs. And how then do psychologists answer the same question, that is, *what is in the best interest of the children?* Having said this, I am not suggesting that a 'one size fits all' model be imposed, rather I am encouraging an open space to debate whether the practices of psychologists are indeed helpful to both the families with whom they interact, as well as the larger legal context in

which such practices are embedded. These practices require a thorough analysis and reflection of both the theoretical as well as practical applications of the forensic field. In South Africa, only a relatively small number of the registered psychologists are involved with forensic work, the majority of whom are regarded as experts in the field. From a practice perspective, many psychologists are involved in numerous cases thus accumulating hundreds of hours of practical experience. From a theoretical and critical perspective, very little has been written to substantiate current practices in South Africa. According to Dr Louise Olivier, Chair of the Neuropsychology and Forensic Psychology Division of the Psychological Association of South Africa (2011-2013) (PsySSA), the category of Forensic Psychology exists only on paper, and needs to be approved by the Minister of Health (Olivier, Personal Communication/Symposium, PsySSA, 2013). As of December 2016, no registration category had been promulgated; however, the qualifications of Master of Arts in Forensic Psychology and Neuropsychology have now been gazetted. The University of Cape Town and the University of the Witwatersrand were selected to provide tuition for these qualifications. Despite being a point of discussion on the statutory body's agenda for many years now, and while I agree that formal training programmes and professional qualifications are long overdue, it would be of interest to know what the criteria were for identifying these universities, what the required outcomes for such training programmes are, as well as the criteria needed for eventual registration categories. However, psychologists continue to offer forensic services without formal guidelines and training. This notion gave rise to the question that originally inspired this study: "What are the current psychological practises of psychologists working within the forensic context, and in specific care and contact evaluations?"

Due to the heavy reliance on international standards and practices, and as is indicated throughout the literature, various authors use the term *psycholegal* when referring to the field

of Forensic Psychology, and so for the purposes of this study, both the terms *Forensic Psychology* and *psycholegal work* are used synonymously. In addition, the term *custody* is most frequently used throughout the literature, and so in order to remain consistent with both international and South African literature, the terms *custody* and *care and contact* (which includes primary residency) are used interchangeably. Further, for the purposes of this study, references to *parents* include those who were married, unmarried and cohabiting, legal guardians, as well as same-sex couples.

Contextual Challenges in Forensic Psychology

Literature suggests that many psychologists are attracted to the forensic field because of the perception that it is lucrative and holds many professional opportunities (Varela & Conroy, 2012). According to Mart (2007), psychologists tend to get involved in various areas of forensic practice in a “haphazard manner” (p. 148). This contributes to the concern that psychologists tend to lack the expertise and skills needed to provide quality services (Otto & Heilbrun, 2002).

Forensic Psychology, which is a difficult and complex undertaking, offers extraordinary challenges that may result in burnout (Brandt, Swartz, & Dawes, 2005; Budd, 2005; Fuhrmann & Zibbell, 2012; Kelly & Ramsey, 2009; Pepiton, et al., 2014; Pickar, 2007; Roos & Vorster, 2009; Stahl, 1994). It is therefore vital that psychologists have specific competencies in order to work ethically within the field of Forensic Psychology. Moreover, it is the methodology of what psychologists do as professionals in addition to the ethics of psychology that become core areas to be explored. It goes without question that a psychologist should therefore possess a plethora of competencies that perhaps consist of more than a do’s and don’ts checklist. Several authors refer to specific skills and abilities that are required in this regard (Association of Family and Conciliation Courts, 2006; Jaffe & Mandelew, 2008; Kaliski, 2006; Kirkpatrick, 2004; Pickar, 2007; Thompson, 2012). Varela

and Conroy summarise these competencies as being either *general* or *specialty competencies* (Varela & Conroy, 2012).

General competencies refer to the skills and competencies that can be used across all specialities within the broader field of psychology, while speciality competencies refer to those unique skills that are associated with the specialised areas (Varela & Conroy, 2012). One of the most common activities for psychologists, who work in the justice arena, is psychological assessment (Melton et al., 2007). According to Varela and Conroy (2012) and Rodolfa et al. (2005), the psychological assessment training that (doctoral) Clinical Psychology students receive is necessary, but *not* sufficient for the forensic context. Internationally, formal training programmes for forensic psychologists have been implemented for only a few decades (Burl et al., 2012); nevertheless there is still not enough training for those wanting to work in the field (Stahl & Martin, 2013; Vorderstrasse, 2016; Zumbach & Koglin, 2015). According to Ackerman and Pritzl (2011), 95% of their 213 sample group of psychologists obtained their forensic training through seminars and workshops. In South African, as previously mentioned, there are still no formal programmes available, and psychologists are left to their own devices to source short courses and workshops that are offered by qualified professionals. The lack of training programmes is largely due to a dearth of formal registration categories for professionals who undergo such training.

The next section addresses areas that the literature highlights as problems or challenges related to care and contact evaluations: These aspects became the impetus for this study.

Competency

Training of psychologists in the field of Forensic Psychology, regardless of the sub-speciality, is not only a requirement, but also a necessity to ensure competent practices. As

has been the case in South Africa, psychologists tend to migrate towards, or 'fall into', working in a forensic context after qualifying and registering for independent practice with the HPCSA. These professionals are often not fully knowledgeable and skilled to provide services specifically related to forensic practices, and so tend not to possess the necessary competencies (Budd, 2005). It is in these instances that the risk for significant error is increased; "a lack of specialty competencies can quickly lead to violations of civil rights and unjust court actions, as well as serious embarrassment to the clinician and the profession" (Varela & Conroy, 2012, p. 410). As Fasser (2014) pointed out in her auto-ethnographic case study, both seasoned professionals and novices tend to make significant errors thus highlighting the delicate but dangerous journey in which they are engaged. Louw and Allan (1998) are of the opinion that "A non-specialist who testifies in court as an expert is consequently either arrogant or ignorant of the legal rules governing such testimony" (Louw & Allan, 1998, p. 239). Vorderstrasse (2016) stated that when evaluators testify, they should be able to defend their position with knowledge, training and expertise. However, for the most part evaluators do not know how to testify as experts. It goes without saying that psychologists should possess competencies in the areas in which they wish to practise (Greenberg et al., 2004).

It is my perspective that very few professionals would enter a field in which they know they lack competence; nevertheless, the Forensic Psychology field does tend to attract many who may not be aware that the typical *clinical mind set* is not sufficient for forensic work; "clinicians who fail to recognize these differences may do serious damage to children and families" (Greenberg et al., 2004, p. 11). Due to the lack of training and professional registration categories, it is not uncommon for novices to take on this type of work (Cohen & Malcolm, 2005). This potential for doing harm has led authors to argue that it is important for the Social Sciences to include the study of forensic science in teaching programmes to ensure

that psychologists have the necessary level of competency and remain up to date with relevant information and literature (Flens, 2005; Fradella, Owen, & Burke, 2007; Greenberg et al., 2004; Pepiton et al., 2014; Ribner & Pennington, 2014).

With this in mind, a professionally competent psychologist can be defined as one who is “qualified, capable and able to understand and do certain things in an appropriate and effective manner” (Rodolfa et al., 2005, p. 348). Fouad et al., (2009, p. S6) defined competency as performance at an acceptable level with the presumption of integrating multiple competencies. In recent years, accountability, which has become a benchmark for professional services rendered (Greenberg et al., 2004; Rodolfa et al., 2005), has facilitated the development of several models of training that aim to ensure the competency of professionals. Rodolfa et al. (2005) proposed the Competency Cube Model that is based on three levels of training; *Foundation Competencies* (described as the building blocks for psychologists’ training), *Functional Competencies* (the knowledge, skills and values psychologists’ need to perform work) and *Stages of Professional Development*. Table 2-1 provides a summary of the skill sets required within these three levels, and Figure 2-3 depicts the Cube Model relating to the development of professional competency.

Table 2-1 *Cube Model of Competency Skills Set*

FOUNDATIONAL COMPETENCIES	FUNCTIONAL COMPEPTENCIES	STAGES OF PROFESSIONAL DEVELOPMENT
<ul style="list-style-type: none"> a) reflective practice-self-assessment b) scientific knowledge-methods c) relationships d) ethical-legal standards-policy e) individual cultural diversity f) interdisciplinary systems 	<ul style="list-style-type: none"> a) assessment-diagnosis-case conceptualisation b) intervention c) consultation d) research-evaluation e) supervision-teaching f) management-administration 	<ul style="list-style-type: none"> a) Doctoral Education b) Doctoral Internship c) Post-doctoral Supervision d) Residency / Fellowship e) Continuing competency

Competency Cube**

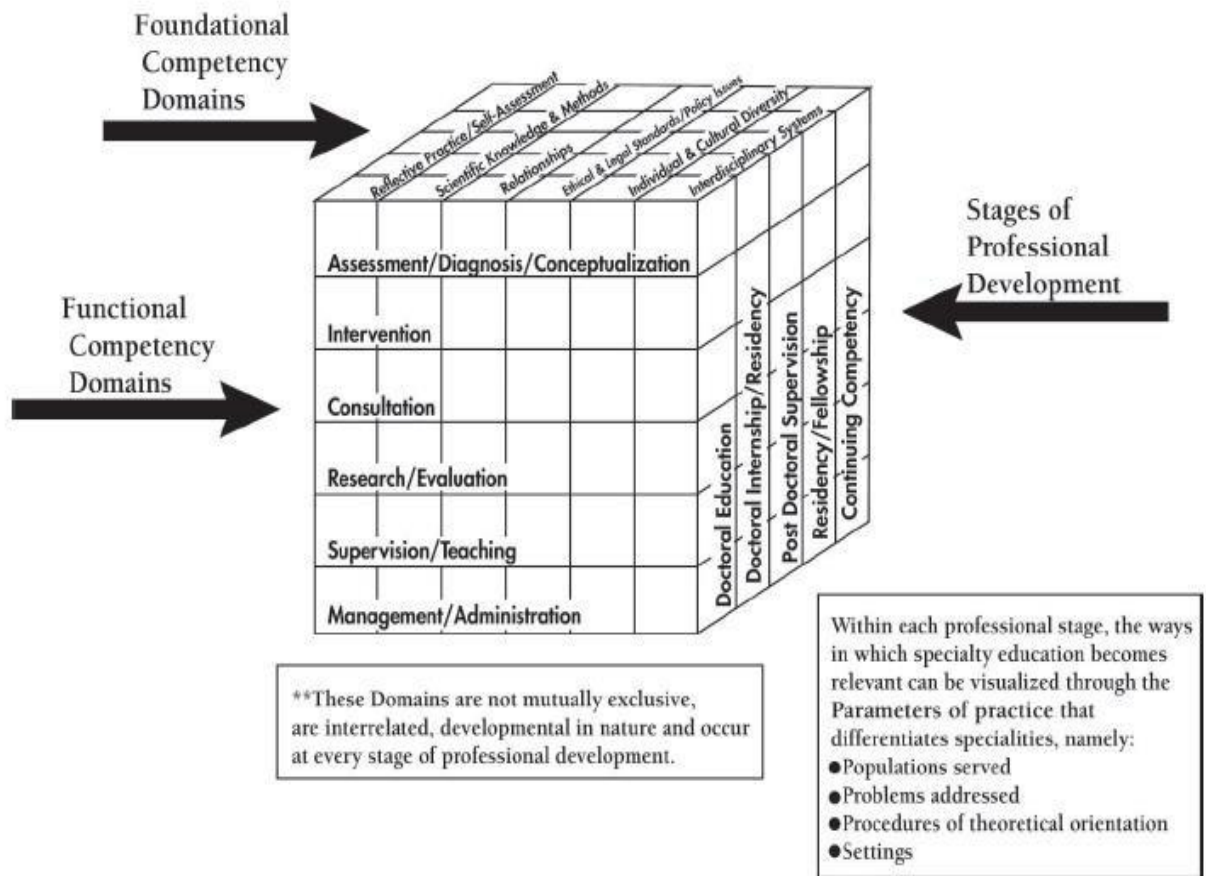


Figure 2-3 *Competency Cube* (Rodolfa et al., 2005, p.350)

Fouad et al. (2009) described a model for understanding and measuring training competencies within the field of psychology. Drawing on The Cube Model, they proposed core foundational and functional competencies across three areas of development and training (readiness for practicum, readiness for internship and readiness for entry into practice) (Fouad et al., 2009, p. S5). The Competency Benchmark document of Fouad et al., (2009) is extensive and can be found in their publication titled *Competency Benchmarks: A Model for Understanding and Measuring Competence in Professional Psychology Across Training Levels*. Although Varela and Conroy (2012) drew on these approaches, they took a step further and included both general competencies and speciality competencies.

The authors provided a summary of these skills in relation to assessment competencies, intervention competencies and consultation competencies (see Tables 2-2, 2-3 and 2-4 below). Generalised competencies refer to skills and competencies that can be applied to the broad field of psychology, while the speciality skills and competencies refer to specific and unique skills that are required in forensic practice (Varela & Conroy, 2012, p. 411).

Table 2-2 *Generalised and Speciality Assessment Competencies in Forensic Psychology*

Generalized and Specialty Assessment Competencies in Forensic Psychology

Generalized

Knowledge

- A. Science, theory, and contexts related to psychological constructs being assessed
- B. Interaction between physical and psychological functioning
- C. Psychometric theory and test construction
- D. Strengths and weaknesses of assessment methods
- E. Ethical and legal issues in psychological assessment
- F. Influence of diversity on assessment process and outcome

Skills

- A. Clinical and diagnostic interviewing
- B. Appropriate test selection, administration, scoring, and interpretation
- C. Data integration from multisource-multimethod assessment
- D. Effective written and oral communication of assessment findings

Attitudes

- A. Recognition of personal biases that influence assessment process and outcome
- B. Understanding of the limitations of psychological assessment methods
- C. Readiness to seek consultation as needed

Specialty

Knowledge

- A. Statutes, case law, governmental rules, and other jurisprudence that may impact assessment
- B. Unique assessment techniques used to address psycholegal issues
- C. Unique rights of examinees in forensic contexts (e.g., avoidance of self-incrimination, refusal rights, prisoner rights)
- D. Unique ethical issues associated with forensic evaluations (e.g., appropriate disclosure to court representatives, defining the client, attorney-client privilege, consent for evaluation)
- E. Diverse cultural groups in justice system (e.g., criminal subculture, gang affiliation)

Skills

- A. Use/integration of collateral data, including data sources unique to forensic contexts (e.g., police reports, crime witness statements, correctional records)
- B. Incorporation of psycholegal issues and pertinent jurisprudence when selecting assessment methods
- C. Administration, scoring, and interpretation of specialized forensic assessment instruments
- D. Explanation of assessment methods and limitations of methods to non-psychologists representatives of the justice system
- E. Communication of clinical and psycholegal opinions to non-psychologist stakeholders in the justice system

Attitudes

- A. Awareness of attitudes toward justice issues that may influence assessment process, outcome, and formulation of psycholegal opinions
 - B. Acceptance of scrutiny and challenges to assessment methods and outcome
 - C. Acceptance of psychology's limited role relative to the overall goals of the justice system
 - D. Resistance to treating probabilistic conclusions as facts, despite the pressure from representatives of the justice system
 - E. Understanding of the limitations of forensic assessment techniques
 - F. Understanding of the limitations and potential biases of collateral data
-

Table 2-3 Generalised and Speciality Intervention Competencies in Forensic Psychology

Generalized and Specially Intervention Competencies in Forensic Psychology

Generalized

Knowledge

- A. Evidence-based interventions (e.g., empirical support for effectiveness, interventions for specific disorders)
- B. Limitations of research related to specific interventions and specific populations
- C. Standards of practice regarding risk management and clinical documentation
- D. Jurisprudence relevant to treatment services in local jurisdiction

Skills

- A. Alliance-building and therapeutic intervention skills (i.e., clinician self-awareness, active listening, appropriate use of questions)
- B. Ability to incorporate social, biological, cognitive, and affective bases of behavior across the lifespan in formulating treatment plans
- C. Incorporation of multicultural considerations in planning and implementing treatments
- D. Working collaboratively with clients in developing treatment plans, goals and implementing treatment techniques
- E. Adherence to empirically-supported techniques and adjustment of interventions if needed to client context and changing client needs
- F. Monitoring ongoing risk and intervention during clinical crises
- G. Management of the emotional demands of psychotherapy
- H. Identification and resolution of ethical dilemmas

Attitudes

- A. Compassion and commitment to client welfare
- B. Sensitivity to multicultural issues and multiple client identities
- C. Professional values and ethics in behaving toward clients
- D. Readiness to seek consultation and/or supervision to address client needs

Specialty

Knowledge

- A. Knowledge of empirically-supported techniques for intervention with unique behavioral problems in forensic contexts
- B. Applied experience with relevant forensic populations
- C. Understanding of psycholegal issues impacting or impacted by intervention (e.g., restoration to competency, parenting capacity)
- D. Awareness of unique ethical issues in forensic settings (e.g., defining client, avoidance of dual roles such as therapist/evaluator)
- E. Awareness of rights of treatment recipients (e.g., treatment refusal, least restrictive environment, avoidance of self-incrimination)

Skills

- A. Treatment planning to address legally relevant goals that may not be patient-centered (e.g., criminogenic needs, risk reduction)
- B. Specialized expertise in specific practice areas (e.g., specialized treatments, prevention of violence, violence risk management)
- C. Consideration of unique clinical issues and obstacles (e.g., client motivation, unique treatment goals, limitation on service delivery)
- D. Incorporation of forensic-specific considerations in clinical documentation (e.g., limited confidentiality, use of records for justice decision-making)
- E. Identification and resolution of ethical dilemmas unique to many forensic settings

Attitudes

- A. Maintenance of a professional identity and commitment to ethical principles as a professional psychologist in nonclinical settings (e.g., prison, court clinic)
 - B. Recognition of mental health treatment as secondary to other organizational goals in many forensic contexts
 - C. Sensitivity to unique multicultural issues in forensic settings (gang affiliation, victims of violence, criminal subculture)
-

Table 2-4 *Generalised and Speciality Consultation Competencies in Forensic Psychology*

Generalized and Specialty Consultation Competencies in Forensic Psychology

Generalized

Knowledge

- A. Familiarity with core literature on consultation
- B. Cross-disciplinary knowledge (e.g., basic psychopharmacology & utilization of community resources/programs in multidisciplinary settings)

Skills

- A. Identification of appropriate consultant roles, expectations, obligations, and goals
- B. Communication with non-psychologist and non-mental health consultees
- C. Application of expert guidance in response to client needs
- D. Application of ethical and legal standards to diverse groups

Attitudes

- A. Willingness to work and apply psychology within the limitations of consultee needs and organization
- B. Willingness to recognize one's own limits and respond appropriately through additional learning, seeking supervision, or consultee referral

Specialty

Knowledge

- A. Understanding the mission of judicial and correctional organizations and the role of psychology in accomplishing organizational goals
- B. Understanding of unique organizational subcultures (e.g., norms and mores, consultee perception of psychology)
- C. Familiarity with pertinent forensic consultation subspecialties (e.g., jury selection, witness preparation, eyewitness identification procedures)
- D. Understanding of ethical imperatives that differ between the mental health professionals and legal/law enforcement professionals

Skills

- A. Applying psychological theory and techniques to meet nonclinical consultee needs and goals
- B. Communication of clinical and professional opinions in a manner relevant to legal and other justice system professionals

Attitudes

- A. Commitment to values and ethics of psychology and active avoidance of misuse of psychologists' work
 - B. Respect for the missions and values of disciplines within the forensic context (e.g. the judiciary, law enforcement, protective agencies)
-

As the Forensic Psychology field is vast, it is challenging to provide a list of skills that is exhaustive; nonetheless, the above models provide some indication as to the speciality skills needed to ensure that psychologists are able to conduct work that is ethical and applicable.

Controversy of standardisation and of standard use of psychometric tests

Custody evaluations remain controversial, and one of the debates involves the contention that standardised psychological tests, which often form a significant part of care and contact evaluations, are not designed and standardised to directly assess the legal issue of the best interest of the children (Budd, 2005; Martindale & Gould, 2004; Stolberg & Kauffman, 2015). Budd (2005) indicated that the difficulties of parent assessment relate to the practices used by clinicians. It has been suggested that despite the usefulness of the tools, there are often problems with test properties and the interpretation of the data (Pepiton et al.,

2014). Criticism is largely centred on the perception that psychologists tend to formulate their recommendations based on “pseudoscientific” methods (Erickson, Lilienfeld, & Vitacco, 2007a, p. 157). This is particularly evident in South Africa where a significant percentage of tests is not normed for the South African population.

Melton et al. (2007) suggested that the contentions pertain to a lack of scientific validity, clinical data that are irrelevant to the legal question, and problems associated with clinicians reaching beyond their clinical expertise. Hynan (2016) elaborated and indicated that the most prominent criticism of custody evaluations centres around the inadequate reliance on science.

One source of validity that may be useful to explore is construct validity (i.e. the degree to which a test measures what it is supposed to measure), which in essence is the “evidential basis for score interpretation” (Messick, 1995, p. 743). Construct validity relates to the relevance of the content and representativeness of the scores and contributes to the interpretation of the scores (Messick, 1995). However, the principles of validity stretch beyond the interpretive value of the actual psychometric test information and include inferences that can be made from test data (Messick, 1995). This suggests that although a specific test instrument may not directly assess the BIC principle, the information elicited can still be used to draw inferences that work towards confirming or disconfirming hypotheses within care and contact evaluations. In other words, the question concerning validity relates to whether or not these instruments have functional abilities that bear directly on the matter before the court (Martindale & Gould, 2004).

Further to this, there is no single approach to data collection and the use of psychometric tests that adequately capture the necessary data in all situations (Fuhrmann & Zibbell, 2012). Although an obvious statement, Messick (1980) suggested that two questions

should be asked when deciding to use a particular test. The first question, which refers to the scientific and technical aspects of the test and can be answered by reviewing the construct validity and technical properties of the test, “is the test any good as a measure of the characteristics it is interpreted to assess?” (Messick, 1980, p. 1012). The second question, which eludes to the ethical decisions an evaluator needs to make, is “should the test be used for the proposed purpose in the proposed way?” (Messick, 1980, p. 1012). Gould (2005) adds to this by questioning whether the tests selected by an evaluator are reliable measures that bear directly upon the matter before the court. Taking into account the inherently value-laden variables, such as personality characteristics, it is then critical to contemplate the validity and reliability, as well as the value of an instrument (Jaffe & Mandelew, 2008; Messick, 1980). Swanepoel (2010) elaborated that psychologists, at times, tend to select a test battery that they are comfortable using rather than an instrument that is appropriate for each individual, and case.

In line with test standardisation, there is also varied use of psychometric tests amongst psychologists (Zumbach & Koglin, 2015). According to Tredoux et al. (2005) there are no set rules and the decisions with regards to selecting a test battery. It is suggested that psychologists select test batteries, which should not be used indiscriminately, based on the needs of each case (Pepiton et al., 2014). However, the incomparability of batteries can pose a problem for the courts (Vorderstrasse, 2016). Ultimately the decision, as to which test battery should be used, ought to take into account the reason for referral, as well as the experience and competency of the evaluator in question.

Quality of work and professional bias

Many psychologists’ ethical dilemmas stem from the perception that psychology and the law do not have a common goal (Dickie, 2008). According to the APA (2010), the

specific involvement of psychologists and the potential for the misuse of their influence are contentious issues and sources of on-going debate.

Internationally, there is much deliberation apropos the intentions of improving the standards for custody evaluations (Kelly & Ramsey, 2009). However, as previously mentioned, there is a limited body of literature that pertains to Forensic Psychology, specifically care and contact disputes in South Africa. This perhaps pays testament to the challenges experienced in this field. Saks (2009, p. 2) cited the National Research Council's claim that: "[T]here is a dearth of peer-reviewed, published studies establishing the scientific bases and validity of many forensic methods." One of the challenges with regards to this is the inconsistency amongst evaluators as to what information is deemed as relevant. As was found by Thompson (2012), psychologists who performed custody evaluations tended to follow only certain guidelines. The study produced the following outcomes: Several psychologists a) did not use multiple methods of data collection, b) did not take into account parenting capacity, needs of the children and the resulting fit, c) made custody recommendations without assessing both parents and the children and d) did not fully assess the children's wishes. Despite the rights of children being discussed in Family Law academic texts and in various courts, the rights for children to be heard is still very novel and it is debatable whether the children's views are sufficiently canvassed by professionals (Barrie, 2013).

These concerns are not far removed from what transpires in the courtroom where psychologists are often questioned about their findings regardless of the role they played. Not only are psychologists' reports or testimonies challenged by the legal representatives of the families, but also by peers within the psychological profession. It is not uncommon for psychologists' work to be scrutinised by an expert consultant, whose role it is to review the quality and accuracy of reports (Kirkpatrick et al., 2011). Kirkpatrick et al., (2011) argued

that the goal of a consultant, or reviewer, should first and foremost be to assist the courts. Although I am not against work being peer-reviewed, as this lends itself to an improved standard in practice, I at times question the underlying motivations of expert consultants. Often the process of inquiry is a replication of the adversarial nature of matters and so the litigious environment becomes the norm. This perhaps is a good example of where the problem-determined system arises. The ensuing process becomes an isomorph of the conflictual stances of the parents and the lawyers. As discussed in Chapter 5, the problem-determined system, which stems from cybernetics, describes a systemic boundary in which all who dialogue about a problem define the problem at hand (Anderson, Goolishian, & Winderman, 1986). The implication for the mental health field is that “it can easily fall prey to perpetuating the very problem it seeks to cure” (Keeney, 1983, p. 23). The problem-determined system is then understood as a linguistically bound system that is actively defined, and communicated, by all those involved (Anderson et al., 1986).

Adding to the concept of the problem-determined system, several authors have raised concerns, and hold reservations regarding the neutrality, independence and knowledge of forensic psychologists, the biased practice of psychologists, the poor quality of evidence offered in court, recommendations being made without assessing all parties, the lack of training and the high number of disgruntled families’ complaints levelled against psychologists (Gudjonsson & Haward, 1998; Krüger, 2004; Pickar, 2007; Stahl, 1994; Thompson, 2012). As stated by Krüger (2004), psychologists render a specialised service within the legal system; however, they are often faced with problems. Some of these problems include poor preparation to “think forensically” (Greenberg & Gould, 2001, p. 470). This denotes that aspects of forensic work differ markedly from traditional clinical work (Greenberg et al., 2004). This assumption further implies that many psychologists are not trained in assessments that are used for legal purposes, and therefore often fail to follow

forensic guidelines (Budd, 2005; Budd, Poindexter, Felix, & Naik-Polan, 2001). This further suggests that legal professionals are trained to work in an adversarial environment, while the roles of psychologists are not adversarial. In the matter *Schneider NO and others v Aspeling and another (2010) 3 All SA 332 (WCC)*, the findings of the presiding Judge were summarised as follows (South African Law Report, 2010, p. 8):

In short, an expert comes to court to give the court the benefit of his or her expertise. Agreed, an expert is called by a particular party, presumably because the conclusion of the expert, using his or her expertise, is in favour of the line of argument of the particular party. But that does not absolve the expert from providing the court with as objective and unbiased opinion, based on his or her expertise, as is possible. An expert is not a hired gun who dispenses his or her expertise for the purposes of a particular case. An expert does not assume the role of an advocate, nor give evidence which goes beyond the logic which is dictated by the scientific knowledge which that expert claims to possess.

This summary clearly points out the current challenges that may emerge in a courtroom. In theory, psychologists are neither paralegals, nor advocates, and yet case comments of Judges and Magistrates, as seen in the above quote, often allude to the boundary slippage that occurs at times. This can be further complicated when psychologists align their findings and recommendations to a particular party irrespective of whether the findings are objectively correct. This ‘hired gun’ phenomenon exists in the undercurrent of the professional context, and manifests in the psychologists’ reports, especially when the data are interrogated and analysed (Gould et al., 2011; Swanepoel, 2010; Thompson, 2012). This practice totally undermines the profession and in fact creates a perception that psychologists

sway their recommendations based on alliances, rather than on their professional psychological judgement. The hired guns phenomenon is not new, and despite ethical guidelines being implemented over time (Jameson, 2001) this still seems to occur within the profession. The AFCC states that evaluators should rather strive to use a balanced process in order to increase objectivity, fairness and independence (Association of Family and Conciliation Courts, 2006, p. 14).

Another area that has been identified as problematic is the overly technical and jargonistic reports that prove difficult for the families and legal professionals to understand. Greenberg et al. (2004) and Swanepoel (2010) suggested that reports be written in a clear and understandable manner in order to best assist the courts, and ultimately the family in question.

Affordability

De Jong (2005) indicated that the legal system in South Africa tends to have strong formalism and Western roots that are unacceptable and inapplicable to the indigenous populations, and which have led to the official law system remaining unaffordable to many. These services are not only out of the financial reach of those who were previously disadvantaged, but also to the majority of families who spend exorbitant amounts on legal fees, as well as fees related to psychological services. There are no set fees, nor guidelines with regards to the structure of fees for forensic work in South Africa, and so the costs tend to vary greatly among psychologists (Roos & Vorster, 2009). According to the Mediation in Certain Divorce Matters Act (Act No 24 of, 1987) , divorcing parties can be forced into mediation processes prior to the courts granting a divorce order. Mediation was introduced as an alternative psycho-emotional option for families due to the costly nature of the litigation and to the courts often requiring parents to attend mediation prior to embarking on litigation (Froyd & Cain, 2014; O'Hara Brewster, Beck, Anderson, & Benjamin, 2011; Vorderstrasse,

2016). In spite of this, families often need the services of several professionals to assist them in resolving the conflict, which adds to their already heavy financial burden, and not all families can afford a comprehensive child custody evaluation or the services of several professionals in a relatively short span of time (Froyd & Cain, 2014; Greenberg et al., 2004; Stahl & Martin, 2013). The high conflict cases relevant to this study are often characterised by years of litigation, psychological services and the like. In a 20 year review of child custody evaluations in America, it was found that 87.3% of psychologists requested that the full assessment fees be paid prior to any court appearances, while only 3.5% and 9.2% required a partial or no payment respectively (Ackerman & Pritzl, 2011).

There are perhaps two sides to this. On the one hand, the specialist services aim to assist in highly conflictual matters, and rightly so, an appropriate financial compensatory payment is warranted. The other side is perhaps a point of contention. Too often the exorbitant fees escalate the tensions in an already sensitive system, especially when these essential services are needed.

Board complaints and resistance to do the work

Psychologists find themselves subjected to an increase in board complaints and disciplinary action for both general practice as well as forensic work (Pickar, 2007; Zumbach & Koglin, 2015). Nortje and Hoffman (2015) analysed the case content of guilty verdicts from the HPCSA records, and noted a steady increase in the number of psychologists sanctioned between 2007 and 2013. Amongst others, the specific misconduct of psychologists included conflicts of interest (acting as a mediator for a child custody case as well as later acting as an expert witness for one of the parties); making biased recommendations for custody related matters without proper assessment of all parties; and failure to use correct or indicated test instruments and compiling a psychological report without interviewing all concerned parties.

Society has become more litigious and there is reluctance amongst psychologists to work within the forensic context for several reasons: a) The high incidents of professionals being reported to the HPCSA by both dissatisfied family members and peers in the profession, b) the adversarial nature of the custody disputes, and c) the findings of psychologists are often contested in court by other psychologists, a phenomenon referred to by Krüger as the “battle of the experts” (Krüger, 2004, p. 297; Martindale & Gould, 2004). In a study by Scherrer, Louw and Moller (2002), ethical complaints levelled against psychologists in South Africa were reviewed. The authors noted that problems regarding psychological reports were the second most frequently cited and that approximately a quarter of the complaints emanated from child custody cases. Krüger (2004) questioned the neutrality of psychologists in this field and found that the viewpoints of Judges entailed disgraceful remarks about the integrity of the profession and psychologists. Bow, Gottlieb, Siegel and Noble (2010) found that between one third and two thirds of custody evaluators in the USA had been reported to the board.

Hess (2006) suggested that professionals need to be acutely aware of the ethical parameters that govern Forensic Psychology especially where such practices differ from the traditional practices of Clinical Psychology. According to the American Psychological Association, “The acceptance and thus the overall utility of psychologists’ child custody evaluations are augmented by demonstrably competent forensic practice and by consistent adherence to ethical standards” (APA, 2010, p. 863). Despite the various reasons for being reported to the statutory body, the process of being reported is challenging and psychologists tend to question their professional integrity after being reported (Fasser, 2014). For these reasons, the involvement of psychologists in forensic work is one of the least desired areas of professional practise (Pickar, 2007).

The above points make it evident that it is necessary and relevant to explore the current practices of Clinical Psychologists in the forensic context. In order to place the above aspects into context, the core topic of this study, that is, care and contact, or more specifically primary residency and contact (PRC), are discussed below.

Care and Contact Evaluations in Contested Divorces

Child custody evaluations are not straightforward as they comprise various aspects that need to be taken into account when reaching decisions and formulating recommendations based on the best interests of minor children. It is necessary for psychologists, who undertake these evaluations, to take cognisance of the changing family structures, developmental needs of the children, parenting capacities of the parents, presence of psychopathology as well as the interactional dynamics between family members. Covering each aspect in detail in this chapter would be rather challenging and is beyond the scope of this study, and therefore only the necessary areas pertaining to the work of psychologists are discussed.

As is highlighted in this section, psychologists tend to fulfil diverse roles in care and contact disputes, and each role has a different mandate and scope. Ultimately their feedback, reports and opinions are filtered through to the Judges in the High Courts, who have the authority to make final decisions with regards to the minor children. Figure 2-4 simplifies the diverse roles of psychologists, as well as contextualises the relationships between psychologists and other professionals and depicts the interconnected relationships between the psychologists' and the families' ecologies. These interconnected relationships are also applicable within the relationships between the psychologists and the legal professionals. What is essential to keep in mind, is that the minor children are at the centre of this web.

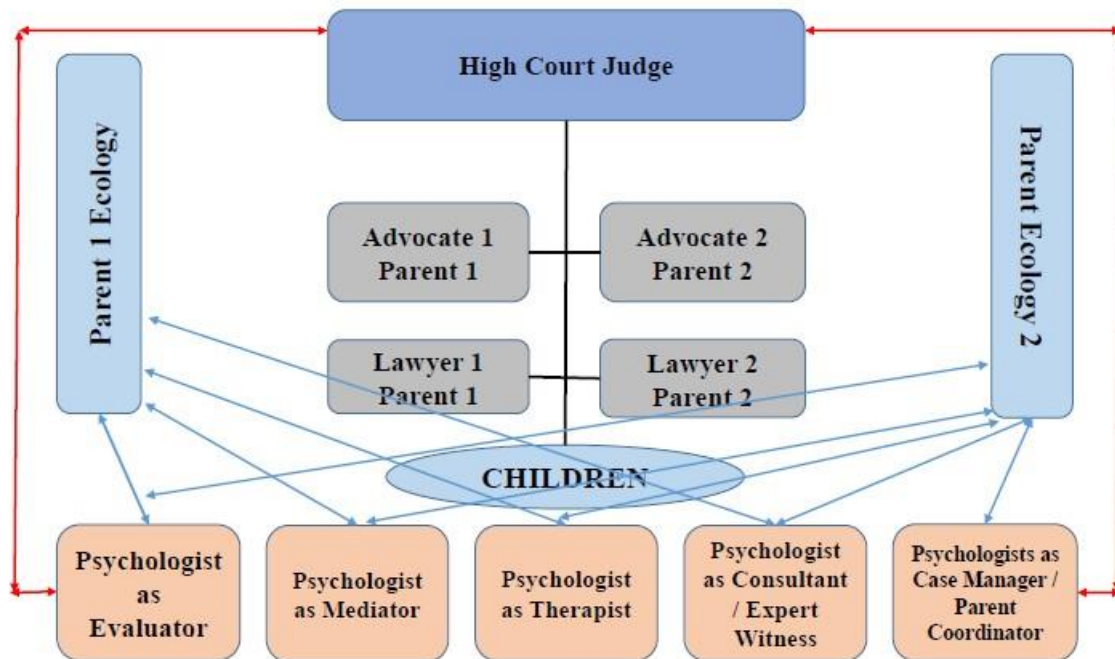


Figure 2-4 *Web of professional interconnectedness*

Fuhrmann and Zibbell (2012) indicated that evaluations often assess diverse factors that could influence the parent-child relationship. When parents are able to decide on co-parenting arrangements in a collaborative fashion, there is generally no need for the courts to become involved. However, when arrangements are not successfully agreed upon, and parents are unable to reach any agreement with regards to the care and contact of the minor children, the courts then become involved (APA, 2010; Kelly & Ramsey, 2009). Even if parents do agree on the care and contact arrangements, and the Judge is not satisfied as to these arrangements, s/he can order an investigation as to the best interests of the minor children. The purpose of child custody evaluations is to conduct a thorough, scientifically sound evaluation of a family and its ecology to help the court determine the care and contact arrangements that will best serve the children's interests (Rohrbaugh, 2008). Primary residency and contact arrangements form part of the care arrangements. This evaluative information is collected and analysed using methods and procedures drawn from the

behavioural sciences (Gould, 1999). In 1994, the APA developed guidelines for Child Custody Evaluations in divorce proceedings. These guidelines were updated in 2009, and were intended to facilitate the continued development of the profession and the high level of practise by psychologists (APA, 2010). These guidelines were meant to act as inspirational rather than mandatory. However, one of the most controversial areas of Forensic Psychology is child custody practice (Bow & Quinnell, 2002). The phrase “valid custody evaluations” largely remains a paradox with scant evidence that custody evaluators can conduct evaluations that in fact are in the “best interest of the child” (Woodward Tolle & O’Donohue, 2012, p. 1).

Although high rates of divorce are not new, there seems to be an increase in the intensity of disputes involving custody. It is estimated that three quarters of separating or divorcing parents transition successfully, while only a small number (approximately 10%) of all divorces involving minor children are contested and are seen in court (Coates, 2015; Drozd & Olesen, 2004; Fuhrmann & Zibbell, 2012; Kelly & Ramsey, 2009; Lebow & Black, 2012; Roos & Vorster, 2009). It would be ideal if families could resolve this conflict and reach a workable arrangement aimed at caring for the minor children. When no agreement is reached, and the conflict is severe, the courts and frequently professionals are included in the dispute to assist in resolving the conflict (Kelly & Ramsey, 2009; Meyer, 2016; Rohrbaugh, 2008). Applications for custody are heard by the High Court in South Africa and psychologists, who are usually among the professional cohort, assist the court in reaching decisions with regards to the minor children’s best interests (Krüger, 2004; Stolberg & Kauffman, 2015; Zumbach & Koglin, 2015). In a recent South African study, Rohrbaugh (2008) stated that “a comprehensive evaluation is needed when the court is faced with complex behavioural health issues or high risk factors such as contentious parents, domestic violence, substance abuse, serious mental illness or child abuse” (p. 32). Markan and

Weinstock (2005) on the other hand argued that comprehensive child custody evaluations should rather be the exception and not the rule. It is clear from the literature that two different streams of thought exist with regards to the appropriate use of custody evaluations. On the one hand, few authors agree that the evaluations should be the last resort and that other means should be employed first, such as mediation or therapeutic intervention. On the other hand, it is clear that the evaluative practices are valued by not only psychologists but by legal professionals as well, and perhaps such evaluations earlier on may lead to quicker resolutions (Budd, 2005; Lund, 2015; Markan & Weinstock, 2005; Rohrbaugh, 2008).

In addition, Rohrbaugh (2008) highlighted that the psychological health of each minor child must be assessed, as well as the psychological health, parenting capacity and abilities of each parent. Condie (as cited in Rohrbaugh, 2008) nevertheless stated that the evaluator's professional and ethical obligation is to the attorney, the social service agency and by extension the court, regardless of the referral. Budd (2005) mentioned that an evaluator's report is often treated differently depending on the source of appointment (e.g. directly from the Court, legal representatives, or parties themselves) (Budd, 2005). Attorneys and caseworkers who request evaluations often have different reasons for the referral and therefore pose varying expectations of the final report (Budd, 2005, p. 436). From a systemic perspective, Selvini Palazzoli, Boscolo, Cecchin and Prata (1980, p. 3) refer to this as the "problem of the referring person". At times referrals are made because (a) important gaps exist in clinical issues, (b) opinions on the direction of the case differ, or (c) of a "fishing expedition" that has no specific questions in mind (Budd, 2005, p. 4136). This stresses the need for legal professionals to understand the ethical and professional standards that underlie competent mental health practice in forensic cases, as well as the boundaries as to what information psychologists can provide (Allan & Louw, 2001; Greenberg et al., 2004).

Brandt, Swartz and Dawes (2005) suggested that in order for the paradigm differences between the legal and psychological profession to be appropriately and adequately addressed, psychologists (and lawyers) need to realise, and acknowledge, their different roles in child custody evaluations. Some of the differences can be resolved simply by professionals recognising that the objectives of, and approaches to, forensic work differ and that mental health professionals need to depart from the 'therapist as witness approach' and engage more fully with their specialist role as expert witness (Pickar, 2007). Fasser (2014) supplemented this notion and stated that psychotherapy and forensic work, and the training thereof, are fundamentally different. She further claimed that:

The aim of a therapeutic relationship is psychological healing or growth, be it of an individual or of a relationship ... the aim of a psychological child custody forensic assessment is to arrive at an unbiased and objective psychological evaluation of behaviour for the purposes of assisting a court of law to determine the best possible action to take that will be in the best interests of a minor or children in a family law matter (2014, p. 82).

This requires a thorough understanding of psychological theories, practices and assessments, legislative Acts as well as the culture of family law in the South African context. Regardless of who refers a matter, a psychologist's report has one overarching aim, and that is to formulate recommendations that are in keeping with the best interests of the minor children, regardless of the agendas of any professional or non-professional involved in the matter. This produces an expectation of the forensic psychologist who operate from a neutral, unbiased and objective position (Fasser, 2014).

Despite there being several international publications that refer to child custody disputes and the recommended guidelines in child custody evaluations, there is a dearth of

literature in the South African context. South African psychologists have no specific protocol, nor formal guidelines, and rely heavily on American based literature in this regard (Brandt et al., 2005; Rohrbaugh, 2008; Thompson, 2012; Van den Berg, 2002). Further, it is unclear as to how South African psychologists use these guidelines, what evaluation methodologies are used when conducting evaluations, what information is deemed important, and how this information is gathered and presented to the court (Rohrbaugh, 2008). In addition, there have been significant concerns regarding the use of certain psychological tests (Quinnell & Bow, 2001; Thompson, 2012; Vorderstrasse, 2016). According to Bow and Quinnell (2002) it is vital that psychologists ensure high quality child custody evaluations as these are in the best interests of the children.

To address the concerns raised above, the following section focuses on care and contact evaluations, and includes the current legal and psychological practices in South Africa.

The Nature of Care and Contact Evaluations

As mentioned earlier in this chapter, psychologists fulfil different roles and assist the court in various capacities. At the heart of all evaluations is the BIC principle, which remains an elusive quality (Emery et al., 2005; Fuhrmann & Zibbell, 2012; Garber, 2009; Zumbach & Koglin, 2015). Care and contact evaluations are generally conducted within two worlds, the legal world of legislation and case law, and the mental health world, which consists of various forensic psychological procedures and practices (Flens, 2005). It is the analysis of various psychological constructs and the legislative parameters of family law that assist professionals to ultimately arrive at conclusions. Before discussing the various roles psychologists fulfil, it is necessary to understand the concepts of guardianship, primary residency and contact.

Guardianship and custody: A new approach

Previously, custody was often confused with guardianship; in essence, these two constructs are inherently different. According to Mailula (2005, p. 18), guardianship entails the capacity to act on behalf of the children, while custody refers to the physical ‘possession’ of a minor child, in other words, to live with and care for a child. In earlier times, fathers were regarded as the sole guardians of children under the age of 21. This implied that fathers could make the decisions with regards to medical treatment; sign on behalf of his children for any financial contractual agreements, and give consent if his children wanted to marry before the age of 21 years. After this era, the mother was identified as the ‘naturalised’ residential parent. Since the promulgated Children’s Act 38 of 2005, there was a shift from parental power towards parental responsibilities, where both parents are regarded as legal guardians, and the age of consent was changed from 21 to 18 years (Human, Robinson, & Smith, 2010). Unless the courts decide otherwise, both parents are regarded as the legal guardians of their minor children, and consent from both parents is needed in the following matters:

1. Marriage of a minor.
2. Adoption of a minor.
3. Removal of a minor child from South Africa by either parent, or a person other than a parent.
4. The application for a passport of a child under the age of 18.
5. The alienation or encumbrance of a minor child’s immovable property.

(Guardianship Act 92 of 1993; Roos & Voster, 2009).

The shift in parental power towards the parental rights and responsibilities can be seen in *V vs V, 1198 (4) SA 169 (C)*:

There is no doubt that over time the last number of years the emphasis in thinking in regard to questions of relationships between parents and their children has shifted from a concept of parental power of the parents to one of parental responsibility and children's rights (Human et al., 2010, p. 238).

Primary residency and contact do not refer to the legal guardianship of parents, but to the care arrangements of the minor children. There are differing opinions with regards to care arrangements that include primary residency and contact with the non-residential parent. Those who advocate a primary residency parent emphasise the importance of stability, consistency and predictability in a child's life. Those who argue that joint custody, or shared residency, is beneficial, emphasise that it is in the children's best interest to have substantial contact with both parents (Fuhrmann & Zibbell, 2012; Mnookin, 2014; Walker, Brantley, & Rigsbee, 2004). While the majority of states in America adopted the joint custody (legal custody) approach, some states remained in favour of the primary caretaker presumption when parents could not agree to an arrangement (Fuhrmann & Zibbell, 2012). Likewise, in South Africa, there are conflicting opinions as to what the norm should be. However, the discretion resides with the judiciary to grant sole, or shared, guardianship or custody of a child to either or both parents if this is in the child's best interests (Mailula, 2005).

Divorcing parents often have complaints about each other's parenting abilities (Greenberg & Gould, 2001) and so the legal struggle and the conflictual divorce process may impact the parents' perceptions of, and behaviours towards, the best interests of the children, their abilities to separate their own needs from the children's needs as well as the interactions

between the parents and children. The following table briefly outlines the different types of custody as practised internationally.

Table 2-5 *Types of custody arrangements*

TYPES OF CUSTODY	DESCRIPTION
Sole Custody	The general maintenance and supervision of the minor children, as well as decisions relating to the day to day activities of the children who reside with one parent.
Split/divided custody	This involves the splitting up of the minor children between two households, although the courts are not in favour of this.
Joint custody	Legal joint custody must be differentiated from physical joint custody. Legal joint custody is when both parents have equal say with regards to important aspects/decisions involving the minor children. Physical joint custody is when the children live in two homes, where their time is shared equally between both parents.

(Adapted from Roos & Vorster, 2009, p.90)

In South Africa, the term ‘custody’ is no longer referred to. Custody has now been replaced with the terms *care* and *contact*, which amongst others, include residency and contact arrangements of the minor children and the non-residential parent or other caregivers (Human et al., 2010; Thompson, 2012). It is generally accepted that one parent will be awarded primary residency, while the non-residential parent is given contact rights. Table 2-6 below outlines the different types of contact (access):

Table 2-6 *Types of access/contact*

REASONABLE ACCESS	LIMITED / STRUCTURED ACCESS
This refers to the non-residency parent having reasonable access to the children, the arrangements of which are usually determined by the parents. This arrangement is aimed at maintaining the emotional bond between the minor children and the non-residential parent.	If deemed necessary, and if in the best interests of the children, access and visitation can be structured or limited in the following ways: <ul style="list-style-type: none">• Access under supervision• Phased-in access• Parallel access• Non-physical access

(Adapted from Roos & Vorster, 2009)

Taking the above information into account, psychologists make recommendations with regards to the best care arrangements for the minor children. To do this, psychologists may provide services in different capacities. According to Costanzo and Krauss (2012, p. 11), psychologists tend to fulfil three major roles 1) advisors, 2) evaluators and 3) reformers. They further identify five pathways for influencing the legal system; these include:

- 1) Expert testimony
- 2) Cross-disciplinary training
- 3) Amicus curiae briefs
- 4) Broad disseminations of research findings
- 5) Influencing legislatures and public policy.

There is consensus amongst several professional bodies that it is advisable for psychologists to avoid performing multiple roles in psychological matters, including forensic

work (APA, 2010; Cohen & Malcolm, 2005; Health Professions Act 56 Of 1974; Greenberg et al., 2004; Roos & Vorster, 2009; Thompson, 2012). In addition, several authors make a clear distinction between clinical work and forensic work and indicate that psychologists should be familiar with these differences (Greenberg & Gould, 2001; Roos & Vorster, 2009). Mental health professionals are generally called to offer services to the legal profession and the courts, to provide psychological reports and expert recommendations, to act as consultants or expert witnesses and to provide information to other mental health professionals (Goldstein, 2016b; Greenberg et al., 2004; Greenberg & Gould, 2001). According to Fuhrmann and Zibbell (2012, p. 24) the focus of child custody evaluations varies but tends to include assessing the:

- a) Strengths and weaknesses of parents/guardians,
- b) Children's needs,
- c) Source of, the impact of, and interventions for conflict between parents,
- d) Quality of the relationship between children and their parents,
- e) Allegations of parental alienation,
- f) Aligned children,
- g) Allegations of maltreatment in the context of parental separation,
- h) Parenting capacities of parents.

Greenberg et al. (2004) emphasised that mental health professionals should maintain a high ethical standard and remain accountable for any services provided. This is especially important because there is a high possibility that the recommendations made by a mental health professional may not be in favour of a parent, and such recommendations assist the

court in making decisions with regards to the minor children. Stakes are high in child custody cases and opinions and decisions made by psychologists can have a lasting effect (Greenberg & Gould, 2001; Moran & Weinstock, 2011). Greenberg et al. (2004) put forth the notion of professionals remaining accountable in their work and stated that “Accountability is a value and mindset that should permeate all aspects of forensic psychological services” (p. 25). Mental health practitioners serve a critical role in the forensic context; nonetheless, they may also inadvertently escalate conflict if ethical principles are neglected (Greenberg et al., 2004).

Chapter Summary

It is clear that custody evaluations are complex and carry with them a myriad of challenges and risks. In this chapter the context of care and contact disputes and subsequent evaluations was discussed. The challenges associated with the forensic context was expanded on which provided significance to the research problem addressed in this thesis. In the following chapter, Chapter 3, the literature review continues with consideration to the roles that psychologists fulfil in order to address the care arrangements of minor children.

My Family



Drawn by: R

Age: Seven years, 6 months old

Position in family: Eldest of two children

Parents: Married

Chapter 3

Roles of Psychologists Pertaining to Care and Contact

“In all actions concerning children, whether undertaken by public or private social welfare, institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration”

(Convention on the Rights of the Child, 2013, p.3)

Introduction

Chapter 2 provided a discussion of Forensic Psychology and contextual descriptions of care and contact evaluations. As mentioned, psychologists are often a part of the professional cohort employed to provide services to the courts in custody matters (Austin et al., 2011). The roles that psychologists fulfil are plenteous but regardless of the mandate, psychologists are expected to ensure that their work remains in line with the best interests of the children, which remains the guiding principle (Austin et al., 2011; Burman, 2003; Fuhrmann & Zibbell, 2012; Goldstein, 2016a; Gould & Stahl, 2000; Rohrbaugh, 2008; Stahl, 1994; Thompson, 2012). This chapter expands on the roles psychologists fulfil in this field. Commentary is also provided as to ethical practices involved in these roles.

Roles Psychologists Fulfil in Care and Contact Disputes

As has been mentioned, the care and contact field is extensive, and addressing every aspect in its entirety is challenging and is beyond the scope of this thesis. This section therefore only addresses the literature that is relevant to the roles psychologists fulfil in care and contact evaluations, including: Evaluator, mediator, consultant and expert witness, case manager and a treating expert.

Evaluator

The AFCC describes an evaluator as a qualified mental health professional who functions as an impartial examiner in the custody evaluation process (Association of Family and Conciliation Courts (AFCC), 2006). Personality testing and evaluations offer an empirically grounded basis for generating and checking inferences and hypotheses (Erard & Viglione, 2014). Further to this, the evaluative process is regarded as a time-limited, objective view of the family (Greenberg & Sullivan, 2012). According to Meyer et al. (2001, p. 50), formal psychological assessment “is a distinctive and unique aspect of psychological practice”. In the role of evaluator, psychologists use an arsenal of methods and procedures that generally consist of tests and instruments aimed at assessing a variety of psychological constructs (Flens, 2005). According to Gould (2005) and Meyer et al. (2001), differentiating between psychological testing and psychological assessment is necessary. In essence, psychological testing (nomothetic) involves obtaining a particular score from a particular test without viewing the result in context, while psychological assessments (idiographic) use a variety of tests and scores and considers these in context (Gould, 2005, p. 50). Psychological assessment is evidently the more appropriate practice in custody evaluations. Gould (1999, p. 162) suggested that child custody assessments should include the following: (a) An assessment of each parent’s capacity for parenting (b) an assessment of the psychological functioning and developmental needs of the children and the wishes of the children where appropriate; and (c) an assessment of the functional ability, which includes an evaluation of the interaction between each adult and the children, of each parent to meet the needs of the minor children. Included in these evaluations is the assessment of parental psychopathology and substance use/abuse (Fuhrmann & Zibbell, 2012). These suggestions are in line with the AFCC recommendations of:

- 1) Assessing parents and parent figures
- 2) Assessing children
- 3) Assessing adult-child relationships
- 4) Obtaining collateral information.

In order to provide a comprehensive psychological report as to the above mentioned, psychologists use several sources of data to inform their psychological opinions. The sources of information generally include:

1. Interviewing techniques
2. Psychological testing
3. Parent-child observations
4. Home visits
5. Collateral sources
6. Document review
7. School, medical and previous psychological reports (Fuhrmann & Zibbell, 2012, p. 94-97; Foster, 2016; Hynan, 2016; Lobel, 2016; K. G. Meyer, 2016; Pepiton et al., 2014, p.82; Roos & Vorster, 2009; Zumbach & Koglin, 2015).

According to a study conducted by Ackerman and Pritzl (2011), interviewing parents and children took approximately 15% and 8% of evaluator's time respectively. Interactional observations comprised 8% of the time, while psychological testing and report writing involved 13% and 23% of the time respectively. The remaining period of the assessment period was as follows: Reviewing material (12%), collateral information (7%), interviewing significant others (5%), consulting with attorneys (3%) and testifying in court (6%). Despite the improvements in the field, there is still a need to conduct more empirical research on the

effectiveness of using methods such as interview protocols, parent-child observations, child interviews and home visits (Stahl & Martin, 2013).

Assessing parenting capacity, psychopathology and the resulting parent-child relationship

Rycus and Hughes (2003) stated that the purpose of family assessment “is to identify and explore, in considerable depth, the unique complex of developmental and ecological factors in each family and their environment that may contribute to or mitigate maltreatment” (p. 11). Parental attributes and capacities in meeting the needs of their children correspond to the courts’ need for information with regards to the functional abilities and/or deficits of both parents (Fuhrmann & Zibbell, 2012). *Parenting capacity* is a core area of assessment in making decisions with regards to the minor children and rests upon the accurate identification of the needs of the children within their ecology (Eve, Byrne, & Gagliardi, 2014; White, 2005). Assessing parenting capacity is complex and difficult due to the emotionally-laden context and the high stakes of those involved (Schmidt, Cuttress, Lang, Lewandowski, & Rawana, 2007). At best, assessments of parents’ capacities can provide an informed objective perspective that enhances decisions regarding the children, at worst, they can contribute to inaccurate, biased and/or irrelevant information that impairs the decision-making process (Budd, 2005, p. 430).

Prior to embarking on the literature pertaining to parenting capacities and the possible presence of psychopathology, it is perhaps necessary to describe the different types of parenting styles. A parent’s capacity to parent successfully alongside the other parent has a direct influence on the minor children in the family. The findings of the various assessments can influence the recommendations with regards to parents’ abilities to co-parent.

Stahl (2008) highlighted three primary parenting styles for families of divorce:

- a) Cooperative parenting
- b) Conflicted parenting
- c) Disengaged parenting.

Table 3-1 *Parenting Styles*

PARENTING STYLE	DESCRIPTION
Cooperative Parenting	Conflict is low and parents can effectively communicate about the children. Parents tend to agree on most parenting values, are relatively consistent in their parenting styles, and have few disagreements about the children’s lives. Children are rarely put in the middle of disagreements.
Conflicted Parenting	Parents are often unable to separate the prior conflict after the divorce, and children are often caught up in the middle of such conflict.
Disengaged Parenting	Parents have little or no contact with each other. Parents usually embark on parallel parenting where the children’s interests and needs are still met, but with very little contact with each other. This allows parents to parent <i>next</i> to one another and not <i>with</i> one another in order to avoid conflict.

The parents’ parenting capacity, personality styles and psychopathology influence their abilities to meet their children’s needs. The determination of a parent’s capacity to care

for their children is a major concern (Houston, 2016) and so the assessment of parenting capacity as part of the family evaluation in determining custody arrangements for minor children is vital. Despite the importance, there is a lack of definitional clarity around what parenting capacity is, and what constitutes good parenting (Eve et al., 2014; Houston, 2016; Schmidt et al., 2007; White, 2005). White (2005) suggested that “parenting is predominantly seen as a task about the socialisation of children, within an ecological framework that considers children in relation to their family, neighbourhood, the larger social structure and economic, political and cultural environment” (p. 1). Moran and Weinstock (2011) succinctly summarised parenting capacity, which is complex, as encompassing parent-child interactions, multiple parenting skills, and the ability to vary child rearing techniques depending on the developmental needs of the children. These authors emphasised that this concept is multi-factorial and is “mediated by the child’s health, temperament, and stages of development; the family’s health status, geography, and ethnic traditions; and the parents’ social networks and work obligations” (Moran & Weinstock, 2011, p.182).

In line with the lack of clarity as to what parenting capacity is, several problems have been identified when assessing parenting capacity. These include:

- a) Vague referral questions.
- b) Evaluations of parents being completed in a single session.
- c) Lack of home visits.
- d) Using minimal sources of information and collateral sources other than the parents.
- e) Limited access to, or use of, and failure to, cite previous written reports.
- f) Rarely using behavioural methods with no direct information on the child-parent interactions.
- g) Stating purposes in general rather than specific terms.

- h) Relying on psychological instruments not directly related to parenting
- i) Emphasising weaknesses in reporting results.
- j) Neglecting to describe the parent's care-giving qualities or child's relationship with the parents (Budd, Poindexter, Felix & Naik-Polan, 2001; Budd, 2005, p. 432; Eve et al., 2014; White, 2005, p. 2).

According to White (2005, p. 2) addressing these problems entails:

- a) Using multiple sources of information.
- b) Avoiding over-reliance on psychological instruments.
- c) Recognising the impact of phenomenon of 'faking good' on psychological tools
- d) Recognising the importance of parental acceptance of responsibility and readiness to change.
- e) Collaborative practice.
- f) Worker awareness of the impact of their own judgements on appropriate parenting standards.
- g) Supervision and training.
- h) Using research findings in practice.
- i) Recognising the impact of cultural diversity on parenting practices.
- j) Recognising the need to tailor parenting capacity assessments to take into account the individual circumstances of parents.

Chiu (2014) elaborated and identified the significance of cultural sensitivity in evaluations and suggested that evaluators pay particular attention to the culture of the family.

Ignoring the ethno-cultural factors in evaluations and the interplay of such factors in evaluations could lead to evaluators easily committing errors (Chiu, 2014).

Given the paucity of literature on the interplay of ethno-cultural factors in child custody evaluations, child custody experts are finding it difficult to keep updated on scientific knowledge about such dimensions so as to ensure the competency of their evaluation process (Chiu, 2014, p. 107).

Assessing parenting capacity is deemed a core task in protecting the child from physical, emotional and psychological risk and enhancing their developmental needs. In her parenting assessment model, Budd (2005) proposes that assessments should encompass three core areas. First, an assessment should focus on a “parent’s capabilities and deficits as a parent and on the parent child relationship,” second, it should employ a functional approach and address the behaviours and skills needed to parent successfully, and last, it must apply a minimal parent standard (p. 432). In extreme cases where abuse may be present, assessing parenting capacity can contribute to decisions to remove a child from the care of a particular parent (White, 2005).

Goldstein (2016a) corroborated and suggested that evaluators should assess:

- 1) The developmental needs of the children.
- 2) The roles the parents historically played, and still do play, in the child’s life.
- 3) The psychological health of each parent as well as the psychological match with the children.
- 4) Each parent’s ability to facilitate a relationship with the children and the other parent.
- 5) The children’s attachments with each parent.
- 6) The strengths and weaknesses of each parent.

- 7) The parent's ability to understand the children's needs and their relative psychological stability.

Houston (2016, p. 351) further proposed a model aimed at assessing parenting capacity that includes evaluating seven core attributes of parents. It is the evaluator's role to determine, in relation to these seven core attributes, a parent's strengths, areas of concern, prospects for growth and change, and the impact of these on the children.



Figure 3-1 *Dimensions of assessing parenting capacity* (Houston, 2016, p. 351).

Expanding on the above attributes, which contribute to the understanding of parenting capacity, Eve et al. (2014) explored the aspects that professionals (across disciplines) regarded as markers for good parenting. The following were highlighted:

Table 3-2 *Good parenting attributes*

GOOD PARENTING ATTRIBUTES	DESCRIPTION OF THE ATTRIBUTES
INSIGHT	This entails an awareness of one’s role as a parent, an understanding of the children’s needs and the ability to provide for those needs, as well as an acknowledgement of one’s limitations as a parent.
WILLINGNESS AND ABILITY	Good parents should have a willingness to be a parent, as well as an ability to be a parent. This includes a willingness to accept responsibility as a parent, as well as the necessary skills to be a parent.
DAT-TO-DAY VERSUS COMPLEX, LONGTERM NEEDS	Good parenting requires that a parent is able to meet the short term day-to-day needs of their children (physical, emotional, and cognitive needs), as well as the more complex, long term needs that enable the children to reach their potential and develop into well-adjusted individuals.
CHILD’S NEEDS BEFORE OWN	The ability to put the needs of the children ahead of one’s own need is regarded as a necessity. Good parents are generally child focused and prioritise their children’s needs before their own.
FOSTERING ATTACHMENT	This includes a parent’s ability to encourage bonding and attachment in order to establish security, comfort and confidence in the children.

CONSISTENCY VERSUS

An ability to provide a balance between parenting in

FLEXIBILITY	a consistent manner while at the same time remaining flexible and open to change.
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(Eve et al., 2014, p. 118-120)

Despite the lack of consensus as to what parenting capacity assessments should entail, they are often used in forensic cases to add value to evaluations and facilitate better decision-making with regards to family reunification, visitation rights, care decisions and termination of parental rights (Eve et al., 2014). In summary, Budd (2005) offered suggestions as to what assessing parents’ capacities can and cannot do.

Table 3-3 *What parenting assessments can and cannot do*

<p><i>Parenting Assessments Can</i></p> <ul style="list-style-type: none"> • Describe characteristics and patterns of a parent’s functioning in adult and childrearing roles • Explain possible reasons for abnormal or problematic behavior, and the potential for change • Identify person-based and environmental conditions likely to positively or negatively influence the behavior • Describe children’s functioning, needs, and risks in relation to the parent’s skills and deficits • Provide directions for intervention <p><i>Parenting Assessments Cannot</i></p> <ul style="list-style-type: none"> • Compare an individual’s parenting fitness to universal parenting standards • Draw conclusions about parenting adequacy based only on indirect measures • Predict parenting capacity from mental health diagnoses • Rule out the effects of situational influences (e.g., time limitations, demand characteristics, current stressors, cultural issues) on the assessment process • Predict future behavior with certainty • Answer questions not articulated by the referral source
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(Budd, 2005, p. 436).

In addition to determining a parent’s capacity to parent effectively, ascertaining the presence of *psychopathology*, and the possible impact this would have on parents’ abilities is another area that psychologists are requested to assess. Families who are assisted by the

Family Advocates Offices, or who have appeared in court, have already hit a crisis point, and

so it is expected that one or both of the parties may be frustrated, anxious, fearful and angry. Motives are often clouded by these emotions and understandably members of a family present with symptoms that reflect the crisis in the family system. Having said this, there are matters where one party has, or both parties have, symptoms indicative of psychopathology that may impact their ability to parent, as well as to manage the relational difficulties between parties.

Parents involved in custody disputes are most likely to present with relationship dysfunction and clinical psychopathology. Understanding the impact of mental illness and the symptoms on parenting presents a host of challenges for professionals (Butcher, Hass, Greene, & Nelson, 2015; Deutsch & Clyman, 2016). In line with this, mental health workers are expected to assess critical problem areas and the resulting impairment and impact on functioning. Psychologists have been cautioned not to minimize the presence of psychopathology in parents as this may lead to ignoring certain risks. These critical areas and areas of risk, for example, mental health issues, child abuse and domestic violence have become pertinent areas to assess due to the impact on the emotional, psychological, social and behavioural development of children (Butcher et al., 2015; Deutsch & Clyman, 2016; Horvath et al., 2002).

According to Butcher et al. (2015) and Dane and Rosen (2016), mental disability alone is not sufficient to render a parent unfit, and so assessing the relevant impact of mental illness on a parent's parenting capacity, their ability to co-parent and the child's development is important. Research indicates that children of parents with a personality disorder are more likely to experience emotional and behavioural disturbances which necessitate psychological evaluations (Deutsch & Clyman, 2016).

An area that is often underutilised in the broader assessment of a parents' capacity is the direct observation of *parent-child relationships* (Budd, 2005). Although there is no one preferred method of observation, Budd (2005) suggested that observational methods provide an index of behaviours that the parents employ and thus allow the evaluator to "perceive a range of parent and child characteristics" (p. 434). Direct observation is not without its challenges, and so evaluators should be well versed in these methods, as well as child developmental theory and parenting skills (Budd, 2005; Hynan, 2016). Specific areas that should be assessed in the parent-child relationship include assessing whether the parent -

- a) Structures interactions, shows understanding or misunderstanding of their children's developmental level,
- b) Conveys approval or disapproval of the children's behaviours,
- c) Notices and attends to the children's physical needs,
- d) Responds to the children's initiations,
- e) Accepts the children's right to express their own opinion,
- f) Follows through with instructions or rules,
- g) Is able to spread their attention across all the children present (Budd, 2005, p. 435).

An area of the parent-child relationship that seems to be underdeveloped in care and contact evaluations is the assessment of attachment (Garber, 2009; Lee et al., 2009; Schmidt et al., 2007; Shumaker, Deutsch, & Brenninkmeyer, 2009). John Bowlby introduced attachment theory which is one of the most thoroughly researched areas of development with several instruments having been developed to assess the attachment between children and their parents (Ainsworth, Blehar, Waters, & Wall, 2015; Garber, 2009). It is accepted that a parent's personality and psychological makeup does have some effect on the parent-child relationship, and ultimately attachment patterns (Goldberg, 2013). Despite the available literature, there is still no empirical data as to the efficacy of assessing attachment in custody

matters: This could prove useful in determining the quality parent-child relationship (Lee, Borelli, & West, 2011; Shumaker et al., 2009).

Assessing for parental alienation

Parental alienation (PA) is a term that is a moot point, with many professionals debating whether such a concept really exists (Fuhrmann & Zibbell, 2012; Kelly & Johnston, 2001; Neustein & Leshner, 2009; Saunders & Oglesby, 2016; Stahl, 1994; Walker et al., 2004). It has also become a popularised legal strategy in divorce cases (Kelly & Johnston, 2001) and despite its lack of validity and legal reliability, many courts seem to accept parental alienation as a measurable concept (Milchman, 2015; Walker et al., 2004). Despite the controversial nature of this notion, it has for the past 20 years, been a point of interest amongst professionals and indeed warrants more investigation (Ellis, 2008; Fuhrmann & Zibbell, 2012; Neustein & Leshner, 2009). In a review of evaluators who recommended sole custody, it was noted that parental alienation contributed to the findings in 21.5% of cases. Due to the complicated nature of PAS, psychologists are often relied upon to assess and inform the courts in such instances (Saunders & Oglesby, 2016; Walker et al., 2004)

Wallerstein and Kelly (1980) first wrote about this phenomenon; however, it is Gardner (1987) who was credited with coining the complex set of behaviours and attitudes that became known as *Parental Alienation Syndrome* (PAS) (Fuhrmann & Zibbell, 2012; Johnston, 2005; J. B. Kelly & Johnston, 2001; Walker et al., 2004). The term *Parental Alienation Syndrome* (PAS) refers to “a child’s unreasonable rejection of one parent due to the influence of the other parent” (Stahl, 2004, para. 2). In a severe form of parental alienation, a child typically resists or refuses contact with one parent and tends to complain about that parent in unrealistic terms. A more moderate or less severe form of parental alienation manifests as complaints against contact with one parent, but the child typically continues with the contact arrangements stipulated in the parenting plan (a written contractual

agreement between parents regarding the care arrangements of the minor children)
(Fuhrmann & Zibbell, 2012).

According to Johnston (2005) most children, regardless of their loyalty conflicts, are eager to have contact with both parents. In contrast, a relatively small portion of children has a negative attitude towards a parent. Debates continue to exist with regards to PAS. On one hand, PAS proponents believe that the primary cause of PAS is an embittered parent who brainwashes a child against the other parent. On the other hand of the continuum, advocates for domestic violence believe that children and the allied parent are victims and have suffered abuse at the hand of the rejected parent (Johnston, 2005, p. 758). Neustein and Leshner, (2009, p. 322) challenged PAS and described it as a “hydra with flawed assumptions, a self-serving methodology and an inadequacy in assessing allegations of child abuse”. The authors further indicated that instead of reworking the syndrome, it should be rejected. The idea of parental alienation should perhaps not be so easily discarded, but rather investigated as a strategic move in a familial game, as are the allegations of neglect, physical abuse, sexual abuse and molestation.

PAS is too often viewed in a linear way in which a child’s refusal to visit one parent, is supported by the other parent. This is frequently seen in high conflict divorces where the allegations and accusations are made without viewing the historic nature of the parental relationship, nor the context in which these allegations are made. This approach runs the risk of ignoring, or missing, important factors that may have impacted, and contributed to such allegations. Thus, there are two contributing factors to the presence of PAS: a) The brainwashing of a child by one parent and b) the child’s own contributions to the vilification of the target parent (Kelly & Johnston, 2001). Despite this, it is important to acknowledge that we do not exist in a vacuum where relationships are deemed to be mechanistic and linear. Instead, it is necessary to acknowledge that there are multiple factors that may contribute to

PAS (Stahl, 2004). Selvini Palazzoli, Cirillo, Selvini, and Sorrentino, (1989) tersely described these strategies in families. These family therapists referred to two processes, namely *imbroglio* and *instigation* that could be applied to families who make these allegations. Imbroglio, which refers to a “complex interactive process that appears to arise and develop around specific behaviour tactics one parent brings into play”, involves placing a semblance of privilege on a parent-child relationship that in reality does not exist and is instead a tactic against the rejected parent (Selvini Palazzoli et al., 1989, p. 68). Instigation refers to a familial process during which someone instigates someone else *against* a third party (Selvini Palazzoli et al., 1989). Both imbroglio and instigation, as concepts that describe patterns within a family, are neither simple nor straightforward, as is the case with PAS.

Kelly and Johnston (2001) argue that the simplistic view of PAS is problematic. First, many parents engage in indoctrinating behaviours during a high conflict divorce, but only a small portion of the children become alienated from a parent. Second, some children develop negative attitudes or beliefs towards a parent in the absence of alienation. This, therefore, suggests that other factors need to be considered, and that focusing only on the alienating behaviour of a parent is insufficient. In light of this, “The indiscriminate use of PAS terminology has led to widespread confusion and misunderstanding in judicial, legal and psychological circles” (Kelly & Johnston, 2001, p. 250). Kelly and Johnston (2001) claimed that PAS needs to be reformulated due to the many problematic aspects inherent in the concept. The following characteristics were identified as problematic by the authors and have led to the authors reformulating the concept of PAS:

- a) There is a lack of empirical support for PAS as a diagnostic entity.
- b) Testimony of PAS is barred in some courts in the USA.
- c) There tends to be an over simplification of the brainwashing parent as the etiological agent.

d) There are frequent misapplications of PAS in custody disputes.

Kelly and Johnston (2001) and Johnston (2005) argued that the term *alienated child* may better describe the phenomenon. The alienated child could then be defined as “one who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger and hatred, rejection and/or fear) toward a parent that are significantly disproportionate to the child’s actual experience with that parent” (Johnston, 2005, p. 762). This suggests that the focus be placed on the child and the parent-child relationship, rather than on the alienating parent. Understanding the ecology and interpersonal processes/patterns of the family is thus emphasised as opposed to sole attention being placed on an individual. An alienated child can then be defined as a “child who persistently refuses and rejects visitation because of unreasonable negative views and feelings” (Kelly & Johnston, 2001, p. 251). The authors further highlighted that *alienated* children should be differentiated from those children who resist visitation for a variety of normal and realistic reasons, such as an abusive parent. The authors suggested that a child’s relationship with parents can be conceptualised along a continuum of positive and negative interactions.

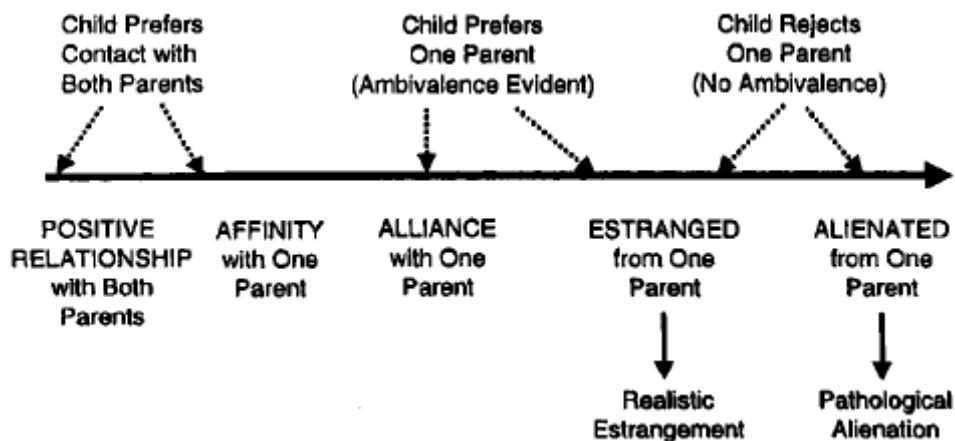


Figure 3-2 A continuum of children’s relationships with Parents after Separation and Divorce (Kelly & Johnston, 2001, p. 252)

The conceptualisation of Kelly and Johnston further provides a systemic framework to adequately present an alienated child's context. Figure 3-3 below is a graphic representation of such a framework, and includes the child's background, the dynamics of the divorce, parent and child temperament, cognitive capacity and age.

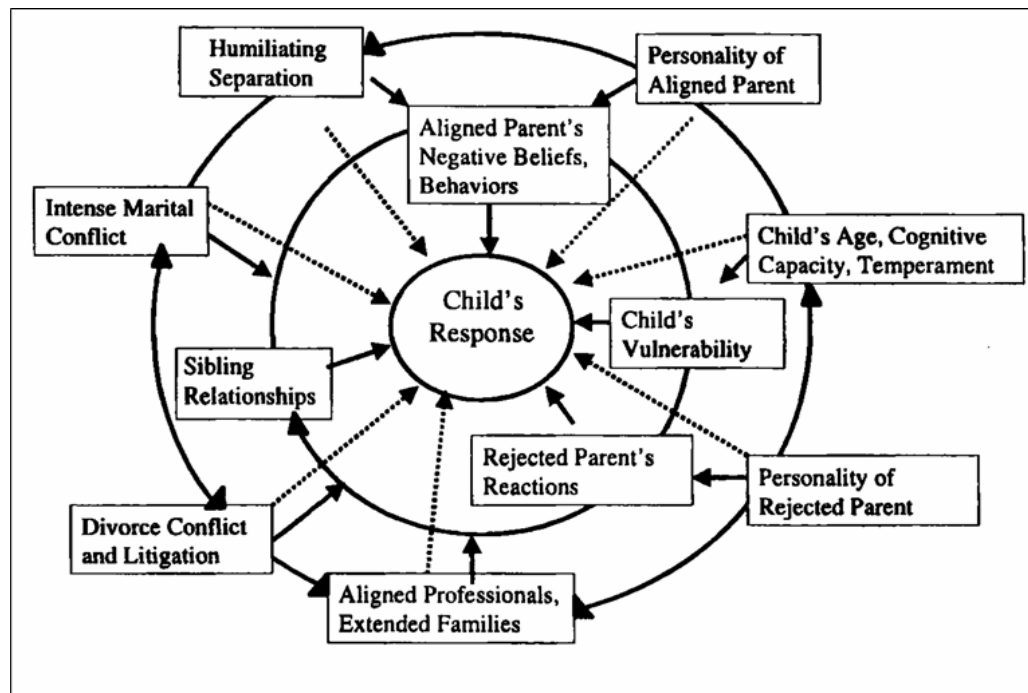


Figure 3-3 Background Factors, intervening variables and the child's response (Kelly & Johnston, 2001, p. 255)

In further studies involving the model depicted in Figure 3-2, it was found that substantiated child abuse occurred in approximately 15% of cases. Forty percent of fathers and 15% of mothers perpetrated domestic violence. In such divorces, where alienating behaviour was the norm from both parents, only one fifth of the children were found to actually reject a parent (Johnston, 2005).

Milchman (2015) augmented the above arguments by differentiating between parental alienation and estrangement. Alienation, according to Milchman (2015) includes an “extreme attempt to interfere with the relationship between the child and the accused parent”, whereas, estrangement occurs when the child has good reason to resist contact with a parent,

for example, due to child abuse or domestic violence (p. 106). Another concept that is closely linked to alienation and estrangement is enmeshment. Enmeshment, which produces a form of fusion, describes a lack of clear boundaries between family members. In this unhealthy situation, children have difficulty in establishing a clear identity that is separate from the parents (Lorandos & Bone, 2016; Minuchin, 1974). The alienating parent often has difficulty separating his/her own feelings from those of their children. This blurring of boundaries is generally a manifestation of pathological enmeshment (Lorandos & Bone, 2016).

The above argument thus supports the notion that PAS should not be labelled and prescribed during custody disputes and litigation processes as a diagnostic term. It should, instead, be viewed as a description of symptoms of the current (dysfunctional) system. This view then recognises that PAS or the alienated child concepts do not exist as static and ‘new’ occurrences, but are perhaps a manifestation of the processes of the family, which were most likely evident prior to the custody dispute (Bow et al., 2002). In this context, new allegations could surface, at any point, as tactical moves in the ‘game’.

It is not uncommon for parents to engage in hostile and inappropriate behaviours, especially early on in the divorce processes. This behaviour generally is a manifestation of anger, emotional fragility and potential dependence on the children for self-esteem (Stahl, 2003). Despite the controversy around the phenomenon, PAS still remains a “fashionable legal strategy” in contested divorces (Johnston, 2005, p. 759). This reiterates that concepts such as PAS should not be seen individually, or as a standalone occurrence, but rather as part of a complex context in which the system can best be described as a problem-determined system. And so PAS becomes a manifestation of how family members and professionals co-create an ecology of ideas around the problem (Fasser, 2014).

Assessing for relocation purposes

Relocation evaluation, as part of custody cases, is one of the most difficult and challenging concepts to assess (Austin & Gould, 2006; Stahl, 2013). Even in low conflict families, relocation tends to create difficulties in reaching agreements with regards to the parenting plans and care arrangements. This is further complicated when parents are faced with adverse divorce processes and ensuing custody battles (Pawlowski, 2007). In the past, relocation cases were not necessarily a problem because one parent was generally awarded sole custody of the minor children. On an international front, since the 1980s, there has been an increase in joint/shared custody being awarded that has led to relocation cases becoming a major issue (Stahl, 2013). In South Africa, legislation clearly indicates that both parents have parental rights and responsibilities towards the children, unless the court decides otherwise, and so professionals who are involved in assisting in making decisions have a difficult task when a parent intends relocating. This is another area that has largely been unexplored, especially within the South African context.

Relocation cases are complex, and the evaluators and legal professionals are required to assess whether the intended move is to the benefit, or detriment, of the minor children and custodial parent (Austin & Gould, 2006; Goldstein, 2016a). One of the complicating factors involved in international relocation is the involvement of two or more legal systems of the countries involved (Pawlowski, 2007). Relocation varies from moving back to family, pursuing a career or educational opportunities, and protecting the children (Warshak, 2013). Stahl (2013, p. 440) indicated several reasons for parents wanting to relocate: a) Returning home to family for emotional and financial support, b) moving to be with a new partner c) moving to make a fresh start d) for a better lifestyle, e) moving to escape violence and control.

A concern that is directly related to relocation is whether the move of one parent is inherently aimed at punishing the other parent. In other words, is the decision to relocate based on good-faith or bad-faith (Stahl, 2013). Masilla and Jacquin (2016) indicated that parents tend to consider their own needs and wants when considering relocation and that the children's interests are not primary. For these reasons, decisions around relocation need to take several aspects into account, including: the risk-benefit analysis of the move, whether the move is in the best interest of the children and the benefits of having both parents actively involved in the children's life (Austin & Gould, 2006; Stahl, 2013).

A prevalent phenomenon in South Africa is the number of families that relocate due to a variety of reasons. Evaluating domestic relocation cases has its own challenges; and this is further complicated if the intended relocation is international (Masilla & Jacquin, 2016; Warshak, 2013). The Hague Convention, to which South Africa belongs, as well as the USA, South American countries, most of Europe, Australia and New Zealand, assist in returning children who have been removed from another Hague convention country without the consent from both parents (Pawlowski, 2007; Stahl, 2013).

Although relocation may at times be a positive change, there are some challenges. Some of the burdens that are associated with relocation and which may impact the well-being of the minor children include: a) children tend to travel extensively between parents and b) the non-residential parent experiences difficulty in maintaining contact with the children.

Another challenge is the potential for attorneys, advocates, Judges and child custody evaluators to become biased in the decision making process (Masilla & Jacquin, 2016; Stahl, 2013), and the following guidelines should be taken into consideration:

- a) Bias in relocation cases,
- b) The whole case,

- c) The children's ages,
- d) The distance of the move,
- e) The children's psychological functioning,
- f) The degree of the non-residential parental involvement,
- g) The strengths, resources and vulnerabilities of the moving parent,
- h) The parenting effectiveness of both parents,
- i) The history, nature and degree of parental conflict,
- j) The history of any domestic violence,
- k) The social capital in each location (i.e. the network of social relations in a society)
- l) Each parent's ability to be a responsible gatekeeper and support the children's relationship with the other parent, and
- m) The recency of the separation and divorce.

For these reasons, relocation cases rarely satisfy each party's needs in totality, and ultimately require balancing mobility on the one hand and stability on the other (Carmody, 2007). Relocation cases are unique, and there are no hard and fast rules to assist in making it easier (Carmody, 2007; Masilla & Jacquin, 2016; Stahl, 2013). Mediation, in which relocation is considered for the appropriate reasons, is recommended in such cases.

Assessment of child physical and sexual abuse in child custody evaluations

Assessing child physical and sexual abuse in the context of care and contact evaluations is multifaceted and challenging for several reasons. Similarly to assessing for relocation purposes, there are no set guidelines for the appropriate methods to follow and psychologists tend to differ in how they conduct abuse assessments (Bow et al., 2002; Gava & Dell'Aglio, 2013). Sexual abuse allegations in child custody evaluations, which can emanate at any point in the process, generally complicate the evaluations. Approximately only 10% of custody evaluators know how to effectively assess sexual abuse allegations, and

so in light of the lack of formal guidelines, psychologists are guided by the practices of the custody assessments (Bow et al., 2002). Validating a history of abuse in families is at times difficult due to the secrecy and denial that are formidable aspects of abuse (Jaffe, Lemon, & Poisson, 2003). This highlights the importance of developing appropriate and effective models of assessing abuse in care and contact evaluations. This area, which warrants much attention, will hopefully be addressed in future studies.

Usefulness of psychological assessment data

Psychological assessment in South Africa is a topic of debate (Laher & Cockcroft, 2013). The reasons for this are plentiful, but of importance is South Africa's turbulent past and the discriminatory uses of instruments that were used, as well as the lack of established norms for many of the instruments. Over the last couple of decades, there has been an increase in attention paid to the use of psychometric assessment instruments in South Africa. Despite the challenges of using psychometric instruments in custody matters to address the above mentioned factors, authors are of the opinion that forensic assessments provide useful information in the testing of hypotheses and theory building (Erickson, Lilienfeld, & Vitacco, 2007; Gould, 2005; Jaffe & Mandelew, 2008; Meyer et al., 2001; Roos & Vorster, 2009). Gould (2005) proposed that "forensic assessment can circumvent problems commonly associated with clinical assessment by imposing somewhat greater structure and greater direction on the accumulation of data" (p. 53). According to Meyer et al. (2001) psychological assessment is a distinctive and unique aspect of psychological practice and professionals should be able to provide a sound rationale for the use of assessment instruments. Meyer and colleagues further stated that one particular instrument may be beneficial for one particular individual and so the "bureaucratic rules about appropriate test batteries are highly suspect" (p.129). The authors further emphasised that considering test data in isolation limits evaluators in making sound judgements. And so the failure to

differentiate between psychological testing and psychological assessment, as discussed earlier, leads to interrogations of the utility of psychological tests (Meyer et al., 2001).

Despite those who are uncertain with regards to the presentation of psychological science in a courtroom, there is evidence of the usefulness of objective psychological testing in forensic contexts (Gould, 2005; Jaffee & Mandeleew, 2008; Meyer et al., 2001; Posthuma, 2016; Rohrbaugh, 2008). It is perhaps not the use of psychological tests, but rather the importance of the instrument being useful for the purpose and reason for the assessment, that must be considered (Gould, 2005). The onus of demonstrating the psychometric test properties and the applicability thereof rests solely on the evaluator using them (Erickson et al., 2007b).

For example, the Minnesota Multiphasic Personality Inventory -2 (MMPI-2) and Millon Clinical Multiaxial Inventory –III (MCMI III), which are tests of psychopathology and personality functioning, and not of parenting capacity, can be used to confirm or disconfirm hypotheses with regards to the parent’s functioning (Gould, 2005). As a summary, the following table briefly highlights a few commonly used psychometric test instruments, as well as the benefits and drawbacks of these instruments. This is by no means an exhaustive list of all the possible instruments used in custody matters.

Table 3-4 *List of commonly used psychometric tests*

OBJECTIVE INSTRUMENTS	
Minnesota Multiphasic Personality Inventory -2 (MMPI-2)	An objective, self-administered inventory of adult personality and psychopathology. Designed to measure a number of major personality patterns and psychological disorders.

	<p>Well researched and most widely used test in child custody evaluations with strong validity and reliability properties. Not normed for the South African population (Butcher, Graham, Ben-Porath, Tellegen, & Dahlstrom, n.d.; Erard & Viglione, 2014; Erickson et al., 2007a, 2007b; J. R. Graham, 2012; A. M. Jaffe & Mandelew, 2008; Posthuma, 2016; Rohrbaugh, 2008).</p>
<p>Millon's Clinical Multiaxial Inventory –III (MCMI III) (Latest version MCMI-IV)</p>	<p>An objective inventory of adult personality and psychopathology. Used frequently in child custody evaluations. Tends to be sensitive to personality disorders. Not normed for the South African population. Some concerns with regards to the tendency of the MCMI-III to produce false positives on certain personality disorder scales (Erard & Viglione, 2014; Erickson et al., 2007a, 2007b; Flens, 2005; A. M. Jaffe & Mandelew, 2008; Millon, 2009; Posthuma, 2016; Rohrbaugh, 2008; Stolberg & Kauffman, 2015).</p>
<p>Personality Assessment Inventory (PAI)</p>	<p>Objective, self-administered inventory of adult personality and psychopathology. Extensive research has supported the PAI as an objective psychological test (Erard & Viglione, 2014; A. M. Jaffe & Mandelew, 2008; Morey, 1991; Posthuma, 2016).</p>

16 Personality Factor -5 (16 PF5)	A trait based test of normal personality. Although the test is not designed to assess psychopathology, the 16PF is a popular test used in clinical settings, as well as child custody evaluations. Has little scientific support in the custody context (Posthuma, 2016; van Eeden, Taylor, & Prinsloo, 2013).
INVENTORIES	
Parent-Child Relationship Inventory (PCRI)	Aims to assess aspects of parenting. Used in a small portion of evaluations and is one of the few parenting tests considered to meet the psychometric threshold of acceptability in child custody evaluations. Has been researched extensively and is considered a valid and reliable tool to use in custody evaluations (Posthuma, 2016; Rohrbaugh, 2008).
Parent Stress Index (PSI)	Designed to identify potential dysfunctional parent-child relationships and potential stress in parenting. Although not developed for forensic settings, some authors are of the opinion that it remains useful. Limited psychometric criteria threshold for custody evaluations (Foster, 2016; Goldstein, 2016b; Posthuma, 2016; Rohrbaugh, 2008).
Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT)	Used to quantify parenting abilities based on results from interviews, observations and various psychological tests. Applied in only a small number

	of custody evaluations (10%). Has poor psychometric properties and little research is available with regards to its usefulness. The limitations of conceptualisation and psychometric properties suggest that it is not an appropriate test for custody evaluations (Rohrbaugh, 2008).
PROJECTIVE INSTRUMENTS	
Many authors argue against using projective tests due to the significant lack of reliability and validity data (Goldstein, 2016c; Lilienfeld, Wood, & Garb, 2000).	
Rorschach Performance Assessment System (R-PAS)	Measures personality characteristics and emotional functioning of children and adults. Provides an understanding of the interactive and dynamic personality processes of an individual. Used often in child custody evaluations but remains both popular and controversial. Despite the critiques, it is regarded as a useful integrative tool by many and it's use is often underestimated (Brink, 2013; Erard & Viglione, 2014; Erickson et al., 2007a, 2007b; Goldstein, 2016c; Lilienfeld et al., 2000; Rohrbaugh, 2008).
Thematic Apperception Test (TAT)	A projective measure that explores an individual's projected aspects of the self. The second most utilised projective measure but has a paucity of research to validate its psychometric properties on custody matters (Erickson et al., 2007b; Goldstein, 2016c; A. M. Jaffe & Mandelew, 2008; Lilienfeld et al., 2000).

<p>Children's Apperception Test (CAT)</p>	<p>A method used to facilitate understanding of a child's relationship to significant figures. The most widely used instrument in custody evaluations (Bellak & Abrams, 2012; Goldstein, 2016c).</p>
<p>Sentence Completion Series - Adult</p>	<p>Consists of a variety of topics an individual completes. The responses, based on themes, conflicts, conflict resolution styles, wishes, fears and the presented world-views, are analysed. Little scientific evidence of its usefulness and some authors caution against using this tool (Goldstein, 2016c; A. M. Jaffe & Mandelew, 2008).</p>
<p>Drawings: Draw a Person (DAP) Draw a Person in the Rain (DAP-R) House-Tree-Person (H-T-P) Kinetic Family Drawing (KFD)</p>	<p>Drawings are generally understood to elicit a person's unconscious material and the use and interpretations of drawings in evaluations varies from psychologist to psychologist. Despite some evaluators making use of projective drawings, the tools lack reliability and validity properties in custody matters. Proponents of drawings suggest that the tool provides rich clinical material, while critics argue that it lacks standardization, norms, reliability and validity (Erickson et al., 2007b; Goldstein, 2016c; A. M. Jaffe & Mandelew, 2008; Lilienfeld et al., 2000; Rohrbaugh, 2008)</p>

Bene Anthony Family Relations

Was developed as a technique for the objective

Test	assessment of the child's emotional relations with his family (Bene & Anthony, 1985).
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Literature suggests that objective tests, rather than projective instruments, are preferred due to the structured and standardised measuring abilities of the instruments (Goldstein, 2016c; Jaffe & Mandelew, 2008; Lilienfeld et al., 2000; Rohrbaugh, 2008). Projective instruments tend to be more unstructured and the reliance on the interpretative skills of the evaluator is great (Roos & Vorster, 2009). In their 20 year study, Ackerman and Pritzl (2011) found that assessments of adults comprised of the following tests: MMPI-2 in 97.2% of cases, MCMI II/III in 71.3% of cases while intelligence tests were administered in 65.5% of cases. The Rorschach was only administered in 51.9% of cases while the TAT and projective drawings were used in 28.9% and 26.8% of cases respectively. The PAI was used in 28% of matters. Although evaluators use the 16PF during custody assessments, in Ackerman and Pritzl's (2011) study, only 15.4% of the custody evaluations included the 16PF. The Beck Depression Inventory was used in 31.2% of case. The Minnesota Multiphasic Personality Inventory – Adolescent (MMPI-A) was used in 55.2% of the cases.

According to Bow and Quinnell (2001, 2002), child psychometric tests are used in only 39-61% of cases. According to the authors, intellectual assessments were often included, despite them not being relevant for custody matters, unless an indication of cognitive deficits was apparent. Projective drawings were used in 57.5% of the cases, while other projective tests were used less often. The Rorschach was used in 39.5% of cases, CAT/TAT used in 38.7% of cases and the Family Relations Test in only 15.7% of the cases.

In addition to the psychometric tools mentioned above, Ackerman and Pritzl (2011) included an analysis of the use of specialty tests. The Parenting Stress index was used most often, at 65.7%. The Child Abuse Potential Inventory (CAPI) was used 51.6% of the time, Parent-Child Relationship Inventory 42.9% of cases, and the Parent Awareness Skills Survey (PASS) at 27.6% of the time. The Aspect was used in 25.8% of cases, while the least used tests included the Adult Adolescent Parenting Inventory (11.8%) and the Custody Quotient (8.3%).

Despite the usefulness of parenting inventories to provide invaluable information, only 45-66% of custody valuations included inventories (Pepiton et al., 2014) such as:

1. Parent Child Relationship Inventory (PCRI)
2. Parenting Stress Inventory (PSI)
3. The Child Sexual Behaviour Inventory (CSBI)
4. Child Abuse Potential Inventory

In summary, psychological testimony is valuable to the courts, particularly when matters are complicated, such as issues relating to parenting, psychological and emotional health and parent-child relationships. Such testimony is strengthened when validated by scientifically reliable and valid tests. Experts' interpretations, which contribute to clinical and legal decisions being made, have potentially life-altering consequences. Should an evaluator use tests that have weak psychometric properties in their test batteries, the responsibility lies with them to justify the reasons for including such instruments (Erickson et al., 2007b).

Mediation

Mediation can be defined as a form of intervention during which a mediator assists the parties to negotiate issues (Roberts, 2014). Mediation, which is regarded as an alternative approach to the adversarial litigated processes of divorce, aims to diffuse co-parenting

conflict and to ensure a smoother more satisfactory process for all involved (O'Hara Brewster et al., 2011; Sbarra & Emery, 2008). Litigation tends to be clouded by a win-lose process, while mediation, which is more cooperative and interactive approach than litigation, aims to assist conflicting parents in meeting resolutions (Sbarra & Emery, 2008). That is, mediation is to assist the co-parents in negotiating and ultimately reaching consensus with regards to care arrangements and developing a parenting plan (Froyd & Cain, 2014). A parenting plan is required to be formulated prior to the court making decisions. The compilation of a parenting plan by psychologists promotes the interests of the minor children in a collaborative process that involves both parents (Roos & Vorster, 2009). Mediation, unlike litigation, is a process that involves discussions with a single professional who, on the basis of cooperation and not competition, assists the parents in reaching decisions with regards to the custody of their children (Emery & Wyer, 1987; Stahl, 1994). This is meant to be distinguished from psychotherapy, in that addressing the emotional issues and interpersonal difficulties are directly related to an objective, that being mediation (Emery & Wyer, 1987). Although this process sounds to be conducive to a healthier resolution, it is not uncommon for parties to resist mediation and perhaps continue the dysfunctional patterns that were characteristic of their previous parental relationship. Oftentimes parental psychopathology, or the problems inherent in the parental relationship manifest in mediation, thus preventing a solution-focused process.

Literature suggests that there are several benefits of mediation. First, mediation could significantly reduce legal costs. Second, it may contribute to parents feeling empowered by providing their input as opposed to “their issues being resolved in an adversarial proceeding vis-à-vis an impersonal legal ruling” (Froyd & Cain, 2014, p. 46). Froyd and Cain (2014) proposed a humanistic and person centred model of mediation where parents are viewed as resourceful and self-aware. Regardless of the above mentioned, the process of mediation is

still very much under researched and remains an area for further investigation (Emery & Wyer, 1987; Froyd & Cain, 2014; Sbarra & Emery, 2008).

Consultant and Expert Witness

Appointed consultants are either mandated as trial consultants, or as product review experts (Austin et al., 2011). According to Kaufman (2011) psychologists are hired as consultants to assist the legal team in custody matters. Psychologists are at times hired to assist legal professionals in an advisory capacity, or alternatively to testify as expert witnesses on matters that are not in the courts' scope of practice (Ackerman, 2001; Gould et al., 2011). As a consultant, a psychologist may be approached by an attorney, or advocate, to assist with understanding the psychological factors inherent in complex custody cases or to review or critique colleagues' work (Goldstein, 2016b; Kaufman, 2011). Austin et al. (2011, p. 54) suggested that the role of a consultant reviewer is to conduct "an objective and balanced review of the evaluator's work product-report and to provide candid and fair feedback to the retaining attorney on the strengths as well as any weaknesses of the evaluation". The goal is to assist the legal professional to understand certain aspects pertaining to family dynamics and psychological matters. The involvement should not be unilateral and make inferences or recommendations with regards to custody and visitation arrangements (Stahl, 1994). Instead the consultant is employed to be helpful and explain psychological matters to the court. The BIC should remain the goal, despite being called by one particular party.

Psychologists may be called to testify in order to assist the court in understanding certain psychological concepts and matters relating to the case. According to Austin et al., (2011, p. 57), psychologists offer *instructional testimony*, which is "designed to inform and educate the court about specialized, technical, or research-based knowledge as opposed to case-specific testimony". In this capacity, as expert witnesses, psychologists communicate to

the court the main issues of the case and present data and results of an investigation to help the court come to conclusions (Kaufman & Lee, 2014). In the capacity of consultant, the psychologist is not involved in the assessment of the family members, and so the testimony is usually associated with the mental health professional's knowledge, expertise and experience on certain matters, for example assisting the court in understanding the theoretical and statistical underpinnings of psychometrics, or clarifying ethical considerations in practice. As the role of consultant develops and becomes more prevalent in custody matters, Kaufman (2011) suggested that psychologists should reflect on the parameters of the role, and the ethical considerations involved when working in an intricate arena.

Case Management

There is a significant gap in literature with regards to the psychologist acting within the role of case manager (i.e. a professional who oversees the implementation of court orders, or recommendations of evaluating professionals). Despite the lack of literature in the psychological fraternity, it is common practice for a case manager to be appointed by the courts to manage a particular high conflict case. At times the case managers appointed are Judges or advocates, yet at times psychologists are called to act in this capacity. In essence, the psychologist fulfils a complex role that encompasses a variety of multifarious processes, including the roles of investigator and monitor. In addition to this, psychologists tend to become the 'go to person' in times of conflict, confusion and dispute, and are often contacted outside of working hours and over weekends to resolve a particular crisis. Stahl (1994) explicates the role of a Special Master which can be likened to the role of a case manager in South Africa. He defined the role of Special Master as a quasi-judicial task that is often requested after an evaluation is completed. The role is to provide on-going monitoring of cases or to settle a particular issue. This task is complex and requires skills of a "detective, evaluator, therapist, educator, teacher, parent, mediator and judge" (Stahl, 1994, p. 18). He

further identified the importance of this role as a means to assist in settling disputes and avoiding court processes. Unlike appointed Judicial case managers, and unless stipulated in a court order, psychologists in South Africa do not have the legal powers to issue directives. This then suggests that the authority of a psychologist as case manager only extends to as far as the parents are willing. Without a modicum of willingness, a mediated process is impossible (Roberts, 2014) This mediated process can provide a platform for parents, who tend to be more litigious, to learn different ways of approaching the conflict and co-parenting, and to minimise the financial and emotional costs of the divorce proceedings (Stahl, 1994).

The alternative role *parental coordinator* may replace the idea of psychologists as case managers in South Africa. Parental coordination has been proposed as a more accurate description of the role psychologists' play and can be defined as a "dispute resolution process provided by a mental health or legal professional that assists high-conflict parents to implement their existing parenting plan in a child-focused and expeditious manner to minimize parental conflict, thereby reducing risk to children" (Sullivan, 2013, p. 57). According to Coates (2015), parenting coordinators serve as case managers in high conflict cases in which structures in the family are set up with the goal of protecting the children. In essence parenting coordination has developed as a quasi-judicial role and an alternative dispute resolution to the adversarial processes in family courts and to assist high conflict co-parents to implement their parenting plan (Coates, 2015; Greenberg & Sullivan, 2012; Henry, Fieldstone, & Bohac, 2009; O'Hara Brewster et al., 2011; Parks, Tindall, & Yingling, 2011; Sullivan, 2013). Although this area of practice is rapidly growing in popularity, it is largely understudied with very little empirical evidence (Henry et al., 2009; O'Hara Brewster et al., 2011; Parks et al., 2011).

The Treating Expert

Divorce, which is in itself a difficult process, is further complicated when custody is contested. Treating psychologists (i.e. psychologists who provide psychotherapy) may be recruited to provide therapeutic assistance to family members. Treating professionals may be mandated by the courts, or requested by the parties themselves, to provide treatment for specific reasons (Greenberg & Gould, 2001; Lebow & Slesinger, 2016). Reasons for therapeutic referrals are vast and could include helping children to adjust to new parenting plans, relocation, reunification, and assisting with visitation arrangements. There may be instances where a therapist is involved with the family members prior to the divorce proceedings and retained throughout. Therapists generally have a more detailed and longitudinal engagement with the families (or family members) and are not responsible for the psycho-legal recommendations or decision making process (Greenberg & Sullivan, 2012). There is; however, a risk for treating psychologists in that they may become unintentionally biased towards their client thus leading to unethical behaviour (Greenberg & Gould, 2001).

Greenberg and Gould (2001) cautioned professionals to be sensitive to the differences that are inherent in clinical psychotherapy and psychotherapy in a forensic context.

Traditionally, psychotherapy provides a non-threatening, secure environment in which client privilege (confidentiality) is acknowledged and where rapport between therapist and client is established early on. Psychotherapy in a forensic context differs from non-forensic psychotherapy in that there may be limits to such therapist-client confidentiality, “the course of the conflict may be affected by an adult or child’s progress in treatment, and the expectations of the parents, counsel and the court may profoundly affect the course of treatment in any number of ways” (Greenberg & Gould, 2001, p. 471). In addition to this, the therapist may be expected, and even ordered by the courts, to divulge information that would ordinarily be subject to confidentiality (Lebow & Black, 2012; Lebow & Slesinger, 2016;

Perlman, 2012). The legal struggle and the conflictual divorce process may impact the parents' perceptions of, and behaviours towards, the best interest of the children, their abilities to separate their own needs from those of their children as well as the interactions between the parents or children and the therapist. While therapists may often keep an open channel of communication with their clients' legal team, there is an opinion that in the case of treating a child, therapy should focus purely on the therapy itself with the exclusion of discussing the therapeutic process with attorneys (Perlman, 2012).

This role of the psychologist as a treating expert perhaps warrants further investigation as it is by no means insignificant. The role of the treating expert differs from the child custody evaluators in that the goal of the former is intervention, while that of the latter is to gather information to answer certain questions about family members (Greenberg & Gould, 2001). The treating expert has a much narrower area of focus during a longer period of interaction, whereas the child custody evaluator tends to have a broader area of focus and engages with family members in a shorter time frame. Greenberg and Gould (2001) highlighted that a treating expert should not stray beyond the boundaries and express opinions, or make recommendations on forensic matters. The role of a psychologist as the treating expert has been largely under discussed and relatively little attention has been devoted to the role they play in divorce cases (Greenberg & Gould, 2001).

Practising Ethical Forensic Psychology

Ethical issues may, on the surface, appear to be clearly either black or white. In reality ethical matters are anything but straightforward, and are often a shade of grey (Swanepoel, 2010). Cohen and Malcolm (2005, p. 65) stressed that the work of psychologists can significantly influence both the court outcomes of matters and case law and so such expert opinion takes on a "powerful ethical and human rights dimension". The work by psychologists who render services should then be consistent with clinical theory and

scientific research, as well as the legislation and legal standards (Greenberg et al., 2004; Posthuma, 2016). Although there is literature that deliberates the methodological practice of psychologists, theoretical principles have been less developed (Milchman, 2015). Although no ethical code can ever address all contentious cases in totality, Martindale and Gould (2004) suggested that psychological services are best met when ethical standards are clear and specific. The probability of disciplinary action against professionals are high when rules are “fuzzy” (Martindale & Gould, 2004, p. 4). The psychologist should maintain a high level of ethical work that educates the legal profession about the critical issues in custody work (Stahl, 1994).

It is generally accepted that each party or client has the right to be informed about the purpose of the assessment, the methodological process of the evaluation and the right to feedback post evaluation (Roos & Vorster, 2009). In addition to this, the following ethical considerations provide a terse description of what professionals ought to keep in mind when conducting forensic work. The following six aspects summarise some of the pertinent considerations as mentioned in the literature.

Competency and the Importance of Theory and Research

As previously mentioned, forensic work is regarded as a specialist area and so it stands to reason that psychologists should maintain the highest standards of professional integrity (Association of Family and Conciliation Courts (AFCC), 2006; Roos & Vorster, 2009; Swanepoel, 2010). According to the Health Professions Act (Act 56 of 1974), a psychologist shall “base his or her psycho-legal work on appropriate knowledge of and competence in the areas underlying such work, including specialised knowledge concerning specific populations” (p. 36).

Prior to embarking on any custody work, Martindale and Gould, (2004) as well as Pepiton et al. (2014) suggested that psychologists should obtain training specific to custody, to read on the topic in-depth, understand legislation and obtain supervision. In summary, they suggested that psychologists should obtain training and skill sets in the following areas:

- a) Developmental and psychological needs of children
- b) Family dynamics
- c) Forensic interviewing of adults; forensic use of psychological tests and measures
- d) Ethics as specifically applied to forensic contexts
- e) Forensic risk management
- f) Theory and assessment of divorce, domestic violence; substance abuse, child maltreatment and abuse and child alienation
- g) Theory and assessment of child alienation; theory and assessment of high conflict post-divorce families
- h) Theory and assessment of child sexual abuse
- i) Distinctions between forensic and health-related evaluations (Association of Family and Conciliation Courts, 2006; Martindale & Gould, 2004, p. 7; Pepiton et al., 2014).

In line with the competency ideal, it is a given that psychologists' practising in the forensic context be aptly familiar with relevant literature and research with regards to the populations to whom they are providing services (Greenberg et al., 2004). This includes a knowledge base inclusive of children's adjustment to divorce, the impact of adult conflict on children, children's suggestibility, domestic violence, child abuse, alienation dynamics, and children's coping and development (Greenberg et al., 2004, p. 19). In addition to psychological theory, it is essential that the psychologist gain knowledge and be familiar with the legal arena, legislature and court processes (Vorderstrasse, 2016). Added to this, there is

an expectation that psychologists have at least three years of experience before embarking on this career path (Cohen & Malcolm, 2005).

Due to the complexities of custody work, and the adversarial nature of the work, it is advised that psychologists regularly receive training and education, and consult with colleagues and obtain supervision for their work in order to guard against errors and bias (Cohen & Malcolm, 2005; Pickar, 2007; Zumbach & Koglin, 2015). As mentioned earlier, there is concern about the training and level of competency of psychologists and a need exists for comprehensive training programmes, mentoring and supervision (Ribner & Pennington, 2014).

Confidentiality

An important ethical consideration in forensic work is that services are explicitly non-confidential (Greenberg et al., 2004; Roos & Vorster, 2009; Swanepoel, 2010). Unlike non-forensically related work, which is generally bound by the confidentiality clause, forensic work requires that the court has access to information that could assist in decisions being reached in line with the best interests of the children (Greenberg et al., 2004). Greenberg et al. (2004) further stated that obtaining informed consent is equally important as discussing the limitations of confidentiality, regardless of the mandated role. Pepiton et al. (2014) echoed this and stipulated that extensive information, including the “evaluator’s qualifications and role, policies, limits of confidentiality, procedures (including the nature of assessment instruments), and fees” (p. 85), needs to be outlined from the outset,

Professional Bias and Responsibility

Psychologists who undertake forensic work render their services to the court, and not for any one particular client. This implies that the work of psychologists should remain impartial and neutral at all time (Rohrbaugh, 2008; Roos & Vorster, 2009; Stahl, 1994;

Vorderstrasse, 2016). Authors are in agreement that objectivity, neutrality and unbiased perspectives should be common place when conducting custody evaluations (Allan & Louw, 2001; Goldstein, 2016b; Kirkpatrick et al., 2011; Pickar, 2007). A common source of bias may occur when evaluators have had a previous relationship with one of the parties (Pickar, 2007). At times, psychologists may inadvertently want to please a party, or a legal representative, and write reports in their favour (Pickar, 2007). In addition to formulating recommendations for a particular party or legal representative, another area of bias relates to evaluators focusing too heavily on the weaknesses of parents in custody evaluations and not enough on the parents' strengths (Eve et al., 2014; White, 2005). Confirmatory bias is also a concern that psychologists should guard against. This involves overvaluing evidence in support of one's hypothesis (Pickar, 2007). Regardless of the source of bias, and despite there being some literature addressing evaluator bias, Stahl and Martin (2013, p. 45) indicate that "all too often evaluator conclusions and recommendations are affected by evaluator bias" and therefore future research is critical in this field.

Professional Boundaries

The literature is clear that psychologists should avoid occupying dual roles, or engaging in multiple relationships (Association of Family and Conciliation Courts, 2006; Froyd & Cain, 2014; Health Professions Act No 56 of 1974; Martindale & Gould, 2004; Pepiton et al., 2014; Swanepoel, 2010). Multiple relationships often involve a level of bias and can lead to problematic outcomes. An example of this is when a psychologist engages in therapy with the parties as well as conducting a custody evaluation. It is advised that psychologists should therefore refrain from entering into multiple relationships in order to maintain objectivity in all aspects (Swanepoel, 2010).

Payment for Services Rendered

Practising Forensic Psychology is taxing and psychologists' work may be scrutinised by colleagues, as well as by the court. As was mentioned at the outset of this chapter, there are no set guidelines for fees in South Africa, and so psychologists tend to vary greatly in their fee structures. Several authors are in agreement that the payment structures are contracted with clients before any work begins, and that families are given an opportunity to clarify any concerns (Ackerman, 2001; Roos & Vorster, 2009; Stahl, 1994).

Ethical Report Writing

An integral part of evaluations is the ability to produce a comprehensive and well integrated report that answers the referral questions logically and is useful to the referral source (Roos & Vorster, 2009). To do this, Budd (2005) suggested that the report should be accurate, be written in an understandable manner, should emphasise the findings instead of the interpretations thereof, and should include a summary that responds to each referral question and delineates the data used to formulate opinions and recommendations (Budd, 2005, p. 435). Goldstein (2016d) is of the opinion that, too often, recommendations formulated in a report are not rationalised or connected to the body of data collected in the evaluation. This creates difficulty for other professionals to understand and appropriately use the reports in court. Vorderstrasse (2016) and Posthuma (2016) added to this and challenged an overly detailed report claiming that it can run the risk of further damaging the already deteriorating parental relationship. The use of psychological tests and the subsequent reports can exacerbate the already adversarial situation.

Other challenges inherent in some reports include bias towards a parent due to gender and confirmatory biases (Goldstein, 2016d), as well as overly lengthy reports. Cohen and Malcolm (2005, p. 80) suggested that psychologists should keep in mind that the evidence and

reports are summative statements aimed at addressing the referral questions and not a clinical case history.

Chapter Summary

Psychologists play a critical role in contributing to the decision-making process of the courts. However, psychologists may inadvertently contribute to, and maintain, the conflict embedded in the problem-determined system. As highlighted in this chapter, the expert opinion of psychologists concerning the care arrangements of minor children constitutes a specialised terrain where it is essential for professionals to have a thorough knowledge of the basic science of the profession and a good understanding of relevant legislation. This chapter drew on both international and local literature to explicate the context of custody evaluations, the roles and services that psychologists fulfil and offer, and the potential pitfalls embedded in doing this type of work. The following chapter introduces the legal context in South Africa and briefly positions the work psychologists do within the broader legal profession.

My Family



Drawn by: T

Age: Seven years, 6 months old

Position in family: Second of two children

Parents: Married

Chapter 4

South African Family Law and the Interface with Psychology

*“Psychology and the Law are disciplines that are,
from several vantage points, worlds apart”*

(Tredoux et al., 2005)

Introduction

Following on from the previous two chapters in which the context of care and contact was discussed, this chapter introduces the legal backdrop of Forensic Psychology. The South African Legal system is unique and encompasses a large body of complex knowledge (Tredoux et al., 2005). The focus of this chapter is not on an analysis of the legal system itself, but rather addresses the relevant legislation pertaining to this study. As previously mentioned, some psychologists work within a broad legal context (family law) and so it is necessary to explicate certain legal acts that guide much of the work. In order to link this with the work of psychologists, I will refer, where applicable, to legal case reports in which presiding officers refer to the work done by psychologists.

South African Law

The South African legal system is unique and despite South African Law being largely based on Roman Dutch Law, it is classically not Roman Dutch, English nor purely South African (Lenel, 2002). Instead it is considered a hybrid of Roman Dutch and English Law (Farlam, 2003; Lenel, 2002; van der Merwe & du Plessis, 2004).

In 1652, Jan van Riebeeck introduced Roman Dutch Law when he arrived in South Africa. In 1803, the British occupied the Cape and introduced English Law (Allen, 2005; Heaton & Roos, 2012; Lenel, 2002). In 1828, English Civil and Criminal Law were introduced to South Africa; and, at the same time a countermovement towards Roman Dutch Law was initiated (Lenel, 2002). The Dutch, who formed colonies in the Cape, introduced

Roman-Dutch Law, which has its roots in the old Roman legal system (Walsh, 2011). According to Farlam (2003), the 19th century is an important period in time during which the influence of the English law featured with regards to Constitutional and Commercial Law. At the end of the Boer war Roman-Dutch Law and its principles of equality and justice were gradually replaced by English Law that was fully established by 1945 (Farlam, 2003; van Niekerk, 2013). However, it is acknowledged that Common Law, a primary source of the law, is based on Roman Dutch law and not on English Law (Heaton & Roos, 2012; Lenel, 2002). It was only in 1910 that the Union of South Africa was formed, with South Africa gaining its independence from England around 1936 (du Bois, 2004; Heaton & Roos, 2012; Lenel, 2002). In 1994 the first democratic elections took place and a new democratic constitutional state was formed (du Bois, 2004; Lenel, 2002).

South African Law is thus multi-layered and comprises several different legal systems (Heaton & Roos, 2012; Lenel, 2002; Walsh, 2011). South African Law, according to Lenel (2002, p.7) consists of the following systems:

1. Tribunal Law and Islamic Law
2. State Law
3. English Law
4. Roman Dutch Law as common law
5. Roman Dutch (Corpus Juris Civilis)

In 1996, South Africa enacted a new Constitution that rejected discrimination and highlighted two key values, that of equality and human dignity (Heaton & Roos, 2012; Sloth-Nielsen & van Heerden, 2014). South African law is currently viewed as an intriguing mixed system that is renowned for its reformations from an oppressive apartheid system to a strive for equality (du Bois, 2004; van der Merwe & du Plessis, 2004). In line with this, the

new Children's Act, Act 38 of 2005 was introduced. This key piece of legislation, which is discussed in more detail later in this chapter, guides professionals in the child custody arena.

Despite the new Constitution in South Africa, which introduced an ethos of a “democratic Rechtsstaat”, there is still a significant gap between the law on paper and the capacity to implement delivery services at ground level (Dawes, 2012, p. 4; du Bois, 2004). Du Bois (2004) stated that the reason for this gap is that the legal system is beyond the financial means of the majority of South Africans. Nevertheless, the legal culture is shaped by the central role of constructing an “integrated, egalitarian and democratic society” (du Bois, 2004, p. 5), with the protection of children as of utmost importance.

Family Law in South Africa

Legal pluralism is a feature of many African countries as is the case in South Africa, and is equally apparent in the country's Family Law context. South African Private Law is also a pluralist system and in the eyes of the South African constitution, African indigenous laws are on an equal footing with Common Law (van der Merwe & du Plessis, 2004). According to Lokin (2008) both the Roman Dutch and English Law have become intertwined and have largely formed South African law, with an additional third source being that of indigenous African Law. Price (2012) states that English Law has woven itself into South African Common Law and has played a significant role in the evolution of law in South Africa. Price further addressed the debate around the relationship between constitutional rights, and Private Law in South Africa. However, in order to present South Africa's complex legal system sufficiently, a great deal of attention must be afforded to this task. This is both beyond the scope of the present study as well as my scope of expertise. For this reason, a brief discussion on Family Law, as it pertains to custody evaluations and the relevant legislature in South Africa, is discussed below.

Family Law, which is a branch of Private Law in South Africa, has undergone significant changes over the last decade. It is primarily concerned with the relations between private individuals, for example husbands and wives, or parents and children (Bonthuys, 2002; Sloth-Nielsen & van Heerden, 2014). Prior to 1979, the grounds for divorce were based on the Roman Dutch principle of culpability; however, since the promulgation of the Divorce Act (Act of 1979), irreversible break-up of a marriage has been the general basis for divorce (Scherrer & Louw, 2003). This principle of no-fault divorce was implemented in the USA in 1960, and is practised under the premise that no marriage must be dissolved without due consideration. However, delaying the dissolution of a marriage that no longer exists is not in the best interests of all parties involved (Scherrer & Louw, 2003). Research estimates that despite the efforts of the no-fault divorce to diminish bitterness and therefore conflict, in 50% of cases couples, in the USA, are still in conflict five years post-divorce (Berger, 1996; Wallerstein, Lewis & Blakeslee, as cited in Scherrer & Louw, 2003).

Family Law in South Africa has changed considerably due to the South African Constitution that contains the Bill of Rights (Human et al., 2010). Family Law is comprised of both Statutory Law as well as Common Law; however, with the changes in Family Law, both Customary Law and Religious Law have also been incorporated (Bonthuys, 2002; Sloth-Nielsen & van Heerden, 2014). The South African Constitution forbids discrimination, and so, according to Sloth-Nielsen and van Heerden (2014), legislation now addresses areas that were previously not incorporated. These include (a) same-sex marriages or heterosexual partnerships not formalised; (b) customary and religious marriages; (c) recognising members of the extended family/step parents/foster parents; and (d) the recognition of child headed households. During the early years of Nelson Mandela's presidency, the government began a review of the laws governing children, including those related to divorce. This culminated in a "comprehensive piece of literature", the Children's Act, Act 38 of 2005 (Walsh, 2011, p.

202). Post-apartheid, the democratically elected government made significant commitments to the welfare of children. According to Walsh; however, by 2000 this was still not seen to fruition. This was due to the South African government being financially ill equipped (Walsh, 2011, p. 212). The changes

As stated earlier, the legal system in South Africa consists of several layers and is a “direct reflection of the changing colonial rule that South Africans experienced” (Walsh, 2011, p. 213). With the introduction of both Roman-Dutch Law and English Law in South Africa, came the view that the father was the primary protector of his children’s welfare, and therefore the fathers’ rights were superior to the mothers’ (Walsh, 2011). During the 17th and 18th century, paternal dominance determined that children ‘belonged’ to their fathers, and so fathers had absolute authority over their children (Fuhrmann & Zibbell, 2012; Goldstein, 2016a; Jameson, 2001; Roos & Vorster, 2009). It was during these times that children were seen as property of the father, and so it would be expected that the best interests of the children were not given priority. Near the end of the British colonial rule, and during the industrial revolution, the prevailing view of children as the property of a father started to change. The focus later shifted to the recognition of the competence of both parents, and later to an overwhelming emphasis on the maternal caregiver as the preferred custodian (Ackerman, 2001; Fuhrmann & Zibbell, 2012; Goldstein, 2016a; Louw, Scherrer, & Esterhuysen, 2004). This era gave rise to the understanding that a child has a primary attachment to one parent, usually the mother, and so the ‘tender year’s doctrine’ (i.e. the legal principle that custody of young children should be awarded to mothers) was shaped. In 1907 and 1909, in the cases of *Cronje vs Cronje* and *Tabb vs Tabb* respectively, it was clear that the legal preference for the father was changing, and that the main consideration should be the best interests of the children (Walsh, 2011).

This shift towards the best interests of the children became more solidified when the new Constitution and Bill of Rights were introduced in South Africa and as a principle, “[a] child’s best interests are of paramount importance in every matter concerning the child” (South African Constitution, Bill of Rights, Section 28(2), p. 12). According to Sloth-Nielsen and van Heerden (2014), the changes, as discussed above, illustrate the dynamics of the social reality of South African family life, with the constitutional imperatives of equality and dignity as the starting point of all decision making. In addition, the “paramountcy of the child's best interest is one of the most progressive moves towards recognition of, and respect for, children's rights” (Mailula, 2005, p. 26). In line with the above, the Family Courts now focus on the protection of children in a litigated divorce or separation (Vorderstrasse, 2016).

Legislation guiding care and contact evaluations

Regardless of the roles psychologists are mandated to fulfil, there are several legislative acts that guide their obligations. These acts, which form the basis of the legal arguments put forth in any custody matter, are the backdrop against which decisions are made in court. In all custody matters heard in the High Court, a Family Law Judge remains the upper guardian of all minor children, and so a Judge is required to ensure that all decisions with regards to the well-being of the minor children are made according to the best interests of the child principle. In order to assist the courts in reaching these decisions, in 1987 the Office of the Family Advocate was established. The aim of the Family Advocates Office is primarily to act as a representative for minor children and to ensure that the best interests of the children are upheld (Kaganas & Budlender, 1996; Roos & Vorster, 2009).

What follows is a synopsis of the pertinent legislation that guides care and contact work and the decisions made in court.

Children's Act 38 of 2005

The Children's Act, which was promulgated in 2007, became officially operational only in 2010 (Sloth-Nielsen & van Heerden, 2014). The primary aims of the new act include:

1. The promotion of the preservation and strengthening of families.
2. To give effect to the following constitutional rights of children:
 - a. Family or parental care
 - b. Social services
 - c. Protection from maltreatment, neglect, abuse or degradation
 - d. That the best interests of a child are of paramount importance in every matter concerning the child.
3. To give effect to the Republic's obligations concerning the well-being of children in terms of international instruments binding on the Republic.
4. To make provision for the promotion and monitoring of the physical, psychological, intellectual, emotional and social development of children.
5. To develop and strengthen community structures for the protection of children; strengthen community ties that assist in the care and protection of children.
6. To protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards.
7. To provide care and protection to children who are in need of care and protection.
8. To recognise the special needs that children with disabilities may have.
9. To promote the protection, development and well-being of children (Children's Act, Act 38 of 2005, pp. 18-19; Roos & Vorster, 2009).

The Children's Act is detailed and covers many important areas, with the development and psychological well-being of minor children reflected in all its sections

(Dawes, 2012). The Act is rather extensive and so only the sections that are relevant to this study are included in the discussion. These are:

Chapter 2 Part 6 - General principles

Chapter 2 Part 7 – The best interests of the child

Chapter 3 Part 1– Parental responsibilities and rights

Chapter 3 Part 2 – Co-exercise of parental responsibility and rights

Chapter 3 Part 3 – Parenting plans

It is clear that children’s rights in respect of the Act are of utmost importance and should be upheld as paramount. Any decision made with regards to minor children must be done with the ‘best interest of the child’ principle in the foreground. This includes respecting the child’s dignity, treating the child fairly and equitably, protecting the child from discrimination on the grounds of health status and /or disability, recognising the child’s need for development and to engage in age-appropriate activities and to create an environment conducive to addressing the special needs of a child (Children’s Act, Act 38 Of 2005, Chapter 2 section 6.2). Section 10 of the Act addresses the participation of children in matters concerning them. According to the Act (p. 22) “Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.” As discussed in Chapter 2, the voice and wishes of the child in custody evaluations are largely absent (Thompson, 2012). Barrie (2013) noted that the application of section 10 of the Children’s Act is still in its infancy stage. He added that the practical application of the child’s right to contribute their views to the decision making process in family law proceedings will ideally unfold in time.

The best interest of the child principle

Family Law proceedings, which encompass a broad range of issues, necessitates the development of comprehensive guidelines. With the inception of the new Constitution, the *best interest of the child* (BIC) principle was formulated as the golden thread that guides child care and ultimately custody evaluations and recommendations (Burman, 2003). The child's interests and well-being, which are vital in custody cases, are complex and multifactorial (Goldstein, 2016a; Gould & Stahl, 2000; Greenberg & Gould, 2001; Rohrbaugh, 2008). According to Barrie (2013), "Section 28(2) of the Constitution of South Africa, 1996 states that a child's best interests are of paramount importance in every matter concerning the child" (Barrie, 2013). Psychologists render a valuable service when they provide competent and impartial opinions that are relevant to the psychological best interests of the child (Miller, 2002). The shift in focus from parental rights and attributes, which tended to be a 'one size fits all' adult centred approach, to the BIC principle is consistent with the current child centred societal values (Fuhrmann & Zibbell, 2012; Garber, 2009). Brandt, Swartz and Dawes (2005, p.134) suggested that the best interest of the child principle requires psychologists to answer the key question "*What is the best interest of the child?*" and not "*Which adult deserves to keep the child?*" In addition to this, the best interest doctrine is regarded as more gender neutral as it espouses that children can have multiple attachment figures, and therefore parental rights and responsibilities can be shared amongst several people (Goldstein, 2016a; Human et al., 2010).

In the South African context, there have been significant changes in Family Law over the last decade. The Children's Act (Act 38 of 2005) reconfigured the building blocks of custody, access and guardianship that regulated parental

relationships with children. Theoretically the law governs and guides professionals in child custody evaluations. Although the prevailing BIC standard is vague, it does direct Judges to make rulings that are unique to each individual case (Emery et al., 2005; Garber, 2009; Zumbach & Koglin, 2015). Carmody (2007) stated that the best interest principle is a ‘value’, not a fact that is susceptible to scientific proof. Thompson (2012) argued that it is unclear how South African psychologists use these guidelines in the evaluation process. According to Bow and Quinnell (2002) it is vital to ensure high quality child custody evaluations that focus on the best interests of the child. As previously mentioned, there are serious debates regarding not only the appropriateness of the psychometric tools used in evaluations, but also the ability of the psychologists (evaluators) to remain neutral and act within their professional scope of practice, as well as to use psychometric tools appropriately to inform recommendations for the child. Brandt, Swartz and Dawes (2005) suggested that, in order for the paradigmatic differences, between the legal and psychological profession, to be appropriately and adequately addressed, psychologists (and legal professionals) need to realise and acknowledge their different roles in child custody evaluations. Some of the differences can be resolved simply by professionals recognising that the aims, objectives and approach to forensic work are different from traditional clinical work. Thus mental health professionals need to depart from the ‘therapist as witness’ approach and engage more fully with their specialist roles. This requires a thorough understanding of psychological theories, practices and assessments, legislative Acts as well as the ethos of Family Law in the South African context.

Custody litigation in South Africa is largely based on international standards, specifically, American standards. At the centre of these practices is the best interest of the

child principle that guides the work of professionals in this context. When a breakdown in parental relations occurs, and agreement cannot be reached by the parties with regards to the care and contact of the minor children, and as happens in most of the western world, the courts become involved and make decisions (Braver, Ellman, Votruba, & Fabricius, 2011). The decisions made by the court are based on the BIC principle where “for the first time in history, custody decisions were to be based on a consideration of the needs and interests of the child rather than on the gender or rights of the parent” (Kelly, 1994, p. 122). Thompson (2012) argued; however, that it is unclear as to how psychologists apply the best interests of the child principle when formulating recommendations in child custody disputes.

Keeping the aims of the Children’s Act in mind, the following factors need to be taken into account when conducting child custody evaluations (Fuhrmann & Zibbell, 2012, p. 15):

- a) The wishes of the children’s parents as to his/her custody
- b) The wishes of the children as to their custodian
- c) The interaction and interrelationship of the parents and children
- d) The children’s adjustment to their home, school and community
- e) The mental and physical health of all individuals involved

The factors mentioned above are explicated in Chapter 2 Section 7 of the Children's Act (2005):

Chapter 2 section 7 – THE BEST INTEREST OF THE CHILD STANDARD

1. ... the best interest of the child standard... Following factors must be applied:
 - a) The nature of the relationship between the child and parent or caregivers
 - b) The attitude of the parents towards the child and the exercising of parental responsibilities and rights of the child
 - c) Capacity of parent to provide for the needs of the child
 - d) The effect of separation from parent/sibling on the child
 - e) The practical difficulty and expense of contact with a parent
 - f) Childs need to remain in the care of a parent/family/culture/tradition and to maintain connection with the parent/family/culture/tradition
 - g) The child's age, maturity, stage of development, gender, background and other relevant characteristics of the child
 - h) the child's physical and emotional security and their intellectual, emotional, social and cultural development
 - i) Any disability the child may have
 - j) Any chronic illness from which the child may suffer
 - k) The need for the child to be brought up in a stable home
 - l) The need to be protected from any physical or psychological harm
 - m) Any family violence involving the child/family member
 - n) Which action/decision will minimize/avoid further legal action with regards to the child

According to Burman (2003), South Africa officially adopted the BIC principle as a basis for all legal decisions involving minor children. However, with this came two problems: (1) The BIC principle tends to be individualistic and (2) the South African social context is fraught with difficulties (e.g. poverty, violence, HIV/Aids) that make the operation of this principle difficult (Burman, 2003). Despite the best interest ‘check list’ provided by the Children’s Act, there is still debate about its subjective and opaque nature. In addition, the legal best interests of a child are not always equivalent to the psychological best interests of the child (Thompson, 2012). Braver et al. (2011) indicated that there are several criticisms levelled at the BIC principle. The first criticism is that it potentially leaves the decisions and interpretation of principles to the discretion of Judges. Second, the lack of specificity makes judicial decisions in custody disputes unpredictable, and last, the nature of the BIC principles makes meaningful appellate review of trial judge decisions nearly impossible (Braver et al., 2011). As Sloth-Nielsen and van Heerden (2014, pp. 116-117) indicated, despite the changes in Family Law that are aimed at equality and dignity for all, the best interests of the child standard can “tilt a decision this way or that,” and that the standard of equality will “come to serve a far more ephemeral and vague purpose.” The authors thus concluded that, in trying to define the legal construct of ‘family’ in South Africa, “the answer appears to lie in the eyes of the beholder”.

In the matter of *LH and another v LA and Another*, the court indicated:

The Act recognises that the child is a social being and that members of the extended family, more often than not, play an important part in the child’s social and psychological development. Grandparents, more than other relatives, usually take a keen interest in the upbringing of their grandchildren and this relationship, provided it is kept within reasonable bounds and does not interfere with parental duties and

responsibilities, often assists and complements parental care. There can therefore be little doubt that it is usually in a child's best interest to maintain a close relationship with his or her grandparents. (Sloth-Nielsen & van Heerden, 2014, p. 110)

The quote above refers to the sensitivity towards the family network and elaborates on the non-exhaustive list of criteria that are aimed at determining the best interests of the child (Sloth-Nielsen & van Heerden, 2014). Despite the identified problems inherent in the BIC standard, the shift towards focusing on the best interests of the child has set in motion an opportunity to engage in discussions of the work psychologists do, and the impact this has on families.

In Chapter 3 of the Children's Act, provision is made for the acquisition and loss of *parental rights and responsibilities*. The holder of parental rights and responsibilities (i.e. the custodian) has the responsibility, and the right, to care for the child, maintain contact with the child, to act as a guardian of the child and to contribute to the maintenance of the child (Children's Act, 38 of 2005, 3(18), p. 25). The act further elucidates the rights and responsibilities of guardians. These include:

- 1) Administering and safeguarding the child's property and property interests.
- 2) Assisting or representing the child in administrative, contractual and other legal matters.
- 3) Giving or refusing any consent required by law in respect of the child including giving consent to the:
 - a) Child to marry,
 - b) Child's adoption,
 - c) Child's departure or removal from the republic,

- d) Child's application for a passport,
 - e) Alienation or encumbrance of any immovable property of the child
- (Children's Act, 2005, p. 25).

In matters of a contested divorce and custody dispute, the parents, as holders of both parental rights and responsibilities, often need further assistance in setting up a plan to successfully co-parent. This is often accomplished by compiling a *parenting plan*, to which both parents must agree, that explicitly states how they are to co-parent. This is essentially a contractual agreement that is compiled with the assistance of a professional, usually a suitably qualified psychologist, social worker or lawyer. A parenting plan must be in writing and signed by both parties, and should include the following:

- 1) Where and with whom the child is to live
- 2) The maintenance of the child
- 3) Contact between the child and the parties or any other person
- 4) The schooling and religious upbringing of the child.

These stipulations clarify the intricacies of the rights, duties and responsibilities of carers, as well as the principle of the child's best interest.

Divorce Act 70 of 1979

As briefly mentioned earlier, prior to the Divorce Act of 1979, a divorce was only granted on the basis of the fault of one party, that being adultery or malicious desertion (Roos & Vorster, 2009). However, since the promulgation of this Act, divorce may be granted on the grounds of irretrievable breakdown or mental illness or if the respondent is in a continuous state of unconsciousness (Divorce Act of 1979; Heaton & Roos, 2012). The Divorce Act also makes provision for the care and well-being of minor children. In cases

where minor children are involved, a divorce decree will not be granted unless the Court is satisfied that:

- a) the provisions are made with regards to the welfare of minor children and which are satisfactory or are the best that can be affected in the circumstances; and that
- b) should an enquiry be instituted by the Family Advocate in terms of section 4(1)(a) or (2)(a) of the Mediation in Certain Divorce Matters Act, 1987, that the court has considered the report and recommendations made (Divorce Act, 70 of 1979, Section 6(1), p. 5; Heaton & Roos, 2012).

Again, if the care arrangements of the minor children are not to the satisfaction of the Courts, then the services of the Family Advocate's Offices and mental health professionals are requested.

Mediation in Certain Divorce Matters Act 24 of 1987

The aim of this act is to ensure that the interests of minor children are protected and to make provision for a report and recommendations from the Family Advocate (FA) with regards to the best interests of the minor children before granting a divorce decree (Mediation in Certain Divorce Matters Act, Act 24 of 1987). The Family Advocate, who is seen as an impartial party (Roos & Vorster, 2009), may initiate an investigation as to the best interests of the minor children. The role of the Family Advocate is to evaluate, mediate and monitor such families and then provide recommendations, with the assistance of a family counsellor, to the court. The family counsellor is usually an appointed Social Worker who assists the Family Advocate in interviewing the parents, as well as conducting an age-appropriate child interview in order to arrive at appropriate recommendations. The Family Advocate and family counsellors are in essence the child's 'legal team' (Kaganas & Budlender, 1996) and often include professionals outside of the Office of the Family Advocate to assist with the

matter. The professionals are most often psychologists, both Educational and Clinical Psychologists, whose mandates include psychological assessment of family members, mediation, case management or psychotherapeutic intervention of a family member. The role of the Family Advocate is essential in protecting children and ensuring that their best interests are adhered to.

Once a referral has been made to a Family Advocate, an investigation, which is dependent on the allegations and concerns that have been raised, begins. If during the investigation, the FA deems it necessary to include a psychiatrist or psychologist, one will be appointed. It is at this point that psychologists receive their mandate in which the parameters of their role are clearly defined. The FA generally requests a report to be furnished as to the professional's findings, and/or recommendations.

Chapter Summary

The law is created by people, for people (Roos & Vorster, 2009) and so it is not implausible that legislature may at times be imperfect. With the changes in South Africa's legal system, the ideals of non-discrimination and equality guide the legal and societal processes, with the well-being of children at the centre. This chapter briefly discussed the legislature and legal framework in which psychologists conduct care and contact evaluations. Following on from this chapter is a conceptual discussion of the paradigm employed and epistemological stance taken in the study.

My Family



Drawn by: M
Age: Eight years, three months old
Position in family: First of three children
Parents: Married

Chapter 5

A Paradigmatic Scaffolding of the Problem-Determined System

“Cogito ergo sum” (I think therefore I am) (Descartes, 1637)

Introduction

Postmodern discourse, which challenges the notion of objectivity with regards to human nature, has long been a focus in the humanities. There has been a shift from a method centred approach to a more discursive method of research where a relational concept of subjectivity is advocated instead of viewing individuals in a mechanical way, as do modernist, natural sciences (Hoffman, 1990; Kvale, 1992b). With this interpretive position in mind, this chapter, in addition to Chapter 6, aims to explicate the research design as well as the conceptual arguments underpinning this study from within a postmodern tradition. There exists a disparity between the ways of understanding from a legal perspective and that of a psychological perspective which I elucidate in this chapter. The central tenet of objectivity in forensic / psycho-legal cases is challenged and the position of a participant-observer is offered as a more authentic and ethical position on the part of the psychologist. And so, in this chapter I contextualise this study and highlight the idea that total neutrality is impossible (Fasser, 2014) rather, I promulgate that the perception of reality, as described by a constructionist paradigm, is more appropriate and applicable for care and contact evaluations.

A Second Order View

As was evidenced in the two preceding chapters, a modernist first order view seems to be the obvious stance of most professionals working within the context of care and contact (CAC) disputes. The trajectory of a referral is to formulate recommendations that are in line with the best interests of the minor children involved. And this seemingly is a linear process: Evaluate → assess the dysfunction → and recommend solutions to return the family to ‘normative’ standards. This is in line with traditional modernist perspectives and is exemplified by psychiatric nomenclature and the classic Medical Model of psychopathology (Keeney, 1979). Regardless of the theoretical orientation of the evaluator, the underlying processes of a family in crisis are anything but linear and simplistic. Working with families from such a reductionistic perspective is usually characterised primarily by simplifying phenomena in order to formulate a family diagnosis and develop pragmatic solutions (Keeney, 1979; Keeney & Sprenkle, 1982). Working from a perspective where ‘objectivity’ is observed is erroneous as this implies that that which is being observed is separate from the observer (Keeney, 1983). This is usually evident if one focuses only on the presenting problem while ignoring the complexity and aesthetics of the family dynamics (Keeney & Sprenkle, 1982).

Although Keeney (1983) predominantly discusses family therapy in his book *Aesthetics of Change*, his assertions appropriately describe family systems and the processes involved in care and contact evaluations. According to Keeney (1983, p. 9) “ A singular emphasis upon pragmatics potentially leads to an ecological decontextualization of [therapy] where one’s bag of tricks, cures, and problem-solving procedures is too easily disconnected from the more encompassing aesthetic patterns of ecology”. It then necessitates the question as to how an evaluator/psychologist, or the observer, could then make such descriptions of a family if they themselves do not have the properties within themselves to make such

descriptions (von Foerster, 1976, p.12). Von Foerster stressed that objectivity does not exist, and is in fact a 'nonsense' notion that, along with its disregard for self-reference, too often prevails in dealing with human systems (Keeney, 1983). In my opinion, it is, therefore, a necessity that a clinician, who works in such an evaluative position, clearly understands the premises underlying their work (Keeney, 1983). An alternative paradigm, which includes cybernetics, ecology and Systems Theory, is proposed as a framework to attune oneself to the ecology, relationship, whole systems, interrelation, complexity and contexts of the families that present for evaluation (Keeney, 1979a, p. 2).

To expand on the above notion and drawing on Bronfenbrenner's Ecological Model (1986), Figure 4-1 below demonstrates the complexities of a family context when they present to an evaluator. Although Bronfenbrenner's model focuses on family development, his model is applicable in this context as it emphasises the intra- and extra familial influences on healthy development. Families, who are most often referred for an evaluation are characterised by the parental relationships as being in a state of schismogenesis (i.e. change or division), which denotes a relational escalation and which leads to the breakdown of the relationships (Keeney, 1983). For example during times of conflict when parents decide to separate or divorce. It is clear that the evaluator spends only a discrete period of time with the family, during which decisions need to be made with regards to the care arrangements of the minor children. The point here is that each family system is complex and multi-layered, and an evaluator/clinician who fails to recognise this may be ineffective and in fact, may add to the problems of the system (Keeney, 1983).

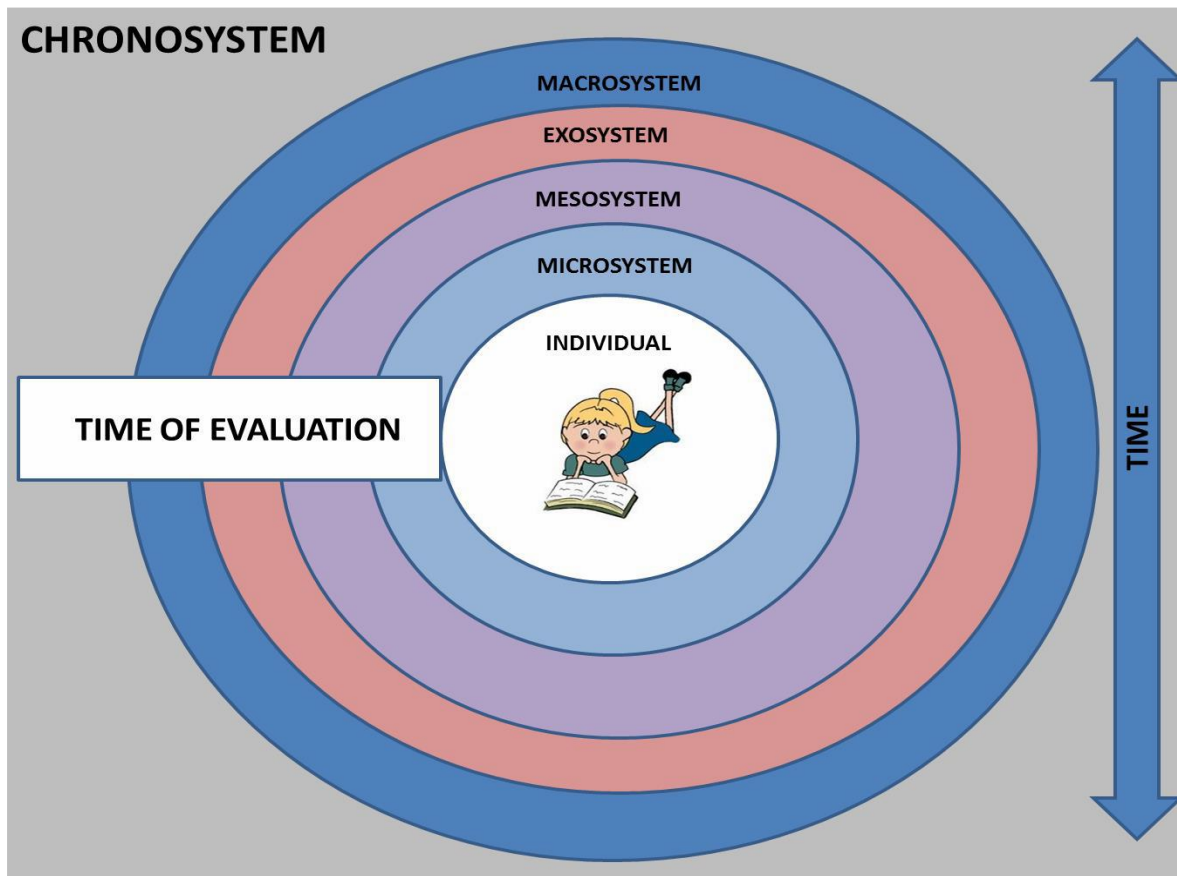


Figure 5-1 An adaption of Bronfenbrenner's Ecological Model depicting the discrete period of time an evaluator is part of a family's ecology

Bronfenbrenner's model (1986, 1994) focuses on how intrafamilial processes are affected by extrafamilial conditions. His model depicts several layers of influential levels that impact on an individual and family systems. The first level, the *microsystem*, refers to systems that are closest to the individual or family. These systems, which are in the immediate environment, include patterns of activity, social roles and interpersonal relations, for example, the home environment, school and work. The next level, the *mesosystem*, denotes the interactions between different parts of a person's microsystem and includes linkages between two or more settings. An instance of a mesosystem is when the home and school 'intersect' when, for example, events and friends cross back and forth between the two environments. The *exosystem* refers to those influences that do not directly involve the individual or family, but which nevertheless impact them, for example a child's experiences

at home may be influenced by a parent's promotion at work in that it requires the parent to work longer hours. The *macrosystem* comprises the cultural context of the individual or family. It involves the overarching pattern of micro-, meso- and exosystems characteristic of a given culture, for example, societal systems, customs, life-styles and cultural environments. The final system, the *chronosystem*, extends into the passage of time and includes changes or consistencies over time. For example major life transitions and historical events.

The relevance of this model for care and contact evaluations is related to the discrete period of time that an evaluator engages with a family. The understanding is that the evaluation is not a complete analysis of a family system over time, but rather a particular analysis at a given point in time. To approach evaluations with a detached and 'objective' stance may run the risk of missing the unique, distinctive processes of each family system.

There have been many contributors to the evolution of family therapy and the understanding family processes. When one reads the works of theorists such as Humberto Maturana, Fransisco Varela, Heinz Von Foerster, Ernst Von Glasersfeld, Bradford Keeney, Paul Watzlawick, Gregory Bateson and Paul Dell one can see the influence of systemic thinking on the paradigm shifts within family therapy (Hoffman, 1990). It was through these works that the notion of an observing system was conceived and where the idea of perspectives being created through one's own involvement in the environment was considered. A second order view embraces taking a step back and perceiving reflexively (Hoffman, 1990). In view of this, living systems are not seen as being programmable by external agents, but rather as "self-creating, independent entities" (Hoffman, 1990, p. 3). Keeney (1983) challenged the naïve realism that people may hold about their reality and instead encouraged people to examine how they participate in the constructions of their reality. More often than not the partial views of families and their dynamics can lead to an either/or duality (Keeney, 1983), which is ultimately a trap of believing a one-sided 'truth'. A

more reflexive approach to the human dilemmas, within human relationship systems, has its theoretical roots in cybernetics, ecology and Systems Theory (collectively referred to as Ecosystemics or Ecosystemic Psychology) (Keeney, 1983). Systems Theory is an appropriate epistemological foundation for understanding complex family systems. This idea of reflexivity is further highlighted by Keeney (1983, p. 6); “A clinician who fails to explicitly recognize the premises underlying his work may be less effective because of his deficiency in understanding.” In this statement, Keeney warns clinicians about blindly stripping theoretical assumptions into pragmatics, creating the possibility of ignoring the broader exploratory value of family systems. This is further echoed by Snyders (2003, p. 83) who states that the mechologic context, characterised by rigidity, reductionism and an either/or ideology, disturbs the “ecological flow and balance of relatedness”. These reductionistic and polarising ideologies may lead to rigid, single truths of absolute meaning and negation. An ideology of relativism as applied to ecological systems, characterised by contextualism and a both/and approach, may be more useful. These ideologies in relation to the relationship between psychology and the law are further demonstrated in Figure 5-2 below. Snyders (2003, p. 83) thus purports that the language of ecology opens the way “to the exploration of the ‘truths’ of others”. And so, my aim in this study was to critically question the causality, pathology, diagnosis, change and the role I play in the care and contact milieu and the risk of mechologic thinking in a relativist, contextual and intersubjective ecology.

And so herein lays the philosophical challenge of finding a more useful interface between the legal field and the field of psychology. The legal field dictates what is acceptable from within the jurisdiction of legislation. Psychology, on the other hand, is coloured by human processes and the dynamics that are embodied within each individual, each family, and each living system. And thus, a second order stance would be the interface and a major contribution to this work. A second order stance is needed to appropriately describe and

understand the complex happenings within a systemic environment, and to further make this available and useful in a context of law where the theoretical understandings and pragmatics are embedded within an either/or dualistic environment. This requires one to take a step back to create a space for reflexivity (Hoffman, 1990) and to take a meta-perspective of the methodologies of practice. Drawing on the works of Snyders (2003), Figure 5-2 provides a simplified image of the complex nature between psychology and the law, and how these two fields co-exist. It is in this co-existing domain, the grey area, in which this study is embedded.

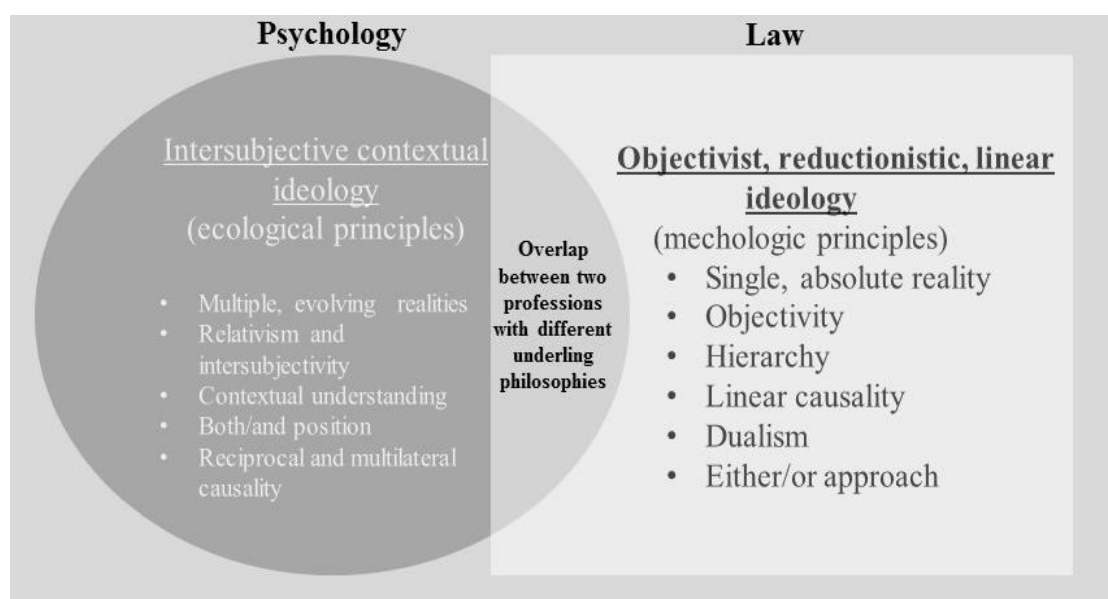


Figure 5-2 *Psychology and Law: Two co-existing fields*

The polarisation of objectivism (as is relevant in the legal field), and relativism (as is relevant in the field of psychology) in itself is a modernist issue (Keeney, 1983; Kvale, 1992b; Snyders, 2003); however, it is necessary to take a bird's eye view in order to sufficiently understand the processes that ultimately have the potential to shape the outcomes of any custody evaluation. Thus, the assumptions of objectivity and relativism become important concepts to define within the juxtaposition of both professional fields: This, in my opinion, is a lot easier said than done.

A Philosophical Clash between Content and Process, Objectivity and Subjectivity

Legal professionals and mental health professionals tend to approach custody matters from different ontological and epistemological perspectives (Jameson, 2001). It is a given that any piece of evidence provided in a court of law must be factually correct and objective. Experts and professionals who provide their expertise, or evidence, are expected to do so from a position of neutrality and free from any bias. And so, from a legal perspective, objectivity refers to a lack of bias and unfair favour towards, or against, a particular party. Findings are often polarised as ‘right’ or ‘wrong’. The opposing position of subjectivity, or intersubjectivity, then seems to be the polar opposite in that it lacks clear, objective scientific evidence. This position is seen as unacceptable in a court of law and should be avoided.

While the objective stance is appropriate and expected from a legal perspective, the challenge is when inspecting the position of a psychologist and the processes of evaluation they undertake during care and contact disputes. Objectivity, from a psychological perspective, is somewhat complicated and not so clear cut. I argue that it is impossible to remain completely objective and neutral when engaging with an individual or a family ecology. A more congruent perspective than the absolute objective stance is that ‘reality’ is observer dependent, and the mutual interactions between and amongst all parties is participatory and inter-subjective. This perspective may best be illustrated by a question posed by Goolishian and Winderman (1988): “is there a reality independent of the act of observation?” (Goolishian & Winderman, 1988, p.131). A person with a positivist perspective may argue that one may be able to observe free of intersubjective influences. However, this is not possible from an interactional and relativist point of view. While I do not advocate that psychologists should be biased and unprofessional, or sway in favour of a particular party, I do instead suggest that the level from which we punctuate (i.e. the ordering of experiences) must be carefully considered. The preference of objectivity in the legal field,

versus relativism at the psychological level, implies a difference in the philosophical underpinnings between the two professions. And while these two professions cannot be separated in the context of custody disputes, it is necessary to fully understand and appreciate the position of psychologists, their methodology and how these fit into the broader legal context. In order to provide bias free information to the court a psychologist needs to adopt a reflexive position, and take an “approximate objective position” (Fasser, 2014, p. 90). This clash of “doctrines” is an opportunity for the psychologist, in the forensic context, to work towards an understanding of human systems and the problems they present (Anderson, Goolishian, & Winderman, 1986, p. 1). Therefore, as Fasser (2014, p. 91) indicated, in “a child custody forensic investigation the process that the child custody forensic psychologist employs should be epistemologically objective – in other words, free from bias, open to counter arguments, and cognisant of the relevant facts,” however, “the process should also include a consensual domain of information”. By understanding this relational context of language, a place can be made for “empirical research and moral deliberation” (Gergen, 1994, p. 412). This suggests that psychologists should ensure that the processes and methodologies they employ, which are inherently influenced by a participant-observer position, are objective in a relativist context.

A Postmodern Discourse of Reality

There has been much debate between researchers and scientists from a realist and objectivistic (quantitative) perspective and those from an interpretivistic perspective (Becvar & Becvar, 2009; Madill, Jordon, & Shirley, 2000; Spender, 2008). If one looks at the evolution of knowledge and the acquisition of knowledge, there are three main eras that encompass different ontological perspectives (Becvar & Becvar, 2009; Raskin, 2000). The romanticism of the *premodern* era incorporates idealism and heroism where religion and faith played a significant role. Following this, the *modern* era emphasised empiricism and logic,

where the grand narrative included science as objective and the truth as being discoverable by knowledgeable experts. Reality was seen as something that could be understood and that truth was inherent in scientific research. The most recent perspective, *postmodernism*, undermines the notion that knowledge is absolute and objective, and instead reality is seen as something subjective, constructed rather through the act of observation, and ‘linguaging’ (Becvar & Becvar, 2009; Goldenberg & Goldenberg, 2013; Neuman, 2000; Raskin, 2000). Postmodernism, which challenges the assumptions that constitute the general ways of thinking, the notion of a universal truth, values knowledge as unique to each individual (Hansen, 2015; Neuman, 2000; Phipps & Vorster, 2015). This would then imply that researchers and theorists are concerned with how people ‘know’, and what they know, and the viability thereof, as opposed to the validity of such knowledge (Raskin, 2000). And so one of the most significant shifts made is the belief in perspectives as opposed to the belief in facts (Becvar & Becvar, 2013). In this way, constructs of reality are shaped as the individual ‘fits’ with their environment (Hoffman, 1990).

Postmodern thought thus replaces the notion of a reality independent of the observer (Kvale, 1992b) with the idea that the observer is an integral part of the construction of reality. With this in mind, the basis of knowing is then subjective and interpretivist (Phipps & Vorster, 2015). Individuals and/or families, as living systems, construct versions of their reality through their interactions with their environment. Likewise, clinicians and evaluators, who work within the context of family systems and custody disputes, engage with the members from a position of participant observation, and not from a removed position of absolute objectivity and neutrality. The ‘knower’ cannot have access to the unequivocal *truth* but instead works towards understanding processes from an interpretive position (Phipps & Vorster, 2015). A family constructs their intra- and intersubjective meanings and realities,

which are then shared with the psychologist at a particular given time, who in turn constructs a version of the family's ecology.

In other words, reality is a function of the constructs of the observer, and knowing is a function of the knower (Anderson et al., 1986; Keeney, 1983; Phipps & Vorster, 2015). This outlook is congruent with the constructivist perspective. Adopting such a position creates an opportunity to challenge and critique the underlying concepts, categories and assumptions that constitute our usual way of thinking within the profession (Hansen, 2015). Within the field of care and contact disputes, the evaluator or clinician aims to explore how the families experience realities as mental structures and operations that have been actively constructed rather than passively acquired (Riegler, 2012). This suggests that, in order to explore how clinicians construct their understanding of the family's experience of reality and the notion of a multiplicity of reality (Wagner, Kawulich, & Garner, 2012), a constructivist perspective is the most appropriate as a discourse towards a critical social science perspective. I appreciate that this approach may be challenged in the context of forensic work, and that a more scientific approach be advocated. However, as I mentioned before, adopting a critical stance does not negate professionalism nor the quality and ethical practices of psychologists. Instead, the aim is to explore and understand family systems in crisis from a holistic perspective that encompasses the ecology and patterns embedded within such systems. The 'scientific methods' associated with psychological assessments, for example, are not ignored nor rejected; instead they form but a part of the entire evaluative process.

The Epistemology of Constructivism

Social science involves the study of people, their interactions, beliefs and behaviours within a wide social system and requires an approach that best serves the fluidity of the nature of human phenomena (Strydom, Fouche & Delport, 2005; Tubey, Rotich, & Bengat, 2015). In order to adequately understand family systems and the processes that unfold in care

and contact evaluations it is necessary to find a paradigm that adequately addresses the research problem.

A *constructivist* perspective, which is based on the notion that we construct our personal knowledge base of reality, forms the over-arching epistemology of the study. This view implies that we cannot know the truth about reality, or people, in any objective way (Becvar & Becvar, 2013). As part of the naturalist inquiry, which is often referred to as interpretivism, a social constructivist perspective challenges the notion of reality as a stable entity that is observable and separate from the observer (Anderson et al., 1986; Creswell, 2014; Lincoln & Guba, 1985). Instead this perspective purports that members of a family, as well as the observing system (the psychologist, clinician or evaluator), experience reality from an interpretive, relativist perspective. Epistemology is concerned with the “rules of operation that govern cognition” and so in order to understand any phenomenon, one should begin by noting how it was constructed (Keeney, 1983, p. 12-13). Epistemologically speaking, the starting point is therefore for an observer to draw distinctions in order to observe, and so “any distinction drawn, is drawn by the observer” (Keeney, 1983, p. 24). Realities, which are subjective and varied, lead a researcher to look for the complexities of views rather than narrowing meanings into a few ideas (Creswell, 2014, p. 37). Realities are then understood to exist in the form of “multiple, intangible mental constructions, socially and experientially based” (Guba & Lincoln, 1994, p. 110). Guba and Lincoln (1994, p. 111) indicated that constructions, as with realities, are alterable, and that such realities are not more or less “true, but rather more or less “sophisticated or informed”. Constructivism, which formed the epistemological framework for this study, is congruently aligned with the postmodern tradition of thought.

Constructivism may well be criticised, particularly with regards to the many writings about constructivism from different authors, as Phillips (1995) pointed out. This gives rise to

confusion around the theory and philosophy of constructivism (Phillips, 1995). This confusion is further amplified when trying to resolve the dilemma as to how constructivism and social constructionism are related. Although a discussion of Western epistemology cannot be discussed sufficiently in one chapter (von Glasersfeld, 1984), it is warranted to briefly mention some of the premises involved in deciding on the epistemological and paradigmatic frameworks of this study. Graham (2015, p. 60) described this confusion succinctly:

Confusion over constructivism and social constructionism exists because, for example, some position social constructionism as a sub-paradigm within constructivism (e.g., Godwin, Kreutzer, Arango-lasprilla, & Lehan, 2011), others synthesise them (e.g., Botella, 1995), and still others emphasise the distinction between the two (e.g., Cecchin, 1992).

In this study, I adopted Graham's (2015) understanding, which is depicted in Figure 5-3 below.

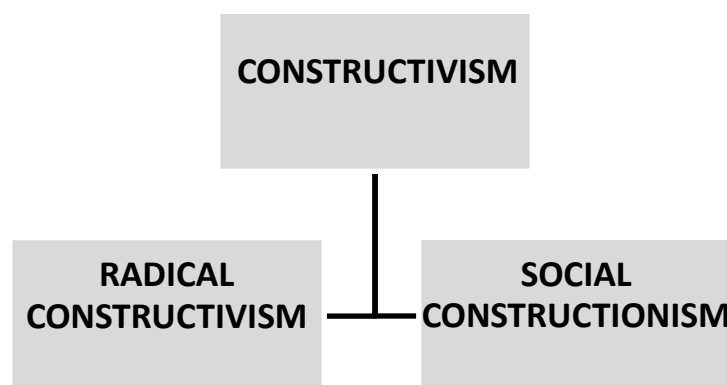


Figure 5-3 *Paradigm Framework*

The first leg of constructivism, *radical constructivism*, purports that knowledge acquisition is individually based, and the knower actively constructs his/her knowledge base (Becvar & Becvar, 2013; von Glasersfeld, 1984). Any true representation of reality and

knowledge is denied and instead the individual's realities and perceptions are viewed as internally constructed. This suggests that individuals are responsible for their own thinking and knowledge (von Glasersfeld, 1984).

The second leg, which forms the paradigmatic scaffold of this study, is *social constructionism* that focuses on social processes and invites one to challenge the “objective basis of conventional knowledge’ (Gergen, 1985, p. 267). In line with the appreciation that families, who present for custody evaluations are multidimensional, the social constructionist view holds that the process of understanding is not automatically driven by outside forces, rather, understanding is a result of an active and cooperative enterprise of persons in a relationship (Gergen, 1985). This notion emphasises context and the view that meaning is intersubjectively created (Becvar & Becvar, 2013). Social constructionism contends that we should take a critical stance towards the “taken for granted ways of understanding” and should challenge the view that knowledge is based on objective and unbiased observations (Burr, 2015, p. 2). Burr (2015) added that our understanding of the world is historically and culturally relative. This implies that knowledge is created between people and that language is a significant aspect of knowledge creation. Knowledge, and therefore reality, is not as a result of an objective fact, but rather as a result of social processes and interactions (Burr, 2015). This suggests that knowledge is co-constructed in the context of relationships.

Expanding on the above, language is not a ‘reporting device’ but rather a defining framework that plays a role in how we draw such distinctions, “Given a language system, we make choices regarding the patterns we discern” (Keeney, 1983, p. 25). Gergen (1985, p. 266) adds that social constructionism views “discourse about the world not as a reflection or map of the world but as an artifact of communal interchange”. The understanding is that “human systems exist in language, survive and conserve themselves by means of language, but also destroy themselves with the aid of language” (Snyders, 2003). Taking this a level

further, in order to understand how others come to punctuate and know their world, a higher order of understanding of epistemology is required. Bateson (1958) suggested that such an epistemological perspective requires a “weaving of three levels of abstraction” (Bateson, 1958):

The first level, a concrete level of ethnographic data; the second, more abstract level, the arrangement of data to create various pictures of the culture; and the third, most abstract level, a self-conscious discussion of the procedures by which the pieces of the jigsaw puzzle are put together (Bateson, as cited in Keeney, 1983, p. 28).

The evaluation processes of care and contact disputes are analogous to taking several snapshots at a time and putting them together to create some understanding of the situation, the relationships and the patterns that emerge (Keeney, 1983).

In line with the reflexive stance, as mentioned earlier, and the understanding that the observer is active in the process of observation, the constructivist view of reality (the meta-epistemological stance of this study) advocates that that which is being observed changes as a result of the act of observation (Anderson et al., 1986). The constructivist perspective is based on the assumption that “in the process of perceiving and describing an experience, we construct not only our personal knowledge base about reality, but also reality itself” (Becvar & Becvar, 2013, p. 88). Thus, individuals only know their constructions of reality, or of a phenomenon, as opposed to knowing an absolute truth.

These constructions serve as the interface between the observer and hard reality. Social constructionism (the paradigm of this study), which forms an interconnected link with social constructivism, emphasises the importance of context in understanding what occurs in society and constructing knowledge based on this understanding. As Bateson (1970) stated, “Any complex person or agency that influences a complex interactive system thereby

becomes a part of that system, and no part can ever control the whole” (Bateson, in Becvar & Becvar, 2013, p. 64). The epistemological perspective of this study is thus encompassed within the notion that reality is constructed through human interaction, where knowledge is a human product that is socially and culturally constructed (Kim, 2006). In addition, the psychologist who conducts these custody evaluations becomes an active part of the construction of a reality that very often is positioned from a medical, psychopathological perspective. The evaluation process can best be described as a “kaleidoscopic flow of events, patterns of relationships, of which we are all a part of” (Anderson et al., 1986, p. 4; Goolishian & Winderman, 1988, p. 131). The dynamics of each family are unique and should be viewed with this context in mind. This suggests that a one size fits all approach is illogical and unhelpful. A constructionist approach thus challenges the notion that a mental health practitioner is separate from that which is being observed, and without such an awareness of the observer participation in care and contact investigations, the professional may well be at risk of both ethical and observational flaws (Fasser, 2014). Being aware of one’s position and paradigmatic and methodological positions could aid the professional in becoming more sensitive to the roles they play, and thus address any bias that may be present. This also provides an opportunity for the psychologist to become aware of, and acknowledge, their inherent power in the professional-client relationship (Stahl, 1994). This awareness further aids the professional in becoming aware of the tendency to blindly follow protocols that currently exist within the models of practice (Fasser, 2014). This suggests that legal proceedings regarding intersubjective meanings go beyond the raw data presented. As the case proceeds, the problem-determined system is written like a play with twists and turns.

In view of this, people create systems to meaningfully understand their worlds and experiences (Raskin, 2000). Families develop narratives and beliefs that shape their stories, and so construct experiences that play a powerful role in their lives (Goldenberg &

Goldenberg, 2013). This shift in thinking is consistent with the postmodern era that emphasises the creation, rather than the discovery, of personal and social realities (Raskin, 2000). And so, individuals participate in the creation of knowledge, as opposed to passively receiving an external version of reality as the truth. In line with this, the ontology of a relativist perspective informs us that mental structures and operations are actively constructed and reality is thus characterised by multiple, intangible mental constructions, and is socially and experientially based, local and specific in nature (Guba & Lincoln, 1994; Riegler, 2012). The world is no longer seen as a stable structure with constant properties, rather it is a world of observing systems (von Foerster, 1981 in Anderson et al., 1986, p. 4). Moreover, we do not discover reality or scientific facts, but instead the “all knowledge, including scientific fact, is a construction of mind in the social domain” (Anderson et al., 1986, p. 4).

Consistent with the epistemology and paradigm as discussed above, Systemic Theory views a multiverse of realities that are all valid and true in their own right. Thus, by building on these concepts, we shift towards the theoretical orientations that are associated with systemic thinking; ecology and cybernetics. Focusing specifically on a higher order of thinking, in other words, cybernetics of cybernetics and the concepts of autopoiesis and structural determinism, family systems can be understood to be autonomous and self-sufficient.

Cybernetics and the problem-determined system

We can begin to identify how people construct, and maintain their habits of cognitions by drawing on a cybernetic epistemology to understand what, and how, they think (Keeney, 1983). The implication for the mental health field is that “it can easily fall prey to perpetuating the very problem it seeks to cure” (Keeney, 1983, p. 23). An iatrogenic process is implied in that mental health professionals and the psychiatric taxonomy mobilise the construction of such problems. Taking a meta-perspective involves incorporating the

assumptions of systemic and cybernetic theories. Ecology and cybernetics are attuned to holism, relationships, complexity, patterns and contextual interconnectedness (Keeney & Sprenkle, 1982) and relationships are viewed as existing within contexts. Systemic researchers do not impose norms of absolute reality, and so the focus is on the context in which individuals exist and the patterns that connect within the ecology. In view of this, there is a coherent fit between the ontological and epistemological frameworks of this study. Constructionism gives much attention to the deconstruction and the role of language, and so perception now becomes a process of construction that highlights the importance of understanding the presumptions and assumptions according to which we perceive reality (Becvar & Becvar, 2013; Burr, 2015; Gergen, 1985).

“Since a description always implies an interaction, and since the describing systems describe their components via their interaction through components, there is a constitutive homomorphism between descriptions, and behaviour in general, and the operations of the system. Therefore we literally create the world in which we live by living in it” (Maturana, in Becvar & Becvar, 2013, p. 80).

Using the concept of the *problem determined-system* to describe a family in crisis, as well as the ecology that encompasses the legal and psychological professions, are useful concepts when working with the complexities of care and contact disputes. The definition of a problem marks the system and defines the boundaries of the system, and is defined by those who actively communicate about the ‘problem’ within the system (Anderson et al., 1986). The problem-determined system is a language system with the boundaries marked by “a linguistically shared problem” (Anderson et al., 1986, p. 7). And so, all the individuals, who are involved in a communicative process about the ‘problem’, form part of the problem-determined system (Anderson et al., 1986). It thus becomes important to view all living systems within a context that is not universal, “if we abstract a human from his or her

context, we are trapped between the poles of the universal and the individual – the way out is to study humans in their cultural and social context” (Kvale, 1992a, p. 34). Watzlawick, Beavin, and Jackson (1967) echoed this in their statement “a phenomenon remains unexplainable as long as the range of observation is not wide enough to include the context in which the phenomenon occurs” (Watzlawick, Beavin, & Jackson, 1967, p. 21).

With the constructivist epistemology, constructionist paradigm and the cybernetic concept of the problem-determined system in mind, assessing a family out of context can be detrimental to any evaluation conducted by a psychologist. Furthermore, it could lead to one observing aspects and attributing properties that may not be part of the living system under investigation (Watzlawick et al., 1967). An evaluator could, for example, interpret a child’s reluctance to see their father as parental alienation, without considering all possible contributing factors to the reluctance. Further to this, Watzlawick et al. (1967, p. 21) indicated that:

If a person exhibiting disturbed behaviour (psychopathology) is studied in isolation, then the inquiry must be concerned with the nature of the condition and, in a wider sense, with the nature of the human mind. If the limits of the inquiry are extended to include the effects of this behaviour on others, their reactions to it, and the context in which all of this takes place, the focus shifts from the artificially isolated monad to the relationship between the parts of a wider system. The observer of human behaviour then turns from an inferential study of the mind to the study of the observable manifestations of the relationship.

The definition of a problem cannot be determined by a clinician on the basis of externally imposed views of social systems, and instead it is believed that clinicians “interact via language with an ecology of ideas. These ecologies of ideas are transformations of

experience and are communicated through language in a manner that creates context...” (Anderson et al., 1986, p. 7). Language is then seen as linguistically mediated and contextually relevant. In other words, “communication and discourse define social organization” (Goolishian & Winderman, 1988, p. 372). Anderson et al. (1987) went further to explain that a core feature of the problem-determined system is a signal of distress by an observer with the communicated implication being a demand for change. In care and contact evaluations, the problem-determined system is formed through communications by, and between, families, the psychologists and the legislative systems. By merely accepting a referral, the clinician is already a part of the discursive nature of the problem-determined system, and becomes an active member who communicates about the problem-determined system. These systems often also include social workers, other mental health professionals, lawyers, advocates and members of the judiciary (Anderson et al., 1986).

The term *autopoiesis*, from Maturana and Varela (1987), is used to describe systems that are self-creating and self-reliant. This implies that families are autonomous and their behaviour structurally determined (Maturana & Varela, 1987). In other words, “living systems behave as a function of how they are built” (Goolishian & Winderman, 1988, p. 133). The behaviour of such systems, which is not determined by the environment (e.g. professionals) but rather by the relationship of the various components, react in an idiosyncratic manner when perturbed by the environment (Goolishian & Winderman, 1988). And so psychologists and legal professionals should not act upon the families in crisis, but rather co-exist, and co-evolve within a network of meaning, and within a linguistic domain (Goolishian & Winderman, 1988). Thus, a new and ever evolving problem-determined system comes into existence, often to the trepidation of all involved. For example a high conflict, problematic family. In line with this, Bateson (1986) defined this system as a “meaning processing system of interacting participants who maintain and transform the

identity of themselves and their network through more or less shared understanding of both themselves and the world” (Bateson, 1986, in Goolishian & Winderman, 1988, p. 134). In view of this, one can then imagine the amplification of the problem-determined system as more members and/or views are added to the complex system of evaluations.

To conclude this section, problems are not made by systems, but rather languaging about the problems makes the system (Goolishian & Winderman, 1988). The members of the problem-determined system are brought together by the problem that they seek to ‘solve’. In other words, the problem-determined system becomes the problem. Thus, the psychologists and legal professionals actively participates in this linguistic problem-determined system. The notion of the problem-determined system is not a diagnostic marker, but is rather a way of understanding and communicating about families who are in dispute of the care arrangements of their children.

Chapter Summary

The professional practice of psychologists is seen as an important generator of psychological knowledge (Kvale, 1992b) and as such I highlighted the inherent paradox within care and contact evaluations. The juxtaposition of objectivity and subjectivity (or relativism) within these matters was impressed upon, and the position of observer dependence was identified as an ethical and congruent position from within which to do this work. It thus elucidates that an either/or position is unhelpful, and instead the psychologist adopting a relativist position while remaining objective in the broader context of custody evaluations is necessary. In order to explore these practices, it was necessary to deliberate about social constructionism which is the paradigmatic scaffold of this study. In addition, the cybernetic concept of the problem-determined system became the lens through which families in conflict and the professionals involved in the custody evaluations are viewed.

My Family



Drawn by: L

Age: Nine years, one month old

Position in family: Last born of three children

Parents: Married

Chapter 6

Research Design

“In the process of perceiving and describing an experience, we construct not only our personal knowledge base about reality, but also our reality itself”

(Becvar & Becvar, 2009, p. 90)

Introduction

The previous chapter provided the paradigmatic scaffolding and theoretical orientation of the study, this chapter describes the research methods used within this paradigmatic context and the research design. The discussion includes a recapitulation of the study’s purpose and objective. This is followed by a discussion of the sampling strategies, data collection and data analysis techniques. The final sections discuss the trustworthiness of this study as well as the ethical considerations. The first order ethical considerations that are discussed, which were followed throughout the study, are in accordance with the guidelines stipulated by the American Psychological Association and the South African statutory body, the Health Professions Council of South Africa (HPCSA). However, in line with the constructionist paradigm, and the participant-observer position, it is necessary to discuss ethics from a position of reflexivity, and so the second order ethics from the perspective of cybernetics of cybernetics are also deliberated.

Purpose and Aims of the Study Revisited

The field of care and contact disputes is complex. Family Law proceedings encompass a broad range of issues including custody, maintenance, visitation and relocation (American Psychological Association, 2010). Several professionals often work simultaneously on a case; however, not always harmoniously. With this in mind, and the current lack of any formal registration category or qualification, the countless complaints made against psychologists at the HPCSA and the resistance of psychologists to work within the forensic

context, the aim of this research was to explore the current practices of Clinical Psychologists and the roles they fulfil within the forensic context, with a specific focus on care and contact disputes. It further aimed to explore how Clinical Psychologists formulate recommendations that are in line with the best interest of the child principle. The final aim of the study was to identify areas that need further investigation and to formulate guidelines to promote the proficiency in the conduct and evaluations of Clinical Psychologists. In view of this, the specific research questions were:

1. What are the current psychological practices of Clinical Psychologists who work within the forensic context, and specifically in care and contact disputes?
2. How do the evaluation procedures, used by Clinical Psychologists, inform their recommendations to the Court in such matters, and in so doing, adhere to the ‘best interest of the child’ principle?
3. What are the current pitfalls in child custody evaluations, and how can these be improved upon when developing guidelines and/or frameworks to assist Clinical Psychologists and improve the efficacy of working in these contexts?

In order to address the research questions posed, a qualitative research approach was used. An epistemology of understanding a phenomenon in context provided a congruent framework. In addition, I positioned this study within the constructionist paradigm and used cybernetic theoretical principles and qualitative research to engage more intimately with the respondents so as to explore the work of clinicians in forensic contexts. The constructivist epistemological premise and a constructionist paradigm espouse that the world and reality are constructed, interpreted and experienced by people in their interactions with others (Tubey et al., 2015). In line with this, the ontological perspective is therefore a rejection of a reality, which exists irrespective of the individual, as ‘out there’ (Anderson et al., 1986; Becvar & Becvar, 2013; Tubey et al., 2015). For this reason, the nature of inquiry of this research was

interpretive as the aim was to explore and understand the care and contact disputes and the work of Clinical Psychologists in the field. The method used to collect rich and deep data involved personal contact with respondents over a period of time (Creswell, 2007; Tubey et al., 2015). To achieve this, a qualitative approach was used. Despite the non-generalisability of the findings, this approach holds much value, is oriented towards discovery and process, and produces a deep understanding of the research problem (Creswell, 2007).

Qualitative Research Approach

According to Denzin and Lincoln (2003), qualitative research, which has been ever-changing, locates the observer in the world, meaning that “qualitative researchers study things in their natural settings, attempting to make sense of, or interpret phenomena in terms of meanings people bring to them” (Denzin & Lincoln, 2003, p.4). Qualitative research is therefore based on a relativist, constructivist ontology that posits that there is no objective reality (Krauss, 2005). This is also in line with the systemic theoretical assumptions that suggest that multiple versions of reality exist (Becvar & Becvar, 2013; Krauss, 2005).

With this in mind, meaning can only be understood within a social context, and so qualitative research is a step towards a deeper understanding of social phenomena and their dynamics (Attride-Stirling, 2001). This research approach allows one to explore a complex phenomenon and gain insight from the respondents’ experiences (de Vos, Strydom, Fouche, & Delpont, 2011). In addition, qualitative researchers stress the socially constructed nature of reality and the intimate relationship between the researcher and that which is being studied (Denzin & Lincoln, 2003). The epistemological assumption is that the inquirer and the object of inquiry are inseparable and therefore it is not possible for a researcher to remain objective and value free (Creswell, 2007; Denzin & Lincoln, 2003; Guba & Lincoln, 1994). According to Kvale (1992), qualitative methods best serve the inherent epistemological premises of post-

modern constructivist research. In line with this, the approach of this study was based on qualitative methodologies.

In addition, this study was explorative and inductive in nature, which is consistent with the qualitative approach. The rationale for employing an exploratory design was that there is a dearth of information relating to the nature of care and contact disputes in South Africa, despite them having been practised for decades. My aim was to explore a relatively unknown area in order to gain insight into the phenomena under study. An exploratory research design is appropriate for this study as my goal was to deepen my understanding about the topic, and also to identify new categories of meaning by exploring an area in which little research has been done within a South African context (Babbie, 2013; de Vos et al., 2011; Marshall & Rossman, 2006). The research is also inductive in nature in that the data were analysed without categorising the information into a pre-existing coding frame. Inductive reasoning involves a process of discovery, of uncovering patterns, of working from the bottom up and collaboratively interacting with respondents in order for abstractions to emerge from the process (Braun & Clarke, 2006; Creswell, 2007; Tubey et al., 2015). This process involves continuously moving back and forth between the data base and the findings in order to establish a comprehensive set of themes (Creswell, 2007). This process guided my approach in making sense of the phenomena: The aim was to explore responses to open questions rather than testing theoretically derived (deductive) hypotheses. Therefore, in the process of analysis I initially immersed myself in the natural setting, described the phenomena, and thereafter slowly worked towards building second-order constructs as suggested by Babbie and Mouton (2001).

This approach enabled me to embark on this study with an open-mind and interactive attitude thus guiding my exploration throughout. Further to this, I also posit that a qualitative research approach with an explorative and inductive nature is congruent with the underlying philosophy of the constructionist, interpretivist paradigm in which I positioned myself. The

ultimate aim of this design was to explore a topic that, despite being practised for decades, lacks scientific writings.

There is an inherent obsession amongst researchers to ensure that they remain bound by particular research methods; however, from a qualitative perspective, researchers should be inquisitive (Denzin & Lincoln, 2003). The role of a qualitative researcher “demands a presence, an attention to detail, and a powerful use of the researcher’s own mind and body in analysis and interpretation of data” (Denzin & Lincoln, 2003, p. 63). At the risk of falling into the trap, I ensured that the methods employed throughout allowed an iterative process, thus obtaining substantive and rich data. In this next section I outline the methods used in this study. This is to provide a context for the findings that are discussed in Chapters 7 and 8.

Population and Respondent Selection

Keeping in mind the explorative nature of this study, I ensured that the respondents, who were interviewed, fulfilled certain criteria in order for the research questions to tap relevant information. In addition, I approached this study from a cybernetic, constructionist paradigm. To triangulate my data and ensure rigour within the study, the following data sources were included:

1. Clinical Psychologists who were registered with the HPCSA, and who were working in the psycho-legal/ forensic field, and specifically with care and contact cases.
2. Family Advocates, or advocates who were practising in the field of family law, and who were working in conjunction with Clinical Psychologists on such matters.

The selection criteria for the respondent group of Clinical Psychologists were as follows:

- a) Participants were registered in the category of Clinical Psychology with the Health Professions Council of South Africa.

- b) Respondents were active in care and contact matters dispute evaluations.

The selection criteria for the advocates and Family Advocates were as follows:

- a) The respondents must be working in the family law context as a Family Advocate or advocate.
- b) The respondents must be working closely with Clinical Psychologists in child custody disputes.

Sampling strategy

Keeping the research purpose in mind, respondents who could fulfil this purpose and were able to answer the specific research questions, were selected. In other words, respondents who had the knowledge and experience to contribute to the understanding of the topic were included. For these reasons, purposive and snowball sampling strategies were employed. Due to the scarcity of Clinical Psychologists working within this field, purposive sampling was an appropriate method to access a ‘difficult to reach’ population (Neuman, 2000). Purposive sampling allowed for specific participants (i.e. those with specialised knowledge relating to the research questions at hand) to be included. In addition, snowball sampling was used to ensure a process of gradually accumulating a sufficiently large enough sample group through relevant contacts and references (TerreBlanche, Durrheim, & Painter, 2006; Wagner et al., 2012).

Although the inclusion of respondents was not limited to a specific location, all respondents were located throughout the Gauteng Province, South Africa. In addition, there was no hard and fast rule as to the final number of respondents. I knew from the outset that recruiting a large number of professionals may be challenging due to the inaccessibility and work load of these professionals, as well their possible reluctance in participating in such a study. However; despite the latter challenge, participants were willing to share their knowledge and experience.

Qualitative research, by nature, is not prescriptive and so there are no hard and fast rules as to the ideal number of respondents (Wagner et al., 2012). The sample should however, not be so small that data saturation is not reached. For this reason, I continued to collect data until no new information came to light and so the final number of respondents was largely dependent on data saturation. The respondent group consisted of 10 participants and were comprised as follows:

- a) Five Clinical Psychologists who were working within an organisation or private practice in South Africa, who were registered with the HPCSA as an independent practitioner in the category of clinical psychology; and who were actively working within the psycholegal/forensic context with a specific focus on care and contact matter disputes.
- b) Five advocates who were working within the family law context and who had worked with Clinical Psychologists in such matters

A summary of the respondents' demographics is outlined in Table 6-1 below.

Table 6-1 *Demographics of respondents*

NAME	PROFESSION	MALE / FEMALE	AGE	ETHNICITY	YEARS OF REGISTRATION	YEARS OF FAMILY LAW WORK	TESTIFIED IN COURT	HPCSA BOARD COMPLAINT
Dr Jane	Clinical Psychologist	Female	38y/o	White	10 years	14 years	Yes	Yes
Dr Lewis	Clinical Psychologist	Female	62y/o	White	26 years	18 years	Yes	Yes
Dr Martins	Clinical Psychologist	Female	57y/o	White	30 years	+20years	Yes	Yes
Mr Nate	Clinical Psychologist	Male	28y/o	White	4 years	2 years	No	No

Dr Alan	Clinical Psychologist	Male	43y/o	White	17 years	16 years	Yes	Yes
Adv. Reid	Advocate	Female	46 /o	White	22 years	+10 years	-	-
Adv. Hanson	Advocate	Female	-	White	-	-	-	-
Adv. Blake	Advocate	Female	43y/o	White	20 years	+10 years	-	-
Adv. Banks	Advocate	Female	-	White	+20 years	+15 years	-	-
Adv. McGill	Advocate	Female	-	White	+30 years	+30 years	-	-

Data Collection

Triangulation, a source of cross verification of data from several sources, was used to ensure data saturation and in so doing enhance the confidence of the findings and the credibility of the study. The following figure is a graphical representation of the data sources used to collect information:

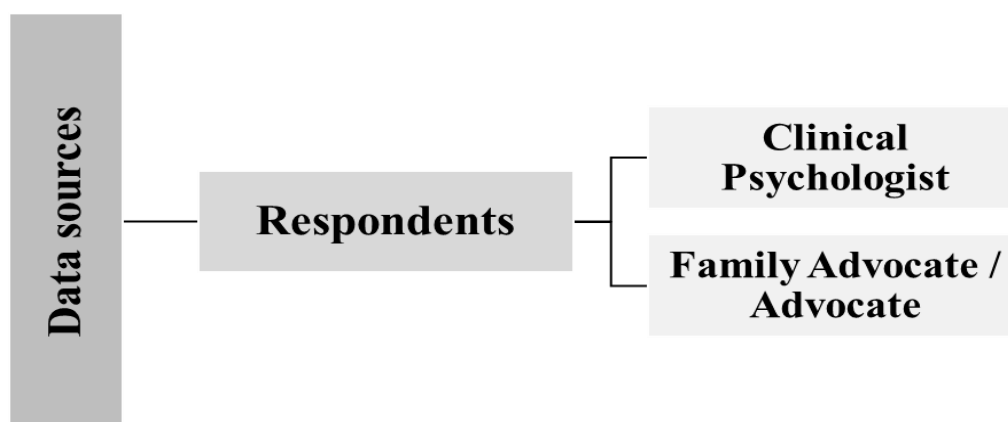


Figure 6-1 Graphical representation of the data sources used to collect information

In-depth semi-structured face to face interviews with the respondents were used to collect the data. The aim of the study was to explore a relatively undocumented, and sensitive nature of care and contact evaluations. In-depth interviews allowed me to obtain not only content information, but also to tap into the process by which the content of the conversation came into being (Babbie & Mouton, 2008). This facilitated new insights to emerge. If research questions are approached from different angles and bring together a range of views then there is a potential to generate new and alternative explanations that capture the social complexity of the phenomenon under study (Arksey & Knight, 1999). The interview questions were compiled so as to elicit substantive and rich discussions of the topic. The interviews proved to be engaging and enriching. It must be noted that, despite having a sense of direction that the pre-planned questions provided, I found that the conversations often led to additional questions being asked in order to elaborate more thoroughly on a particular topic. This allowed questions to emerge and change.

The interviews were audio recorded and later transcribed by a third party who agreed to confidentiality clauses. The transcriptions were checked for discrepancies and respondents were offered an opportunity to clarify and/or correct the transcripts. This process was followed to ensure that the data sets were accurately and reliably recorded.

Data Analysis

Qualitative approaches, which are diverse, complex and nuanced (Braun & Clarke, 2006, p. 4), facilitate a complex meaning-making process (Creswell, 2007). This was an intense learning process where new knowledge and information came to light. It has been said that qualitative inquiry is unique and so the data analysis processes are also unique and unfold during the research process (Livingston, 2014). According to Attride-Stirling (2001), for qualitative research to yield meaningful and useful results, it is imperative that the material under scrutiny is analysed in a methodical manner, and for this reason thematic network

analysis was used. In this way, systematic and rigorous guidelines led to meaningful and useful results (Attride-Stirling, 2001). Although thematic analysis can be described as flexible, it is useful to embrace flexibility while at the same time ensuring that the procedures of thematic analysis are “theoretically and methodologically sound” (Braun & Clarke, 2006, p. 5). Thematic network analysis, which explores the understanding of an issue or the significance of an idea (Attride-Stirling, 2001), seeks to unearth the salient themes and patterns in a particular linguistic domain. In this way, I was able to generate new levels of meaning.

Although the technique is not new, it seems to have gained popularity in qualitative studies over the last few decades (Attride-Stirling, 2001; Coviello, 2005; Jack, 2005).

Thematic network analysis conducted within a social constructionist paradigm seeks to theorise sociocultural contexts (Braun & Clarke, 2006). Thematic network analysis is thus a method for identifying, analysing, and reporting patterns (themes) within data (Braun & Clarke, 2006), with the broad aim of exploring the comprehension of an issue or the significance of an idea. Applying thematic networks in this study allowed for the organising of the qualitative data and sought to unearth the salient themes in the texts at different levels (Attride-Stirling, 2001). The process of deriving themes from textual data and illustrating these, with some representational tool, is well established in qualitative research and adds to the methodological rigour of qualitative studies.

The paradigmatic and theoretical framework of the study alludes to the notion that individuals exist in relation to others, and that knowledge is co-created, therefore, thematic network analysis was an appropriate technique to use. This is aligned with the premise that networks are relationship based. The aim of employing thematic network analysis was to explore the understanding of the custody dispute context rather than to reconcile conflicting arguments regarding a problem. To ensure that there was clarity with regards to the ‘how’ of the data analysis and to ensure that the analysis process was done with transparency, the steps

involved will be described below (Attride-Stirling, 2001; Braun & Clarke, 2006). Although thematic network analysis can be likened to many other qualitative analysis methods, Attride-Stirling (2001, p. 391) proposes a six step process in analysing data using thematic network analysis. The aim of thematic network analysis is to explore the understanding of the issue at hand and to organise the qualitative data elicited from the texts. Salient themes are unearthed and the process of networks organises and depicts the themes elicited (Attride-Stirling, 2001). The full process can be separated into three broad stages depicted below in Table 6-2:

Table 6-2 *A Summary of the Six Stages of Thematic Network Analysis*

ANALYSIS STAGE A	REDUCTION OR BREAKDOWN OF TEXT
	<p>STEP 1: CODE MATERIAL</p> <ul style="list-style-type: none"> a) Devise a coding framework b) Dissect text into text segments using the coding framework
	<p>STEP 2: IDENTIFY THEMES</p> <ul style="list-style-type: none"> a) Abstract themes from coded text segments b) Refine themes
	<p>STEP 3: CONSTRUCT THEMATIC NETWORKS</p> <ul style="list-style-type: none"> a) Arrange themes b) Select basic themes c) Rearrange into organizing themes d) Deduce global themes e) Illustrate as thematic networks f) Verify and refine the networks
ANALYSIS STAGE B	EXPLORATION OF TEXT
	<p>STEP 4: DESCRIBE AND EXPLORE THEMATIC NETWORKS</p> <ul style="list-style-type: none"> a) Describe the network b) Explore the network
	<p>STEP 5: SUMMARISE THEMATIC NETWORKS</p>
ANALYSIS STAGE C	INTEGRATION OF THE EXPLORATION
	<p>STEP 6: INTERPRET PATTERNS</p>

Thematic network analysis provides web-like representations, as an organising principle, to delineate the procedures used in moving from data to interpretation (Attride-Stirling, 2001). This procedure provides a systematic extraction of:

- (i) Lowest order premises evident in the text (basic themes); (ii) categories of basic themes grouped together to summarize more abstract principles (organizing themes); and (iii) super-ordinate themes encapsulating the principal metaphors in the text as a whole (global themes) (Attride-Stirling, 2001, p. 388)

To remain consistent with the systematic analysis procedures of Attride-Stirling, the findings of this study (Chapter Six) are presented in web-like representations prior to the relevant discussions of the theme and networks elicited. The analysis process therefore began with developing basic themes and working inwards towards a global theme. Once the basic themes were derived, they were classified according to the underlying narratives that were being told. These classifications became the organising themes. This ultimately led to the development of the global themes. Figure 6-2 below is a schematic representation of how the themes were organised (Attride-Stirling, 2001, p. 388):

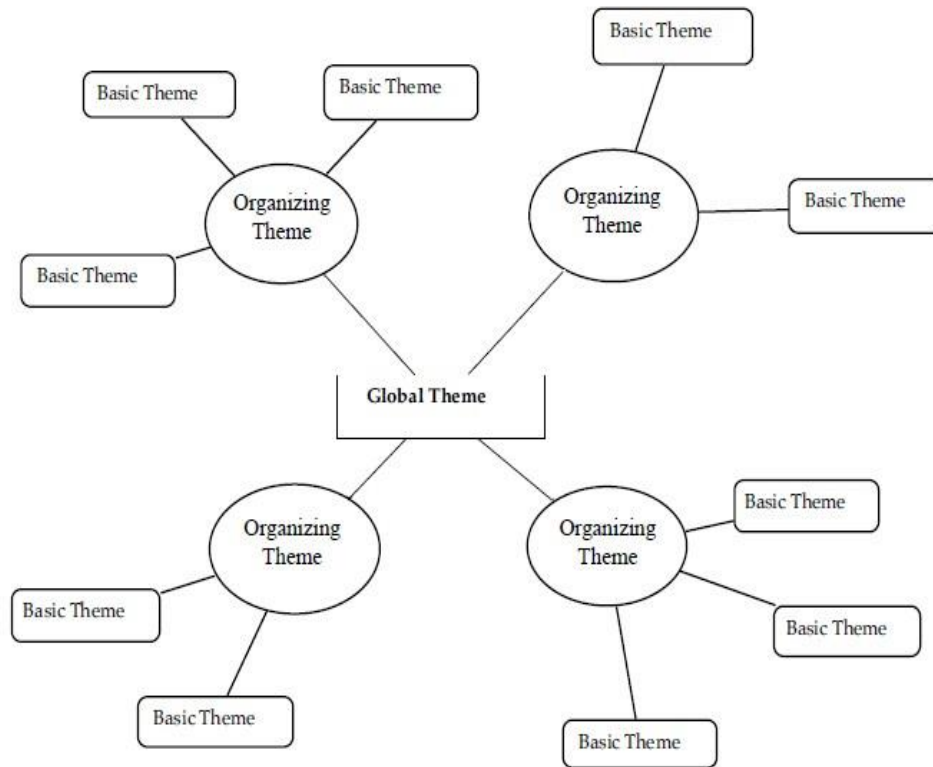


Figure 6-2 *The Structure of Thematic Networks*

To ensure that the data were rigorously analysed and that I became intimately familiar with the texts, I spent a great deal of time immersing myself in the texts. This enabled me to become familiar with the content and in this active reading phase the initial note taking and coding began (Braun & Clarke, 2006). From this point, I began with the first step of the thematic network analysis *coding the data*, which involved developing a coding framework. This was done on the basis of the theoretical interests that guided the research questions and on the basis of the salient issues that arose in the text. Although this step is described as rudimentary, it is imperative to complete it with rigour and attention to detail (Attride-Stirling, 2001). It was necessary to ensure that the coding framework: i) Had explicit boundaries; ii) was not interchangeable or redundant; iii) was limited in scope; and iv) focused explicitly on the object of analysis (Attride-Stirling, 2001; Livingston, 2014, p. 178). Once all the text was coded, step 2, *identifying themes*, which involved abstracting themes from the coded text segments, was implemented. In this step themes were abstracted from the

text segments in each code (or group of related codes). This process revealed the salient or common themes, thus identifying underlying patterns and structures. Once the themes were abstracted, I refined them further into themes that were specific enough to be discrete yet broad enough to encapsulate a set of ideas contained in several text segments (Attride-Stirling, 2001, p. 392). Step 3, *constructing the networks*, involved arranging the themes into similar, coherent groupings that began the formation of the networks. These groupings of themes then became the basic themes as described by Attride-Stirling (2001). Once the basic themes were grouped into clusters based on shared issues, the organising themes began to emerge. Through the process of rearranging the basic themes into organising themes (i.e. categories of basic themes grouped together to summarize more abstract principles) I was able to identify and name the underlying issues. The underlying claim, argument or assumptions of the organising themes were then summarised. These claims, arguments or assumptions formed the global theme of the network. Once the process of abstracting the basic, organising and global themes was completed, I illustrated them with non-hierarchical web-like presentations as suggested by Attride-Stirling (2001). It was important to ensure that the themes reflected the data and that the data in turn supported the themes. The fourth step, *describing and exploring the thematic networks*, required a deeper meaning and a deeper level of abstraction. This entailed returning to the original text and interpreting the text using the networks I had already established. Thus, the networks established became a tool to anchor the interpretations. Step five, *summarise the thematic networks*, required a summary of the principal themes that emerged in the description of the networks, and identifying the underlying patterns of the text. The final step, *interpreting patterns*, involved collating the deductions in the summaries of the networks, as well as the theory in order to explore the themes and patterns that emerged from the texts. In this final step, which brought the process

to a full circle, I addressed the research questions with the theoretical underpinnings in mind. The findings of this process are discussed in Chapter 6.

Thematic network analysis is compatible with both essentialist and constructionist paradigms within psychology and provides a flexible tool that can potentially provide a rich and detailed, yet complex account of data (Braun & Clarke, 2006). Bearing in mind the ontological and epistemological nature of this study, the qualitative approach and thematic network analysis tool were appropriate for the research design. Thematic network analysis conducted within the context of this study did not seek to focus on motivation or individual psychologies, but instead sought to theorise the socio-cultural contexts and structural conditions of the participants (Braun & Clarke, 2006).

Measures to Ensure Trustworthiness

Too often one hears that the naturalist inquirer is guilty of ‘sloppy’ work and merely indiscriminately engages in subjective research (Lincoln & Guba, 1985, p. 289). It is not my aim to defend against such accusations, but instead to demonstrate the value of this research and in so doing, demonstrate the trustworthiness of this study.

Although some researchers still draw on the concepts of validity and reliability in qualitative research, there has been a shift in using a parallel set of criteria that is seen as more appropriate for qualitative studies (Livingston, 2014). Denzin and Lincoln (2003, p. 69) stated that many qualitative researchers struggle to identify issues of validity and reliability appropriately. However, according to Lincoln and Guba (1985) (as cited in Babbie & Mouton, 2001, p. 226) “the key criteria of good qualitative research is in the notion of trustworthiness.” It is through the exploration of the trustworthiness of an inquiry that the quality of such an inquiry can be ascertained (Guba & Lincoln, 1994), and so in order to ensure the trustworthiness of the study, the following measures, as proposed by Lincoln and Guba (1985), were used:

Credibility

Credibility is concerned with the extent to which the findings and conclusions are an adequate account of the descriptions and explanations of others. In this way we ensure that that the reconstructions we have arrived at “are credible to the constructions of the original multiple realities” of the respondents (Lincoln & Guba, 1985, p. 296). Credibility of the study was ensured by using the following procedures:

- a) *Prolonged engagement* – “It is not possible to understand *any* phenomenon without reference to the context in which it is embedded” (Lincoln & Guba, 1985, p. 302) and so I remained in the field until data saturation was reached in order to ensure that I had sufficient time to achieve the research purposes. This gave me the opportunity to fully understand and appreciate the context.
- b) *Data Triangulation* – To ensure that I carried out the inquiry in a way that the credibility of the findings was enhanced, I triangulated the data by using multiple data sources.
- c) *Member checking* – I returned to the sources of information to check both the data, the analytic categories and the interpretations of the data. This provided an opportunity for any errors, or misinterpretations to be clarified, and to ensure that any reconstructions I made were adequate and accurately reflected the respondents’ constructions.
- d) *Peer debriefing* – Peer debriefing served two purposes, first, to ensure that any bias was accounted for, and that I remained as ‘honest’ as possible throughout this process; and second as a way to challenge my findings to confirm that the final product was as credible as it could be.

Transferability

Transferability refers to the extent to which the findings can be applied in other contexts. I do not claim that findings from this study will be applicable to other contexts; however, instead to ensure transferability the following procedures were used:

- a) I made sure that a sufficiently rich and detailed description of the data was collected, thus ensuring a ‘thick’ account of the data.
- b) A purposive sampling strategy was used to obtain the relevant information from experienced and knowledgeable respondents, whose constructions would add to the detailed descriptions.

Dependability

Dependability refers to the notion that if a study were to be repeated, with the same or similar sample group in a similar context, its findings would be similar. Strategies that were used to ensure credibility were also used to ensure dependability. However, instead of member checking, I made use of an inquiry coder, or a co-coder, to ensure the dependability of the study. The co-coder is an experienced qualitative researcher who analysed the data according the Attride-Stirling’s (2001) steps of thematic network analysis. After I had completed my analysis, we deliberated and together finalised the set of network themes and sub-themes that are discussed in Chapter 7 and 8. The independent consultant agreed to confidentiality clauses to ensure the integrity of the data.

Confirmability

Confirmability refers to the degree to which the findings are the product of the focus of the study, and not the biases of the researcher. Lincoln and Guba (1985) suggested that a researcher leaves a confirmability audit trail in order for an auditor to determine if the conclusions, interpretations and the recommendations can be traced to their sources. Therefore, disclosure of the processes of interpretation in qualitative research is important

(Attride-Stirling, 2001). An audit trail was created and electronically documented throughout the research process to ensure that an audit trail represented the processes followed during the data collection, analysis, interpretation and reporting phases. Thus, the audit trail consisted of the raw data, the products of the data coding and reduction, the data reconstructions and interpretations and all process notes.

Ethical Considerations

The ethical issues in the social sciences tend to be complex because the sources of information are human beings. In order to comprehend some meanings of life, research then involves collecting data from people regarding phenomena (Creswell, 2014, p. 132). For this reason, it is imperative to safeguard the well-being of the respondents (de Vos et al., 2011). In line with the paradigm of the study, the definition of ethics, which is agreed upon in the profession, and which is adhered to throughout this study, is defined as “a set of moral principles which is suggested by an individual or group, is subsequently widely accepted, and which offers rules and behavioural expectations about the most correct conduct towards subjects and respondents ...” (Strydom, Fouché, & Delpont, 2005, p. 57). However, the topic of ethical considerations will be addressed in two parts: the first part concerns the ethical considerations generally agreed upon by the professional statutory governing body, the HPCSA, as well as the ethical guidelines as written by many researchers themselves. The second part addresses ethics from the theoretical framework of this study, and highlights the ethical considerations from a higher order of thinking. This level of ethics is also implicit in constructivism, where ethics resides in the process, and not only present in the content of interactions. Thus, ethics from a second order perspective will also be discussed.

First Order Ethics

Ethical clearance

It was my intention to ensure that no respondent suffered any harm throughout the process, and to respect the integrity and autonomy of all participants and organisations that were involved in this study. As per the Health Professions Act (Act No 56 of 1974) a psychologist shall a) obtain written approval, prior to conducting the research, from the implicated institution(s) or organisation(s), b) provide the host institution(s) or organisation(s) with accurate information about his or her research proposal, and c) conduct the research in accordance with the research protocol approved by the institution or organisation concerned.

For these reasons, I applied for, and was granted ethical clearance from all the appropriate organisations that were involved indirectly by virtue of the respondents taking part in this study. Ethical clearance was obtained from all relevant institutions prior to conducting data collection. To ensure that the respondents remained confidential, I opted not to name the professional organisations in this thesis. I did, however, attach an ethical clearance certificate that was awarded by the Ethics Committee from the Department of Psychology at the University of South Africa (see Appendix A).

Competency of the researcher

It is my responsibility as both a clinician and a researcher to ensure that I remain competent and embody the necessary skills in order to undertake studies. I am a qualified clinical psychologist, registered with the HPCSA, as well as a lecturer at the University of South Africa. As per the HPCSA requirements, I have, since my registration with the HPCSA (Health Professions Act, Act No 56 of 1974), maintained my competency in Clinical Psychology through continued professional development, supervision and continued consultation. I first received training in the forensic field during my Masters in Clinical

Psychology at the University of South Africa in 2004/5, and again in 2006 during my internship year at Sterkfontein Psychiatric Hospital. Once qualified, I continued to receive supervision on forensic cases. In addition, the promoter of this study, whose guidance was sought throughout the research process, is regarded as an expert in the field of Clinical Psychology.

Beneficence and non-maleficence

Many of the ethical guidelines for researchers were developed because of specific abuses of research participants by researchers (Babbie, 2013; Creswell, 2014; de Vos et al., 2011; Neuman, 2000; TerreBlanche et al., 2006) and so it was my aim to ensure that no harm befell the participants. At no time during the research process were respondents deceived in any way about the research process. No foreseen risks were identified and all participants were able to withdraw from the study at any moment if they experienced any form of distress or discomfort. It is important to note that the participants of this study were not regarded as belonging to a sensitive population, and the emotional and physical impact/risk for participants was deemed low.

An additional consideration, which was important to consider, is the concept of *whistle blowing*. Based on my experience, and as discussed above, psychologists working in the care and contact context are often exposed to complaints levelled against them by both disgruntled family members as well as being exposed to attacks or challenges from their peers in the field of psychology. It was not my aim, nor the purpose of this study, to engage in whistle blowing of any participants.

I further offered to debrief the participants should they have felt the need.

Voluntary participation, freedom to withdraw and informed consent

A major tenet of social research is voluntary participation (de Vos et al., 2011; Babbie & Mouton, 2001; Health Professions Act, Act No 56 of 1974; Silverman, 2016; Wagner, Kawulich, & Garner, 2012), and so for the purposes of this research, all participants who agreed to participate did so voluntarily and were not coerced or deceived in anyway. They had the freedom to withdraw at any time during the research process without any consequences (de Vos et al., 2011). Due to the sensitive nature of the topic, it was a necessary and an important ethical consideration to ensure the autonomy and respect of the dignity of the participants. Before consenting to take part in this study the participants were given a written document (see Appendix D) that addressed the following:

- Purpose and objectives of the research
- Procedures that would be followed during the study
- The nature of the interviews, and the measures that would be taken to ensure the safe keeping of all data
- Participants were informed of who would have access to the findings of the study
- Voluntary participation and the freedom to withdraw at any time during the study without penalties
- The credibility of the researcher.

A thorough explanation with regards to the nature of the study afforded the participants to make a reasonable and informed decision. The researcher obtained both verbal and written informed consent from the participants prior to embarking on data collection.

Privacy and confidentiality

The protection of individual and institutional information is an important ethical consideration that aims to protect the dignity of all participants (de Vos et al., 2011; Neuman, 2000; TerreBlanche et al., 2006; Silverman, 2016; Wagner et al., 2012). Anonymity could not

be guaranteed in this study because the respondents were known to me. However, all identifying biographical, personal or institutional information was treated with respect and was kept confidential at all times. Transcriptions were done by a third party, who agreed to confidentiality clauses and signed a confidentiality agreement at the outset of the process. The transcripts were made available to the promoter of this study, as well as the co-coder who was employed to ensure the trustworthiness of the findings. However, at no point were names or place of work of the respondents included in the audio-recordings and the transcriptions. To ensure the safe keeping of all information, documents, audio recordings and transcripts were kept in a safe, secure location with no access to any other party. All electronic devices, on which information was saved, were password protected, and all hard copy documentation was locked in the facility of the researcher's professional offices. In line with the ethical code of conduct as outlined by the Health Professions Council of South Africa (Health Professions Act, Act No 56 of 1974) all documentation and audio recordings will be kept and archived for a period of six years.

Second Order Ethics

From a position, where discovering the absolute truth and total neutrality is seen as being impossible, remaining ethical (from a second order perspective) requires one to adopt a position of reflexivity and to maintain an awareness of the epistemological stance one takes. Thus implies that, from a cybernetic framework, all ethical concerns are inclusive (Becvar & Becvar, 2013). Fasser (2014, p. 98) indicated that psychologists, who lack an epistemological awareness, may leave themselves vulnerable to the “demands of litigation and the lure of advocacy”. It is thus imperative that a psychologist maintains an awareness of the observer dependent position by “embracing knowing what one knows, knowing how one knows, and hence also exercising self-reflexivity” which “ultimately allows for the creation of checks and balances to moderate the meanings that evolve through the investigation”

(Fasser, 2014, p. 98). The intrinsic nature of ethics, from a constructivist paradigm, and the close personal interactions that form part of qualitative research may lead to concerns with regards to the confidentiality and anonymity of the respondents (Guba & Lincoln, 1994). For this reason, a psychologist, who works ethically from a second order perspective, aside from adhering to an external code of ethics or first order ethics as discussed above, should be aware of, and adhere to, internal ethics that are aligned with the constructivist paradigm and the cybernetic theoretical framework (Guba & Lincoln, 1994; Snyman & Fasser, 2004).

Reflexivity and self-reference

As discussed in Chapter 4, an observer, who adopts a position of ‘objectivity’ is at risk of omitting contextual aspects. Disregarding the nature of self-referential systems often prevails in one’s dealing with human systems (Keeney, 1983). In the context of self-reference, the observer and the observed are recursively interconnected (Keeney, 1983). However, it is equally erroneous to negate objectivity for subjectivity (von Foerster, as cited in Keeney, 1983, p. 80).

Reflexivity and adopting a constructionist paradigm requires that researchers address their own background that shapes their interpretations during the research process (Creswell, 2014). This suggests that a reflexive stance, with an awareness of a participatory epistemology, is seen as more ethical than simply following first order ethics. According to this perspective, a modernist, scientific perspective is not applicable to social systems, of which the family system is a part (Keeney, 1983). However, in order to ethically approach a care and contact dispute, it is my opinion that a ‘both/and’ approach, in which both scientific methods and an awareness of ecosystemic epistemologies, is necessary. The second order perspective, cybernetics of cybernetics, then contextualises the more first order, modernist approaches; “The avenue to correcting the potentially heartless and ethically bankrupt position of a strict application of simple cybernetics to human systems involves leaping to the

position of self-reference and participation prescribed by cybernetics of cybernetics” (Keeney, 1983, p. 82). This is further amplified by Bateson (1979) in his discussion of *double description* where information obtained from multiple sources should all be regarded as valuable. In other words, one source of information should not be rejected in favour of the other (Bateson, 1979). In his explanation, he offered the following figure, which can be likened to Figure 5-2 in Chapter Five, as a means of description:

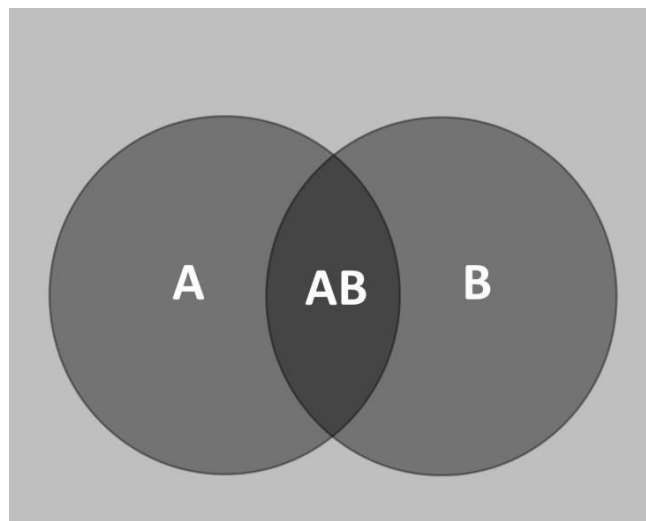


Figure 6-3 Bateson's double description

Consistent with the postmodern framework, where one focuses on dialogue and the understanding that no one reality supersedes another, I therefore remained aware of the ethics of participation, rather than a search for a cause or the “truth” (Hoffman, 1990, p. 2). These second order ethics are regarded as inclusive within the constructionist paradigm and cybernetic theoretical framework.

Participant observation

From a second order perspective, I as researcher took up a position of ‘not knowing’. This does not mean I approached this study with no knowledge, but rather that I, as the clinician and researcher, adopted a position of curiosity rather than as an expert with a pre-existing hypothesis to confirm or disconfirm. This implies that a recognition that all that is

being observed is in itself a construction, and that the process of observation becomes a meta-construction (Fasser, 2014). Adding on to this, ethics then also pertains to the ways in which people, in dialogue, participate. Thus reflecting on one's participation is subsumed as ethical from a second order perspective. This implies an awareness of, and responsibility for, taking for the role as a researcher in the process. The reflection of self in relation to others allows us to behave ethically, since we are continually monitoring both how we are in our relationship with others, and the consequences of our actions. Therefore, thinking ethically from a meta-perspective allows us to be aware of the ethical difficulties embedded in this way of thinking.

Problem definition

In approaching this study, I had my own personal experiences and perspectives of families involved with custody evaluations, and the professionals who formed part of the evaluative processes. I was also aware of falling into the trap of not only problematising the families, but also the Clinical Psychologists who are a part of the evaluations. Although I could not avoid this in totality, it was imperative that I approached this study first with the awareness of my already constructed perceptions, and second, with the understanding that I cannot uncover "the Truth" (Becvar & Becvar, 2013, p. 317) and third, with an alertness to avoid 'over-pathologising' the system under investigation (Becvar & Becvar, 2013). This ecological awareness, in essence, ties in with the principle of non-maleficence as discussed above.

Further to this, the concept of manipulation needs to be briefly addressed. In line with the participant-observer position I took, and the paradigmatic and theoretical frameworks of this study, it is impossible to suggest that I had no impact or influence on the respondents. According to Becvar and Becvar (2013) one cannot not communicate, and therefore one cannot not manipulate. However, manipulation in this sense is not regarded as a malicious intent to deceive respondents, but instead is a reflexive and congruent acknowledgment of the

potential influences one may have during the research process. Influence, or manipulation, is unavoidable, but “the problem, therefore, is not how influence and manipulation can be avoided, but how they can best be comprehended” (Watzlawick, Weakland, & Fisch, 1974, p. xvi). This highlights the important consideration of second order cybernetics, in other words, to maintain a critical questioning stance with regards to consequences, or outcomes.

Chapter Summary

The essence of a good qualitative study is that there are a set of procedures that are simultaneously open ended and rigorous in nature, and that does justice to the complexity of the topic being studied (Denzin & Lincoln, 2003). In this chapter I added to the paradigmatic scaffold discussed in Chapter 5 by describing the research methods that formed part of the research design. In addition, the concept of trustworthiness, as it pertains to qualitative research, was explored. Taking the complexities of this study into account, both first order and second order ethics were highlighted as integral throughout the process. The next chapter presents a comprehensive presentation of the networks in relation to the literature reviewed in the preceding chapters.

My Family



Drawn by: A
Age: Nine years, six months old
Position in family: Second of two children
Parents: Married

Chapter 7

Findings and Discussion – Part 1

The Psychologists' Involvement in the Constructions of the Problem-Determined System in Child Care and Contact Disputes

“It is quite possible that we look at the world from the wrong side and that we might find the right answer by changing our point of view and looking at it from the other side, that is, not from outside, but from inside” (Jung, 1961, p. 580).

Introduction

The first aim of this thesis was to explore the practises of clinical psychologists in the care and contact milieu. The second aim was to explore how these practices inform psychologists' recommendations that are in line with the best interest of the child principle. The third and final aim included developing guidelines to promote the efficacy of the services by psychologists. I present the findings of the study in two chapters to allow for a logical and simple flow of information. In view of this, in Chapter 7 the findings related to past and current practices as elicited from the respondents are presented. Chapter 8 focuses on the professionals' recommendations. These were incorporated into the guidelines (see chapter 9) for improved practice. In addition, I present the findings in a manner that includes the voices of the respondents; a complex interpretation of the research problem, as well as relevant literature. In so doing, a holistic account of the multifaceted topic which formed the basis of this study is provided.

I begin this chapter with a brief description of the profiles of the respondents, (psychologists and law professionals), who participated in this study. This provides some context and reference for the reader. In line with ethical parameters, **pseudonyms** were given

to each respondent. The findings are presented as schematic representations of the networks elicited as well as discussions of associated themes and sub-themes.

Introducing the Respondents

As indicated in Chapter 6, I interviewed five clinical psychologists and five advocates who had extensive experience in care and contact disputes. The psychologists' and advocates' demographic details are noted in Chapter 6. The following section expands on these with a brief description of each interviewee.

The Psychologists

All five of the clinical psychologists interviewed, four of whom had doctoral degrees, ran a private practice, and tended to do both non-forensic and forensic work. All (N=5) were involved in lecturing, presenting papers at conferences and publishing manuscripts.

Dr Jane

Dr Jane, a white female clinical psychologist, practised in Gauteng. She obtained an international Forensic Master's degree in 2002, followed by a MA Clinical Psychology in South Africa. She was actively involved in the forensic field for 14 years, and had been a registered clinical psychologist in South Africa for approximately 10 years. After qualifying in South Africa, Dr Jane worked at several organisations both in the family law and criminal contexts. At the time of the study, she had been in private practice for several years. Dr Jane always had a curiosity and an interest in criminal behaviour, which ignited her work in the forensic context. Her involvement in care and contact matters evolved from her connection in the forensic context in South Africa.

Dr Lewis

Dr Lewis was a white female clinical psychologist in private practice in Gauteng. She obtained her MA Clinical Psychology in 1989, and her D. Litt et Phil (Psychology) in 2014.

Dr Lewis had been in private practice since 1991, and began her career in the forensic context in 1999. In addition, Dr Lewis had several publications and presented papers both in South Africa and internationally. At the start of her private practice, forensic work made up a small part of her work; however, at the time of interviewing, it comprised approximately 50-60% of her work.

Dr Martins

Dr Martins, a white female clinical psychologist, had her private practise in Gauteng. Dr Martins obtained her MA Clinical Psychology Degree in 1986, and her PhD in 2007. In addition, she had presented several papers at international and local conferences, as well as several workshops, which centred on the care and contact milieu, in South Africa. She had extensive experience in testifying in court and supervising other psychologists in forensic contexts.

As an intern psychologist Dr Martins was exposed to a forensic unit in a psychiatric hospital; however, it was never her intention to work in this field. After qualifying, Dr Martins began a private practice and within eight years was referred many cases that needed forensic evaluations. She described being “drawn” into the work through these cases. At the time of the study, Dr Martins had over 30 years of experience as a psychologist, which included clinical and psycho-legal work, and had supervised both peers and students in the care and contact field.

Mr Nate

Mr Nate, a white male clinical psychologist, was in private practice in Gauteng. He qualified in 2013, and began his private practice in 2015. He began working in the medico-legal field, specifically Road Accident Fund assessments that eventually led him into the

family law context. He believed that doing forensic work sharpened his skills sets as a clinician and a therapist.

Dr Alan

Dr Alan, a white male clinical psychologist, had a private practice in Gauteng. He had been registered with the HPCSA for approximately 17 years, with 16 years of experience in the family law context. He was a member of several professional societies, had published and presented several papers, and was involved in academia.

The Advocates

Adv. Reid

Adv. Reid, a white female, had been practising law for approximately 22 years. She started a private practice and eight years later, after a sabbatical, joined an organisation where she practised as an advocate for almost 11 years. Her experience included being a legal representative, curator and case manager in custody matters. Adv. Reid indicated that she had a passion for children and children's rights and regarded her work as a vehicle to give children a voice.

Adv. Blake

Adv. Blake, a white female began her legal career in 1997, had (at the time of this project) 20 years of experience in the legal field. Initially her practice consisted of general practice that included commercial work. She then focused on family law for 10-12 years. Adv. Blake describes "being forced" into family law by attorneys, but claimed to enjoy the field as she was able to make a difference to the lives of children. Much of her work is guided by the 'child's best interest'. She felt that she would be able to make a positive contribution to the lives of children.

Adv. Hanson

Adv. Hanson, a white female, had more than 17 years of experience as an advocate. She (at the time of this study) had a private practice in Gauteng and had published in the field.

Adv. McGill

Adv. McGill, a white female advocate, worked in Gauteng. Adv. McGill started her career as a public prosecutor. In 1986 she became a private practitioner and joined the Pretoria Bar. She was actively involved in Family Law for over 20 years, had served on various councils and committees and was involved in community work relating to family life. In addition, Adv. McGill had presented lectures as well as conference papers both in South Africa and internationally. She published widely and also received various awards.

Adv. Banks

Adv. Banks, a white female, had been practising as an advocate since 1991. She initially worked as a prosecutor and was involved in many cases related to crimes against children, including rape and molestation. After being admitted to the Bar in 2001, Adv. Banks became largely involved in family matters and indicated that care and contact matter comprised 40% of her then current practice. She also believed that men have a perception that women tend to be more capable of doing family law than their male counterparts.

Findings

In line with the study's paradigmatic constructionist framework, the qualitative research approach and the cybernetic theoretical underpinnings, the findings of this study embody the assumption that "meaning is embedded in the participants' experiences and that this meaning is mediated through the researcher's own perceptions" (Creswell, 2007, p. 226). To provide a clear presentation of the findings, and in accordance with Attride-Stirling's

(2001) analysis method, each thematic discussion is preceded by a web-like representation of the networks and themes that emerged.

Networks and Themes

As discussed in Chapter 6, thematic network analysis was used to code and thematise the data. The analysis process produced two global (central) themes, each with specific organising and basic themes. The first global theme, *Psychologists' involvement and practices in the construction of the problem-determined system in child care and contact disputes* consists of nine organising themes and is presented in Chapter 7. The second global (central) theme, *Where to from here? Reimagining the field*, consists of one organising theme and is discussed in Chapter 8. The network of the two global themes and their basic premises are summarised in Table 7-1 and 7-2 below.

Table 7-1 Summary of the organising and basic themes elicited from the first global theme

GLOBAL THEME 1	
Psychologists' involvement and practises in the construction of the problem-determined system in child care and contact disputes	
ORGANISING THEMES	BASIC THEMES
Theme 1 Friend or Foe? Conceptualising the relationship between psychologists and the legal profession	Psychologists as valuable service providers
	Lost in Translation: Paradigmatic differences between the psychology and law profession
	Devalued
	A muddy reputation
Theme 2 A field in Flux: An evolution of sorts	The psychologists' evolution in care and contact evaluations
	After the Child Care Act – Contextual changes
	The movement today
Theme 3 Best Interest of the Child (BIC): The golden thread of practice	In pursuit of the BIC: Legal and psychological constructions
	The voice of the child: Children should be seen and not heard
Theme 4 In Practice	Conceptualising the role of a forensic psychologist and the many hats they wear
	Referrals
	Contracting is the first step
	Triangulation of methods and sources
	The theoretical orientations of psychologists

	Remaining within the boundaries of scope of practice
	When all is said and done: Report writing and feedback
Theme 5	Dirty Family Games: Redefining parent alienation
Defining parameters	What is a good enough parent? Understanding parenting capacity
	“I love you, you love me...”: Attachment as an important factor to assess
Theme 6	Hired guns phenomenon: Who is the puppet master?
Challenges and Pitfalls	Self-agrandisation and professional arrogance
	Justice delayed is justice denied
	An arm and a leg for my child
	Personal and professional bias
	Looking for a needle in a haystack: The reluctance of psychologists
	Professional discord: Lack of camaraderie and support amongst the psychologists in the field
	“I didn’t know”: Gaps in specialised (forensic) training
	Over-reliance on psychometry
	Bad workmanship
Theme 7	Survival of the fittest: Forensic work is a minefield

Nature of the Beast	Experiencing the battlefield: Psychologists description of the war-torn problem-determined system
	“You have been served”: Tactics from the legal profession and clients against the psychologist
	Facing the music: Psychologists in the box
Theme 8 Checks and Balances: Ensuring ethical practices	Keeping them at arm’s length: Avoiding affiliations with the legal profession, a Catch 22
	Keeping your nose clean: On paper trails, transparency and fair practice
	Dotting your I’s and crossing your T’s: Protecting yourself through careful practices
	Towards objectivity: Repackaging psychology as the interface between process and content
	Looking at both sides of the fence
	Sanctions for bad workmanship
Theme 9 Responsibility Consciousness	Remaining mindful of your portion of responsibility
	“Work product gravitas”: Going the extra mile

Table 7-2 Summary of the organising and basic themes elicited from the second global theme

GLOBAL THEME 2	
Where to from here? Reimagining the field	
ORGANISING THEME	BASIC THEME
Theme 1 Working towards a better practice	Back to basics: A need for ethics at grassroots level
	Developing a standard model of practice for the South African context
	Cross-training and interdisciplinary collaboration
	Clinical vs. forensic: A both/and approach towards a sound evaluation
	Avoiding implicit and explicit bias: A call for constructive reflection
	Supervision: Learning to crawl before you walk
	Delineating scope of practice
	Constructive critique: Working towards improving practice and not destroying your colleague
	Appointing a mental health advisor to the Judge: The need to relook at Family Law

Following from the above summaries, in the next section I provide a brief introduction to the first global theme *Psychologists’ involvement and practices in the construction of the problem-determined system in child care and contact disputes*. This is followed by a discussion of each of the associated organising and basic themes. The discussions are substantiated by including verbatim quotes and paraphrased information obtained from the respondents in addition to excerpts from the literature reviewed in Chapters 2, 3 and 4. As evinced in the discussion, forensic work, and in particular care and contact cases are fraught with challenges, intra- and interdisciplinary tension and ethical trepidations that all contribute to the nature of the problem-determined system.

Global Theme 1: Psychologists' involvement and practices in the construction of the problem-determined system in child care and contact disputes

This global theme, which is linked to the first two aims of this thesis in the final chapter, provides clarity around the practices of psychologists in the care and contact locale. It addresses the nature of forensic work, the practices of psychologists working with care and contact cases and the concomitant challenges related to this work. Figure 7-1 below provides a graphical representation of the network that was developed.

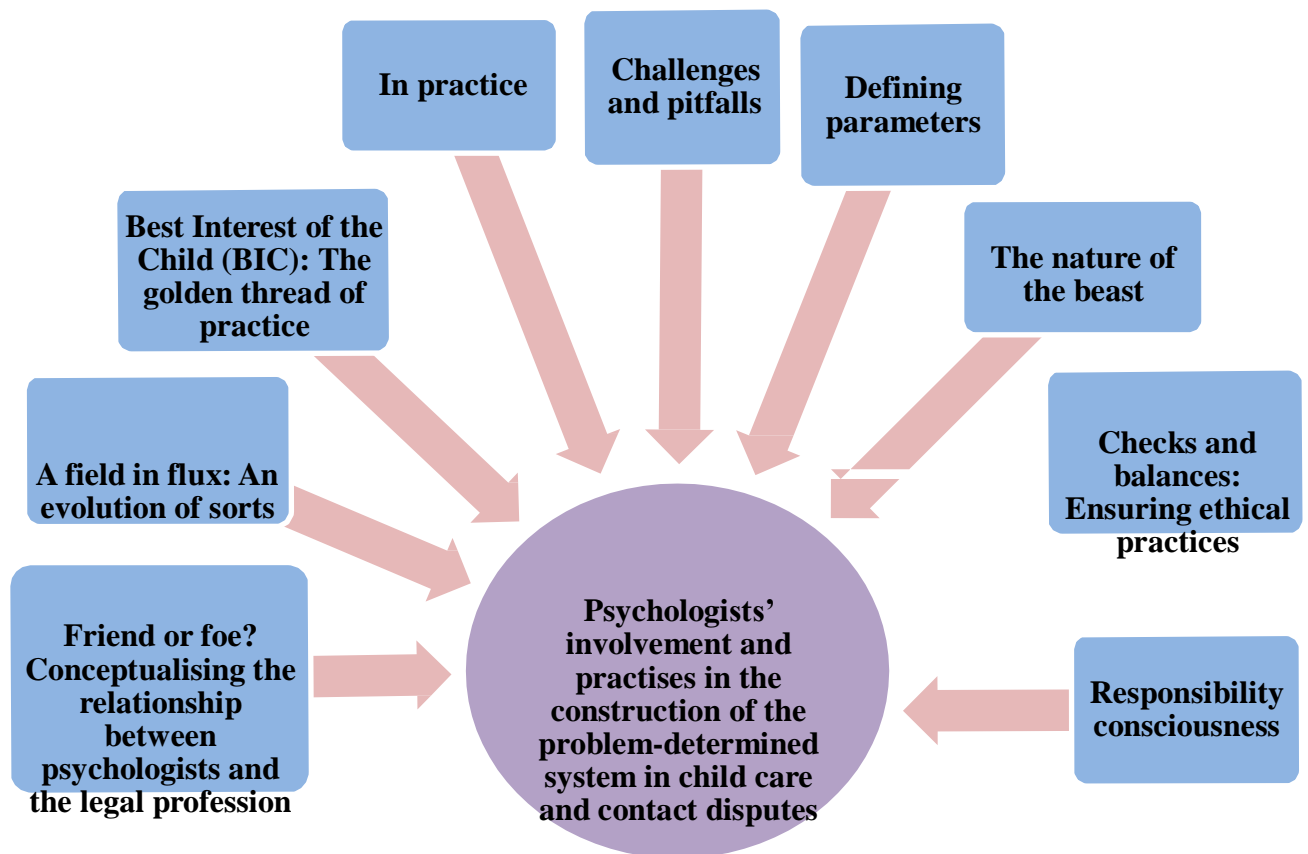


Figure 7-1 *The network of organising themes linked to the global theme: The psychologists' involvement and practises in the constructions of the problem-determined system in child care and contact disputes*

Theme 1: Friend or foe? Conceptualising the relationship between psychology and the legal profession

The first organising theme is specifically related to the nature of the relationship between the psychologists and legal professionals. As is highlighted in the literature, and which has largely been confirmed in this thesis, those working within these professions have vastly different and often contradictory perspectives and methods of working (Jameson, 2001; Tredoux et al., 2005). This can lead to a challenging and sometimes perplexing environment. This is alluded to in the basic themes below. With this in mind, Theme 1, which is comprised of four basic themes, addresses the conceptualised relationship between the field of psychology and the legal profession.

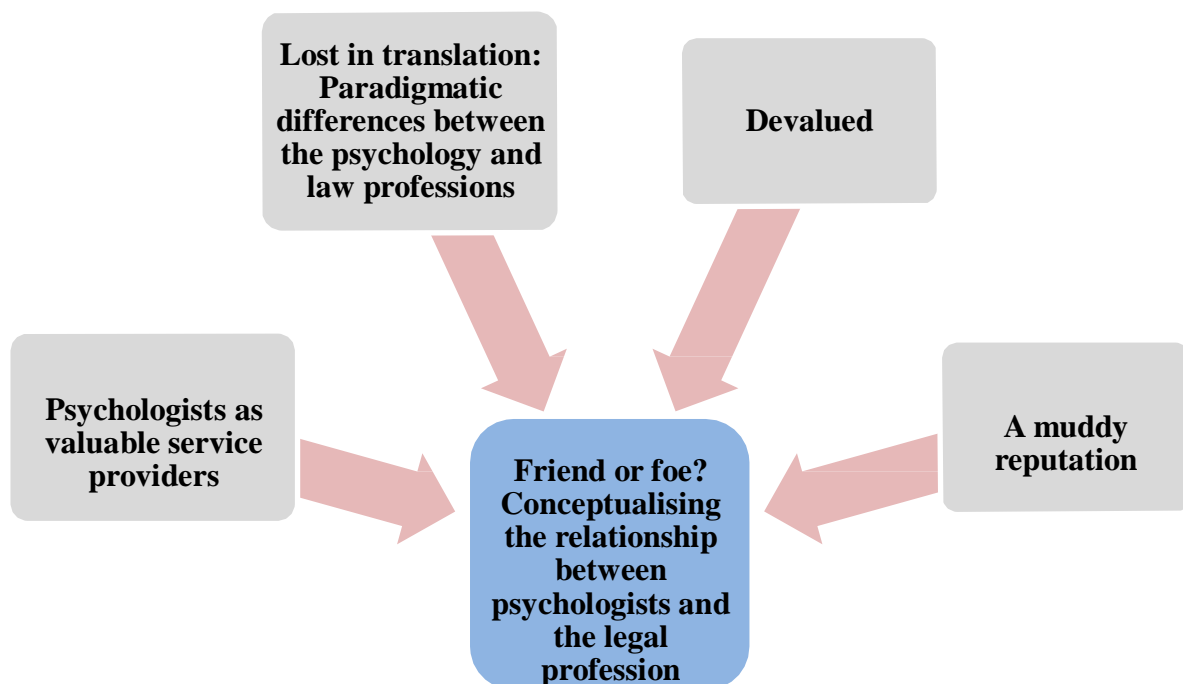


Figure 7-2 Basic themes linked to the organising theme: *Friend or Foe? Conceptualising the relationship between psychologists and the legal profession*

Psychologists as valuable service providers

This first basic theme highlights the position of psychologists in the broader legal context, specifically in providing a particular service, at a specific point in time. The psychologist is regarded as a professional who provides relevant expert psychological information to the legal field. This ultimately assists the presiding officers and legal representatives in making decisions with regards to the minor children (Miller, 2002). Despite the notion that many of the legal professionals have an appreciative, yet at times, a somewhat negative view of psychologists and the work they do, there was an overwhelming perception that the legal profession needs psychologists in care and contact disputes. When asked specifically about the relevance and value of the psychologists' contributions to care and contact cases, the advocates expressed the contributions as helpful and relevant *when they are done properly*. The psychologists viewed themselves as one component in a broader legal process tasked with the gathering and interpretation of information with which the court and the legal professionals are not au fait with.

Adv. Reid: "...they are for sure useful I mean, uhm, if, if they're done properly...I mean they are of immense uhm assistance ... we do need the psychologists..."

Adv. McGill: "It's [the work of psychologists] uhm, it's extremely valuable."

Adv. Blake: "So the work that the psychologists do is extremely important, to give the court a little bit of eyes and ears into the household and to do uhm a bigger investigation or greater investigation ..."

Adv. Hanson: "I think it's very useful where you sit uh with a situation where both parties are making very serious allegations against one another pertaining to that parent's functioning as a parent and the effect that it has on the child for instance."

Adv. Banks: "I think they are useful, it also depends on who the psychologist is."

In line with the above excerpts, it was suggested that the services provided by the psychologists are valuable because the courts and the legal representatives do not have the necessary knowledge and expertise to comment on psychological factors (Emery et al., 2005; Garber, 2009; Zumbach & Koglin, 2015). According to Braver et al. (2011), the psychological best interests of minor children are often not equivalent to the legal best interests, and so it is necessary to have experts, in this case, psychologists who assist. In addition, the decisions made regarding the care arrangements of minor children are left to the discretion of the presiding officer, who may not be adequately equipped to do so (Braver et al., 2011). In this respect, Dr Martins, Dr Alan, Mr Nate, Dr Lewis, Adv. Hanson and Adv. Banks offered the following:

Dr Martins: "Ultimately I think what you're doing is you are giving the court, being the judge and the presiding officer's psychological information that they otherwise wouldn't have, okay, because they're not a psychologist."

Dr Alan: "We need to guide and translate to the courts what will be the best interest of the children ... the courts are, in my experience, are very open for our input. And so from that point of view, we play a very important role in guiding the court to understand the best interest of the children."

Mr Nate: "...basically [psychology is] one additional source of information to inform legal decision making essentially. So I see our role or the field as basically providing sort of expert opinions to inform a broader legal process."

Dr Lewis: "...the court doesn't have that skill."

“You’re there as an expert. You’re there, you know, by invitation of the court. It’s not your case. You’re not there to fight a case.”

Adv. Hanson: “So no, at the end of the day, the court uses the experts as a uh uhm tool”

Adv. Banks: “Well I think, the situation is, the role of psychologists are very, very, I mean the role is actually very big, and courts rely a lot on what psychologists says...”

These findings are consistent with the literature that indicates that psychologists provide a valuable service, and whose contributions assist in the decision making process of the courts (Brandt et al., 2005; Eve et al., 2014; Kaufman, 2011; Kirkpatrick et al., 2011; Krüger, 2004; Pepiton et al., 2014; Stolberg & Kauffman, 2015).

Lost in translation: Psychology and law are worlds apart

Despite the value placed on the contributions of psychologists’ work, this theme centres on the paradigmatic differences inherent in the two professions and focuses on both the psychologists’ and advocates’ constructions of psychology and the law being in opposition to one another. This implies that the underlying paradigmatic frameworks of the two professions are vastly different (Brandt et al., 2005; Jameson, 2001). Despite the perception that psychologists are valued as part of the professional cohort, it was evident from the advocates that psychology is regarded as a fluid profession that tends to be fundamentally idealistic. The nature of the psychological practices was referred to as something that is not easily understood, jargonistic and/or rather vague at times. The advocates indicated that it is at times difficult to understand the psychologists’ frame of reference because it is not of a practical nature, and is instead seen as something “*wishy-washy*” (Adv. Hanson). On the other hand, the psychologists were of the opinion that the

legal field operates in a dualistic manner, and despite the two professions working together in the care and contact domain, there is very little overlap in terms of practices. Both professions strongly agreed that there is no similarity in the two fields, which makes it difficult to understand one another, creates an abyss that leads to an increase in tension. This was evident in the following quotes:

Adv. Reid: "I think we [psychologists and legal professionals] still, when it comes to the children. We're still very much separate..."

Adv. McGill: "...it's certainly not a relationship which one could call a 'collaborative, multi-disciplinary or interdisciplinary' relationship. I think the two professions see themselves as sort of each in his own field. His own box. And uh, that there is at times a very real indication of hostility between the two professions."

Adv. Hanson: "Law and psychology, we will never meet because uh our points of departure are totally different."

Adv. Reid: "I think we, we're getting there, but I think we still don't understand exactly what it is that your, what your profession does and how you must do it."

Dr Jane: "...psychology is about the grey area sort of understanding and explaining, and the law is about sort of making decisions at times and very much black and white, so it can be tricky."

The excerpts above clearly show that the two professions are separated by a lack of understanding regarding both of the underlying philosophies of each, as well as the related practical applications of these perspectives. This ideological chasm is modernistic in nature and risks the belief that one view is more superior than the other. A complementary approach

in which the two ideologies are seen as essential to the survival and growth of an ecology, has been proposed. This ‘both/and’ approach suggests that both ideologies are needed in order for families involved in custody disputes to survive and grow. This implies that despite the inherent philosophical variances, there is potential for greater damage if a rigid mechologic approach (characterised by precision, reductionism, an either/or ideology, hierarchy and bureaucracy) is applied “uncritically to human and ecological systems” (Snyders, 2003, p. 84).

Adv. Hanson indicated further that, in addition to the different points of departure, psychologists tend to also come from an idealistic framework:

Adv. Hanson: *“This kind of ideal thing of yes, but the parents must discuss stuff with one another and they must work with another and this must be shared and this, as if there’s absolutely no recognition of the fact that these people are actually divorcing because they cannot communicate.”*

When one interrogates the fundamental differences between the two professions, the chasms that separate the vocations are evident. The legal profession is known for the tendency to be being objective, factual in nature, and drawn to the polarity of right and wrong. This manifests in the adversarial processes to win their side of the litigated disputes. In contrast, psychology is seen as more subjective, process oriented and ideological. The opposing binaries are clear in the professionals’ descriptions of the nature of the relationship, such as ‘common sense versus mumbo jumbo’, ‘grey area understanding versus black and white understanding’, ‘save the world versus lost world’, and ‘factual versus flowery’, as is seen in the following:

Adv. Hanson: "My problem is with psychologists sometimes is it's not a practical thing. It's all these wishy-washy, lardy-dah uh stuff but you know what, how is it going to work in practice?"

"I sometimes feel that the legal people just got a more robust common sense approach. We're not trying to save the world because we know the world is lost. Sometimes if something's broken, unfortunately, one wants to fix everything but you can't."

Dr Martins: "...because I think there are some psychologists who put in the biggest lot of mumbo jumbo..."

The concept of being *lost in translation* is succinctly discernible in a scenario described by Dr Alan. Dr Alan provided an account of a psychologist trying to explain, in court, the concept of the Oedipal Complex, as per Sigmund Freud's psychodynamic theory. The legal representatives interpreted this theoretical construct in a literal, factual and out of context manner as seen below:

Dr Alan: "Just the principle of the child wanting to kill the father and wanting to have sex with the mother. Right? What [do] the legal profession hear? They hear incest. And then you say, "No, no. It's only in principle because of Freud and that's confusing."

"I've seen it – where psychologists just end up saying to the legal profession, Ag, don't worry, in any case, you won't understand after all this. So, what I would say is; factual. Be factual, if not, the - it creates a bit of a woolliness or vagueness."

In addition to the underlying paradigmatic variances, much of the confusion and lack of understanding centres around the psychological jargon, with which the legal fraternity is not au fait (Greenberg et al., 2004; Swanepoel, 2010). This was confirmed by several of the professionals interviewed, and can be seen in the following quotes:

Dr Martins: “...you see a lot of psychological reports come out with a lot of psychological jargon in it...And the court doesn’t know what to do with that. On the other hand, there is terminology and there is kind of – there are in certain ways to explain something without it making it look ridiculous. You know? I think that unfortunately sometimes we do just have to use certain language that to the court is not understood.”

Dr Jane: “...so I think you can’t go off on a tangent with lots of jargon and psychodynamic terms and things like that. You can explain and define but I think at the end of the day it’s about thinking what is useful to the court.”

Adv. Reid: “So, I think really the psychologists can think about how, how, in a dummy’s for psychologists, what would you call it [laughs] psychology for dummies! Uhm, really, you know, you guys throw around terms like borderline and ...and narcissism and ...but meantime, back at the ranch, you [legal professionals] are clueless.”

The tendency to produce evidence that is jargonistic and theoretical lends itself to being misunderstood by the legal professionals, thus maintaining the lack of understanding and ultimately increasing the gap between the two professions. This theme has confirmed much of what has been written internationally (Greenberg et al., 2004; Swanepoel, 2010) and points to a need to bridge the gap between the two professions in order to work towards a less combative, and more collaborative relationship.

Devalued

This next theme highlights *how* the relationship between the field of law and psychology is viewed and how psychologists' endeavours are undervalued. The majority of respondents overtly agreed that the work of psychologists is important and valued by the court, as discussed above in the theme *Psychologists as valuable service providers*. However, on a more subtle and contradictory level, there was a significant portion of responses that devalued the work of psychologists, especially with regards to the fees charged and the perception that psychologists come across as arrogant. The psychologists themselves believed that their work is valuable and, now more so than in the past, underrated by the legal profession. This perspective of most of the psychologists was concisely described by Dr Martins in her candid explanation:

Dr Martins: "So years ago, it was very much that they wanted the input of the psychologist... I don't know if 'significant' is the right word, but it was accepted more readily."

Dr Martins (continued): "...I would like to say...that they place a lot of value. Because I'm a psychologist... [laughs]... But the reality is; I don't think they do... in fact I pretty much know that they don't... having said that though, I do need to say that I do think that there are some presiding offices and it again comes down to who the presiding officer is. There are some that do place a lot of value on a psychologist's report, if they believe that that psychologist has been shown already [shown to be competent]. Or they trust that psychologists work. So a lot of it comes down to kind of what 'name' you have. Your professional name ... But on the whole, I think they are not given the weight that they should be. That they are not relied upon or trusted enough."

This contradictory perspective of psychologists being valued on the surface, but devalued on a more hidden level adds to the tension and the discord between the two professions. In addition, there is consensus, particularly from the legal professionals, around the view that psychologists charge too much for their services. This belief adds to the discourse that it is acceptable that legal professionals charge exorbitant amounts for their services; conversely; however, there is an expectation that the psychological experts should be more conservative with regards to their fees and charging for services rendered. This endorses the view that psychology is a ‘soft’ profession.

Adv. Blake: “So currently in the system, in my opinion, there’s a big gap in that respect because there’s no proper investigation and because it’s so costly, the Pretoria psychologists, they charge between 30 and R50 000 for a report. In Jo’burg, it’s about 60 to R80 000 for a report. Now parties can’t afford it.”

Adv. McGill: “I think that they [psychologists] are becoming increasingly under fire for their high fees... I think there should at least be – if not a limit to fees, there should be a guideline...”

According to Adv. McGill, the majority of the population in South Africa, who need the services of psychologists, is unable to afford them. In a passionate statement:

Adv. McGill: “And I think that psychologists should really ask themselves whether they are uhm, doing enough to discharge their civic duties in the present day South Africa.”

This was one of the points of critique in the literature. De Jong (2005) stated that the legal system, which includes the psychological services, remains largely unaffordable to the majority of the South African population. In spite of the significant legal costs that are

accumulated by the parties in care and contact disputes, the parties are also often in need of the services of several psychologists, and often cannot afford these services (Froyd & Cain, 2014; Greenberg et al., 2004; Stahl & Martin, 2013). While there is a strong perception that psychologists are expensive, there is also a view that psychologists offer specialised services that warrant an appropriate fee.

Dr Martins: "...in terms of the number of hours. I mean these – especially in the – within the family law area, I mean these residency and contact reports, parental rights and responsibility reports. I think if you speak to any psychologist that do it, they will probably tell you that these reports – a report with a mom and a dad and say two children, and all the collateral sources that you have to put in the – everything you have to put in the – those reports take anywhere between thirty-five to forty hours to write. That's just a report. I mean that's a whole week's work... You know? And then when you want to bill for that, they are like; 'Are you insane?' And I will sit here with people where they will quite happily tell me that they have had to put down a deposit with the attorney of a hundred thousand and then when I tell them that this is what I anticipate my whole things going to cost – they are like; 'What!?'"

Dr Lewis: "So I charge a lot and I've been doing it for a long time. So, I justify that I charge a lot. If people can't afford me, there are people who have been doing it for less that they can go to and I'm happy with that because it's difficult work. So, I don't want to not earn what I think I deserve and I lie awake at night, like lie awake at night thinking about the cases which I don't charge for."

Mr Nate: “Yoh, I think like I kind of see it as one of the cheaper versions of what they’re (psychologists) doing because I mean lawyers’ fees, in their own right, are going to be exorbitant.”

Adv. Banks: “... what I do is, I ask them [psychologists] what you think approximately it would be, and it is never more between R14 000 and R30 000. So it depends on what kind of evaluation is been done. And I don't think that is excessive for the kind of work that has been done.”

This theme endorsed the idea that psychology and law are two professions that are separated by theoretical and practical differences. Although contradictory to the first basic theme, the view that psychologists are vague and tend to offer a more inferior service most likely contributes to the on-going tension and lack of comradery between the two professions.

A muddy reputation

Adding to the underlying notion that psychologists’ services are not valued, there is also a perception that psychologists have a negative reputation in the care and contact scene. This creates a rather unfortunate, and paradoxical state of affairs. As mentioned earlier, psychologists’ work is, on one hand, perhaps superficially, valued and needed by the legal fraternity. And on the other, they are regarded with disdain and disregard. It appears that the professional, and personal, reputation, that psychologists have, tend to affect whether matters are referred to them or not. And while much of this theme focuses on the deleterious reputations, there are instances where psychologists are seen as impartial, competent and ethical. The reputations that psychologists accumulate over their work career tend to be centred on their level of ethics, sub-standard work, their tendency to be influenced by the legal professionals, especially attorneys, their need for a steady flow of income and a perception that psychologists tend to be arrogant.

Adv. Reid: "But I think that perception is still out there. And I think a lot of you guys have reputations unfortunately ... So, there's a perception that one, money plays quite a big role and that psychologists' opinions might be swayed by whoever is funding or paying for the assessment ... So I think the perception is also that the ethics is a bit iffy."

"Uhm, you'll find that at the end of a case, especially the high conflict cases, like five or six psychologists involved that have been doing the same thing over and over ... And I think that maybe one of our perceptions is that psychologists don't say no."

Dr Lewis: "...at the moment, and there are few of us who have good reputations, ... they are known as hired guns, they are known as flaky, they are known as feely feely, they are known as uhm able to be dispensed with."

Adv. McGill: "... we very often get reports where I feel ... it's not really worth the paper it's written on..."

Adv. Blake: "... a certain psychologist who also has a bad name in Pretoria."

Adv. Hanson: "... this expert is trying to usurp the function of the court ... you know I just love it when an expert says yes and I've had a look at Children's Act, the best interest and the best interest of the child, requires in section this of the Act says that and then they give all these interpretations and the Children's Act ... and I think to myself, you know what, why have we spent so many years studying Law and then the interpretation of legislation when it is so easy for you guys just to refer to this."

Adv. Banks: “And I have heard, from some instances that, one report for instance, is just copied and pasted again.”

The above extracts, which provide insight into the problematic areas related to psychological practices, can be likened to the haphazard manner in which psychologists enter the forensic context, and perhaps the lack of training available in the profession (Mart, 2007; Otto & Heilbrun, 2002; Varela & Conroy, 2012). This emphasises a significant concern around the ethical practices of psychologists, as was also highlighted in the literature, and the potential for adding to already problematic cases (Cohen & Malcolm, 2005; Flens, 2005; Fradella et al., 2007; Pepiton et al., 2014; Ribner & Pennington, 2014).

Albeit that the overwhelming perception of psychologists is negative, there is some respite. Psychologists are at times viewed in a positive manner, particularly when employed in the roles of a mediator or treating expert (therapist).

Adv. McGill: “But if the psychologist is requested to mediate the care and contact yes. Par excellence.”

This basic theme, which is linked with the three themes discussed above, contributes to the understanding of how psychologists are viewed by the legal professional. There is an unfortunate opinion, which remains consistent with the literature reviewed, that psychologists are easily influenced and persuaded by the legal professionals, and thus viewed in a undesirable light (Allan & Louw, 2001; Austin et al., 2011; Thompson, 2012).

Theme 2: A field in flux - An evolution of sorts

This second organising theme, *A field in flux: An evolution of sorts*, centres on the shifts that have occurred over time in care and contact disputes. The changes that are discussed comprise the development and growth that has occurred in care and contact

settings, the psychologists themselves, as well as relevant changes that are currently taking place in the field. This second organising theme encompasses three basic themes as demonstrated in Figure 7-3.

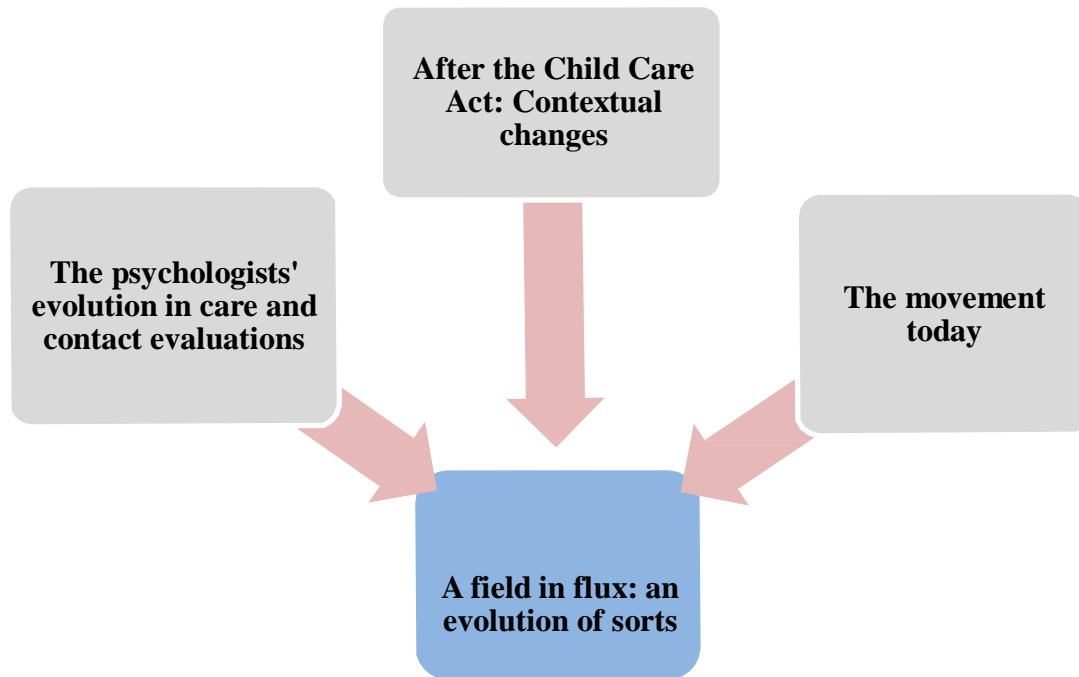


Figure 7-3 Basic themes linked to the organising theme: *A field in flux: An evolution of sorts*

The psychologists' evolution in care and contact evaluations

This theme focusses on the personal and professional development, which has occurred over time, of psychologists. The psychologists were rather candid with regards to the differences in themselves and their practices from the time they began working in the forensic arena to when they started their practices. Specifically, the psychologists mentioned that they had minimal knowledge of forensic practices, especially of care and contact matters. They described their earlier cases as being guided by a *trial and error* approach. This was largely due to the lack of training both in the academic and professional spheres. The following quotes provide insight into the initial family law cases of the psychologists:

Dr Lewis: “...some attorney just phoned me and asked me if I could assess this child, the parents were getting divorced, whatever and I did it really completely without any understanding ... I’ve evolved and it is an evolution”

Dr Jane: “As the years went on initially I wasn’t so experienced ... uhm ... you know when I think of it, the pages of my initial contract ...it has increased as I’ve been doing this work because as you go you learn you need to account for different things...”

Dr Nate: “I’ve seen the change in it [work] since I’ve gotten more familiar with it.”

“...once you make it through the first one, you feel a lot better. It feels easier to tackle and you know you’re still going to be stressed and it’s still going to be tough, but it’s nowhere as bad as the first one because even the subsequent ones that I’ve been working on it, it’s been a lot easier to do.”

Dr Lewis: “So I would ask different questions and I would describe different things even in the reports that were thin in those days. I mean my reports today have about 150 pages but in those days, I mean maybe 20 pages.”

“...then you’d get involved in conversations when you are an expert witness and they would ask you questions and you would hear the language and it gets incorporated. You know how, from a constructivist point of view, it becomes a blend and a mould of those sort of things, but certainly uhm my psychological language has become more fluid, more descriptive...”

Dr Martins: “I think you really only start learning and never really finish learning once you start practising. And that’s why we are always practising.”

Dr Alan: “When I started off, I was certainly not equipped to do this. I was in the deep end.”

If one listens to the voices of the psychologists, one’s attention is drawn to the lack of training and specialisation in the family law context that was available at the start of their professional’s careers. Some decades later, there remains a lack of specialised training in South Africa. This has confirmed many of the concerns raised by several authors in that psychologists lack the necessary skills and competencies at the start of their career in forensic psychology (Budd, 2005). This could potentially lead to increase in error. Therefore, violations of the rights of the families (Fasser, 2014; Varela & Conroy, 2012). In addition, as can be seen from the introductions of the psychologists, their involvement in care and contact cases was *by chance*. This links to the notion that, often, novice psychologists, who enter the field, lack certain competencies (Budd, 2005; Cohen & Malcolm, 2005).

Dr Lewis: “I think training is essential. Training is absolutely essential.”

Dr Alan: “Uhm, so there’s lack of training ... misunderstanding the context but that comes down to training again.”

Dr Martins: “I think they [psychologists] need specific training in forensics...”

These concerns support the suggestions of authors who stress the need for training that ensures professionals are adequately knowledgeable and appropriately skilled to conduct specialised forensic work (Flens, 2005; Fradella et al., 2007; Greenberg et al., 2004; Pepiton et al., 2014; Ribner & Pennington, 2014; Vorderstrasse, 2016). The lack of training in the past, as well as the current need for peer reviewed and advanced forms of training for psychologists, were issues voiced by all the psychologists interviewed.

After the Child Care Act: Contextual changes

In addition to the theme discussed above, the psychologists and advocates alike indicated that the field of care and contact had significantly changed over the years. This was especially evident from the professionals, who had been practising in this milieu for over a decade. This theme points to the developments in the field of family law over time, and more specifically, with the introduction of the Children's Act in 2005. The introduction of the Children's Act (Act 38 of 2005) has shifted the foci of care and contact disputes. This in turn, shifted the practises of the psychologists and the legal fraternity.

One of the most significant changes that emanated from the Act was the emphasis on the *best interests of the child principle* (BIC), which is currently considered the guiding principle in all matters involving minor children (Emery et al., 2005; Fuhrmann & Zibbell, 2012; Garber, 2009; Heaton & Roos, 2012; Stahl & Martin, 2013; Zumbach & Koglin, 2015). In line with the literature, the psychologists and advocates confirmed the shifts in practice and highlighted the associated benefits, as well as the accompanying challenges, that came to light with the introduction of the Children's Act.

Dr Lewis: "The Children's Act only promulgated in 2007 uh or promulgated in 2005. So before that, there was no Children's Act, there was no formal way of doing these things, there was no uhm guiding principles or anything. Everybody just flew by the seat of their pants...the work now is much more difficult than it was when I started... It is complex and it's not uni-dimensional. It is made up of a matrix and a fabric of lots of things."

Dr Jane: "[BIC] ...it's quite a broad term... I don't think you are ever going to have a solution that is 100% perfect but I do think it is about weighing up and making a recommendation that ultimately is going to be the most constructive

situation for that child and beneficial but you know I think more often than not you can't tick all the boxes."

Dr Alan: "According to me. There's no generic way to say, "Right, apply this and then you'll be able to determine the best interest of the child"... So the definition is very difficult, very difficult."

Adv. Hanson: "... you know what I found is since the Children's Act, it's become a separate little cottage industry between certain uh social workers, psychologists and certain attorneys ... the Children's Act has created a new industry."

The concerns raised above by the professionals indicate that although the Act is aimed at guarding the rights of minor children, it has some difficulties. One is the vague nature of the BIC and the struggle to apply the principles to cases. The debate in the profession, as to the opaque and vague nature of the BIC principles (Emery et al., 2005; Garber, 2009; Thompson, 2012; Zumbach & Koglin, 2015), was largely confirmed by the interviews with the professionals. A second concern, which relates to the focus on the rights of the parents and the potential to ignore the rights of the children, was highlighted by Adv. Reid and Blake:

Adv. Reid: "... sometimes I feel like the Children's act should be called the parents act, uhm, because, you know, the court are more concerned about the parents' rights than the child's rights."

Adv. Blake: "... and the focus is more on the parties than on the kids."

Despite the lack of clarity, with regards to some of the precepts embedded in the Children's Act, there appears to be some opinion about the benefits of the Act. The introduction of the new legislation seems to aid the elimination of relatively 'normal' and less

conflictual cases. This has consequently created a thoroughfare for the highly combative cases to be referred for psychological evaluations by psychologists.

Dr Lewis: “After the Children’s Act became more entrenched uhm those people [less adversarial] mediated out through parenting plans ... So, the ones that you see today are really the extremely difficult intransigent cases.”

Taking into account the experiences of the professionals, the changes in legislation has ultimately shifted the nature of care and contact investigations. Although these have not been without some difficulty, they are in line with international standards and practises regarding the children as the focal point (American Psychological Association, 2013; Brandt et al., 2005; Fuhrmann & Zibbell, 2012; Garber, 2009).

The movement today – is diagnosis helpful?

As part of the evaluation process, clinical psychologists administer psychometric instruments that are designed to yield information with regards to the presence of any mental illness, or at the very least, symptoms of mental illness. The presence of parental mental illness, which has the potential to impact the parent-child relationship and a parent’s ability to parent effectively, render these important areas to assess. Despite the vast amount of literature, which indicates the need to assess psychopathology (Butcher et al., 2015; Dane & Rosen, 2016; Deutsch & Clyman, 2016; Horvath et al., 2002), the psychologists interviewed were against the idea of formal diagnoses and pathologies of parents in the care and contact framework. Instead, they were more comfortable to make benign references to personality patterns and symptomatology of particular mental illness. The notion of diagnosing parties was overwhelmingly regarded as unhelpful by the psychologists, with an explicit concern that opposing parties tended to use diagnoses as a weapon during litigation.

Dr Jane: “...you can actually just reflect on you know how there’s non constructive ways that the parents are interacting and I think as soon as you call it a syndrome then it locates it completely in the parent and it makes it even more acrimonious.”

Dr Lewis: “I never diagnose, ever ever ever ever diagnose and I would say if you want some advice, you never diagnose, I’ve never used diagnosis, never. I think it’s counter-productive in these kinds of matters because it just gives one or either of the parties a whip ... So uh the movement today is a description of what’s happening in the family rather than a description of a syndrome.”

Mr Nate: “So I think I don’t like the syndrome solely because I think it locates too much in sort of one narrow aspect of how the system is operating and I prefer the broader term of alienation as it’s sort of being used now, uh to give you a better sense of how it’s operating.”

Dr Martins: “I don’t believe that these reports are right, or these investigations are a forum to give a diagnosis. Okay. And I really, I feel quite strongly about that. Okay. Yes, there’s lots of pathology ja. Okay. But that’s not the forum to start slapping diagnosis on people ... labelling is not right. [They] crucify each other... And then the children are the biggest victims.”

The view that diagnoses was strongly linked to a label, or diagnosed mental illness, then becomes a weapon in the litigation. This places the children, who then bear the brunt of the acrimony, in the middle of the conflict.

Adv. McGill: “Labels (diagnoses) tend to be clutched onto in court – and a long process of arguing it happens.”

It appears that diagnosing a party, which often leads to adding tactics in the already adversarial process, fits with the concept of the problem-determined system discussed in Chapter 5. This suggests that a diagnosis could contribute to, and escalate the problems rather than alleviating them (Anderson et al., 1986; Keeney, 1983). In addition, the testimonies of the professionals is perhaps linked to the concept that understanding a parent's capacity and functional abilities are more useful than assigning a diagnosis in light of any symptomatology that is present.

Theme 3: The best interest of the child - The golden thread guiding practice

Following the above themes, this theme directly addresses *the best interest of the child* principle, as is described in the Children's Act (Act 38 of 2005). The psychologists interviewed provided rich explanations of the usefulness, as well as the short-comings of the principle, and how these are considered in their practices. In addition, the advocates addressed their concerns around how psychologists may, or may not address this principle appropriately in the ensuing evaluations. Theme 3 comprises two basic themes that highlight the children as the focal point of all evaluations.

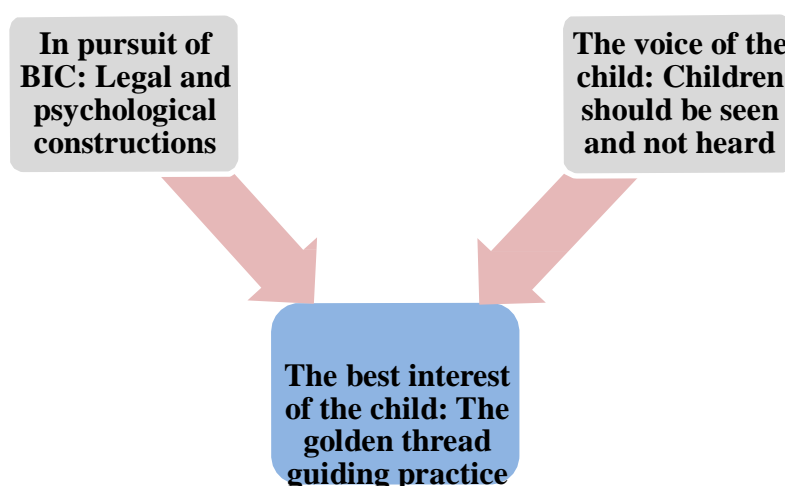


Figure 7-4 Basic themes linked to the organising theme: *The Best Interest of the Child: The golden thread guiding practice*

In pursuit of the BIC: Legal and psychological constructions

The first basic theme elucidates on the professionals' understanding of the BIC principle (Children's Act, Act 38 of 2005), and how their conceptualisations influence their practices. The BIC is an international standard that was adopted in South Africa with the introduction of the Children's Act in 2005. This shifted the focus from determining which parent is the better parent (prior to the children's Act), towards a model that focuses on the physical, emotional, psychological and educational needs of the minor children (Brandt et al., 2005).

Although there is a perception that the guidelines in the Children's Act are helpful, they are seen as a guide rather than a formula to determine the best interests of a particular minor child. According to Barrie (2013, p. 124) "Section 28(2) of the Constitution of South Africa, 1996 states that a child's best interests are of paramount importance in every matter concerning the child". Despite the BIC being introduced in the above section (*After the Child Care Act: Contextual changes*); this principle is regarded as essential in evaluations, and so warrants a more thorough assessment.

Adv. Banks: "...there is children act, I mean the child's, the paramount importance is the children's best interest."

Dr Alan: "I can't give you one definition and saying, "This is the best interest" ... It's defined on the thirteen principles as set out by Justice King in the – I think it's the 1994 case. I use those thirteen, uhm elements: thirteen elements as set up by Justice King."

Dr Martins: "... look I think that the best interests standard as set out in the Children's Act is not bad, okay I think it's, I think it leans or I think, ja ...focuses on issues that are I think very relevant, absolutely, for your more previously

disadvantaged or more, uhm, impoverished community. Uhm, I think it, I think it misses some of the dynamics that need to be considered in your, in your more affluent society families.”

“...but within the family law and divorce arena, a lot of those questions are not really relevant. And I think some of the more subtle ones that we need to be looking at are not there.”

In theory the principles appear to be sufficient in determining the best interests of minor children; however, in practice, they are less obvious, thus determining the best interests may be challenging (Braver et al., 2011; Burman, 2003). The psychologists identified several aspects that guided their work and assisted them in addressing the psychological needs of the children. These included aspects such as the parent-child relationship, the parent’s capacity to identify and meet the needs of their children. The notion that each custody dispute, each case, is unique, and is worthy of an individualised approach, as opposed to applying a ‘one-size fits all’ approach was also highlighted. This confirms the perception that the BIC principle is a guiding framework, rather than a step by step check list.

Dr Alan: “I look at the health of the context ... the context of the divorce and the parents and the children ... I look at the attachments and I look at the parents’ willingness to work together ... physical circumstances, you know; money, schooling, uhm, ability or access ... those are primarily the general aspects but again I can’t give you specifics because each case is different...”

Mr Nate: “So in terms of the best interest of the children, it’s basically ensuring that they’re free from harm, and usually I find it is important both in terms of theory and the legislation, that as far as possible, they’re given the opportunity for contact for both elements of the parental system.”

“Well, essentially what I do in terms of the assessment is that works through each element of the case person by person basically in terms of all of the information that I’ve gathered, and then towards the end, just after I’ve done the summary, I will relate back that information to all of the tenets of the Children’s Act.”

Dr Martins: “I consider things like, uhm, a parent’s capacity, okay, to meet the child’s needs in terms of their physical needs. Okay? Housing, food, clothing, education... Uhm, spiritual, social, cultural, the whole lot okay. So – so sometimes it happens that a parent is not a bad parent ... But when you look at the child, and the child’s psychological functioning and the parent and the parents psychological functioning – that one of the two parents is a better fit.”

“Uhm, so to look at the relationships and which parent best meets that child’s needs from a parent point of view. So I definitely would look at things like attachment...also for me what is quite important is boundary setting...whether the child has been exposed to anything, okay – that’s harmful to the child, through one of the parents. Uhm, and I’m talking about uhm, physical abuse.”

Dr Alan: “...thirteen [principles] because each of the thirteen points touch on a child’s needs; physical; emotional; uhm, they call it creature comforts; uhm, educational; or, uhm, general; about the parents, the parents must be stable; the question of basing the children – same sex placements – you know, all these type of things. So the definition is very difficult, very difficult.”

Although participants could not give a decisive definition of the ‘best interests of the child’ and viewed the principle as being complex, they did use certain frameworks and took certain steps to incorporate this principle into their evaluation processes and their reports.

Further to the above, certain professionals believed that despite the BIC guide, the litigious environment, as well as the dynamics between the professions, dilute the BIC principle. Thus the context becomes a win-lose battle rather than a construction of beneficial care arrangements.

The voice of the child: Children should be seen and not heard

The literature suggests that the voice of the child is a valid and pertinent aspect in child care and contact evaluations. (Barrie, 2013; Fuhrmann & Zibbell, 2012; Thompson, 2012) However, the findings of this study are contrary, in that the voice of the child was largely absent in the psychologists' evaluations, as well as in the courtroom. As indicated in the *McCall vs McCall* (1994) SA 201 (C) matter, the child's preferences should be taken into account when evaluating the best care arrangements. Despite the importance of the child's voice being acknowledged by the professionals interviewed, in practice this does not always occur.

Dr Martins: "Okay, so for me it's very important, okay. Okay? ... How old do they need to be to give a valid view? ... so, my opinion is; from birth. ... And the legal system sees it as being uhm, and I think psychology has kind of played in to that – which is a pity... Uhm, that the older the child, the more of value their opinion is. Okay. I disagree with that..."

Dr Jane: "Uhm and I think what is also tricky sometimes is now you have to introduce the voice of the child."

Dr Lewis: "... the voice of the child needs to be seen through filters of somebody who understands the context."

Adv. Reid: "There's still a big reluctance under, with the courts and the, uh, especially the High Court. The children's court I think a bit more there already is that this voice of the child."

"... for me and that's my, where I'm currently, it's the voice of the child."

Adv. Blake: "The children's voices are not really heard. Really they are not being heard and I think they should focus more on that."

The findings indicate that the professionals were in agreement as to the importance of the voice of the child. Most of the professionals interviewed relayed their belief that regardless of the children's ages, they are capable of communicating their needs and wants. One can infer from Dr Lewis' opinion that a child is able to relay their wants and needs from as early as birth. This thinking implies a shift towards looking at the familial context in a process oriented manner, as opposed to a linear and evidential basis. One can then surmise that this approach is akin to the psychologists' field of expertise that may not be easily understood from a legal perspective. In addition, this notion is linked to the themes above that highlighted the vast gap between the philosophical underpinnings of the professions.

Theme 4: In practice

The above three organising themes focus on the relationship between psychology and the law, and centre the BIC in all care and contact matters. *In practice*, which shifts the focus from the interdisciplinary relationship to the practices of psychologists, comprises seven basic themes. Each of the basic themes (see below) encapsulates, in some way, the practicalities and/or procedures of psychologists who are involved in the forensic field in general, and specifically in care and contact evaluations. Themes are presented in a manner consistent with how a case would be managed from start to finish. The first basic theme

addresses the roles psychologists are mandated to fulfil and concludes with the final basic theme which addresses the submission of the final psychological report.

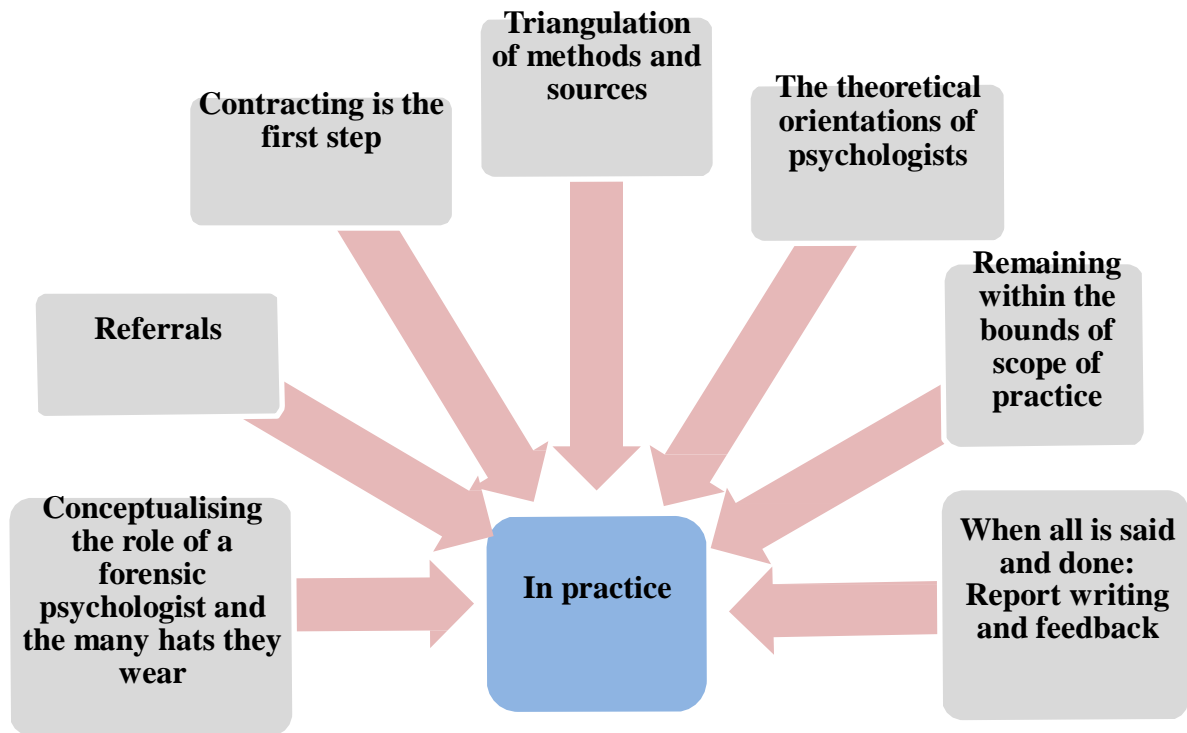


Figure 7-5 Basic themes linked to the organising theme: *In practice*

Conceptualising the role of a forensic psychologist and the many hats they wear

As was indicated in the first theme, psychologists who are viewed as one component in the broader legal system, add to the professional cohort that assists the courts. The roles that psychologists fulfil are numerous and include evaluator, treating psychologist or therapist, case manager, mediator and consultant. This theme focuses on the role of evaluator; however, the additional roles are briefly mentioned.

According to all the professionals interviewed, psychologists are most often involved as *evaluators* in care and contact disputes. The advocates indicated that psychologists are largely relied upon to assess the emotional functioning of the children, as well as to assess the psychological functioning of the parents.

Adv. Reid: “... we work a lot with either doing the assessment of the parents ...so psychological assessment ... Then emotional assessments of children ... psychologists to do a forensic assessment or emotional assessment to determine the true voice of the child.”

Dr Lewis: “I just do child custody evaluations. That’s what I do, the whole uh report and uhm assessment and uhm recommendation.”

Literature indicates that psychological assessment in the forensic context is useful, particularly in the testing of hypotheses and theory building (Erickson et al., 2007a; Gould, 2005; Jaffe & Mandeleew, 2008; Meyer et al., 2001; Roos & Vorster, 2009). This is confirmed by the findings obtained from the psychologists. All five of the psychologists were frequently employed as evaluators with the sole purpose of furnishing a psychological report as to the best interests of the minor children. This positions the psychologist as an expert witness, who concurred that psychological assessment offers objective and evidence-based information that the court deems as important. This is in line with the current trends in international literature in that objective psychological testing is a useful scientific contribution to the courtroom (Gould, 2005; Jaffe & Mandeleew, 2008; Meyer et al., 2001; Posthuma, 2016; Rohrbaugh, 2008).

Dr Alan: “The objective leg by means of psychometry I think it’s imperative. Because it colours in the picture, as I said; it doesn’t replace the clinical judgment of the psychologist but it just gives a bit of a different slant.”

Dr Jane: “... but mostly I would say it’s really around assessment for custody cases.”

In spite of the reliance on psychometric assessments, there were a few concerns. One related to the lack of South African norms for many of the instruments used, which adds to

the challenges in assessing the majority of the population. Laher and Cockcroft (2013) indicated that psychometric assessment remains a sensitive issue due to South Africa's turbulent political past as well as the lack of established norms. In addition, it appears that many of the psychologists made use of a variety of instruments, and so the test batteries differed significantly from one psychologist to another. Adv. Blake specifically stressed the notion that the reports received from psychologists provide no assistance, and that the focus of evaluations should instead be the children's experiences. These concerns can be identified in the excerpts below.

Adv. McGill: "Because I very often find that the battery of tests that are being used, they differ from psychologist to psychologist."

Adv. Blake: "You know those personality tests, the normal stuff. In my opinion, it does not assist at all because I've almost never seen the outcome of that report which indicates that the one person is a better parent than the other one ... In my opinion, they should go to greater lengths to get certain information from the kids."

Dr Alan: "The tests need to be standardised by South Africa. And as you know, there's not many."

The above issues address important challenges in the profession within the South African context. The first point raised around a lack of South African norms, is specifically a procedural challenge. Courts require objective, scientific evidence to substantiate recommendations; however, the lack of South African norms potentially renders the majority of instruments as inappropriate. In addition, there is little consensus as to the appropriate battery of instruments used in care and contact evaluations. This may be suggestive of an individualised approach to cases on one hand, while on the other an inconsistent

methodology. Despite these concerns, psychologists and several of the advocates continue to regard the psychological assessment as valuable and a useful contributor to care and contact cases.

A second role psychologists may be mandated to fulfil is that of a *mediator*. Mediation is generally regarded as an alternative conflict resolution approach that aims to produce a more cooperative environment. There were mixed reviews amongst the psychologists and only a few were willing to provide the service.

Dr Alan: “I’m a registered divorce mediator. So I mediate a lot.”

Dr Martins: “I do mediation for parenting plans and just mediation in family disputes.”

Adv. McGill: “But if the psychologist is requested to mediate the care and contact yes. Par excellence.”

Dr Lewis: “I don’t do, I’m telling you now I don’t do mediation. I’m not a mediator, I’ve never done a mediation course and I don’t enjoy it at all.”

Mediation is defined as an alternative to litigation which aims to work towards a more collaborative, interactive and person-centred process for all parties (Froyd & Cain, 2014; O’Hara Brewster et al., 2011; Roberts, 2014; Sbarra & Emery, 2008). Those psychologists who were not willing to mediate described it as a time-consuming process that mimics litigation. Despite the literature describing mediation as a process that is more conducive to healthier outcomes, it appears that in practice, the problems inherent in the parental relationships manifest in the mediation context. This renders the process ‘difficult’ and problem-focused as opposed to solution-focused.

The concept of *case management* posed a particular challenge to define. This was equally apparent in the literature in which very little is written on case management in the

psychological profession. The reason for this is due to the legal nature of case management, with advocates and Judges being appointed to manage difficult cases. Most of the advocates agreed that case management is a legal role and is inappropriate for a psychologist, who does not possess the abilities to make legal decisions. In line with this, several psychologists spoke of the concept of *parent coordination* as an alternative. This, which was viewed as more appropriate, essentially replaces the idea of case management. This term was, however, not known to the advocates interviewed, again highlighting the void between the two professions.

Dr Martins: "I also, uhm, work a lot as a what is, is going to be called parenting coordination or parent coordinator, case manager, facilitator, depending on what province you're in ... It's moving to parent coordinator now, but it was case manager. But in the Cape it's called a facilitator."

Dr Lewis: "We stopped calling them case managers. We now call them parenting coordinators. Okay, the movement is away from case management because case management is a judicial term, which is for a Judge who's put in charge of a case to take it from beginning to end ... You set up a parenting coordinator who then helps the parents, guides the parents, tries to resolve conflict away from the child, tries to educate them as to the maturational needs of the child."

Adv. Reid: "Uhm especially things like case managers where I see in Joburg it's a big, big thing nowadays that psychologists must be case managers. And my problem with that is that you giving somebody an aah, almost aah legal function. But that person cannot exercise that ...Because a lot of time I think the case managers are appointed and then they sort of didn't, left hanging, [they] don't have real powers."

Adv. Blake: "You know what, people want a judgment. Parties want to go to court and they want the judge to say you're right and you're wrong. With psychologists, it doesn't work that way. So I wouldn't really say it's that successful with case management."

Adv. Banks: "I've got a couple of psychologists that is good case managers. The problem is, the case manager, that psychologists, in the same position, as an Advocate, curator ad litem position. You don't really have powers and duties."

In addition to a new approach, that of parental coordination, there is also significant reluctance amongst the psychologists to engage in this type of role. The reasons for this seem to be linked to the ongoing conflict, and the tendency to have to 'police' the parties, as well as the time-consuming nature of managing a case.

Mr Nate: "No. uh I haven't [done case management] uhm simply for the particular reason that everyone has advised me not to do so ...it's more to do with the fact that they said look, it's administratively intensive. Uhm you really are being sort of pulled away from your usual work and having to type out lengthy emails and deal with a lot of acrimony and people fighting over nonsense, and they said it's very draining and it doesn't feel worth it to them."

Dr Lewis: "Uhm I don't do case management. It's very very very very time-consuming and very very detailed and you're in the conflict between the two parents."

The concept of parent coordinator is considered to be a more appropriate and accurate description of the role psychologists fulfil than case manager. The roles of these professionals, who are regarded as managers of high conflict cases, is to protect the minor children's well-being. This role is seen as a quasi-judicial role in which psychologists attempt

to manage conflict and to assist the parents in implementing their parenting plan. The psychologists' conceptualisation of a parenting coordinator is consistent with the literature (Coates, 2015; Greenberg & Sullivan, 2012; Henry et al., 2009; O'Hara Brewster et al., 2011; Parks et al., 2011; Sullivan, 2013). However; it is a relatively new position that has not yet been formally integrated in the South African context. This was evident during the interviews with the advocates who had no knowledge of the term 'parenting coordinator', or their expected duties.

In addition to evaluator, mediator and case manager/ parent coordinator, psychologists offer psychotherapeutic intervention in forensic matters relating to children, parents and families. Referrals are generally made through previous psychological reports, legal professionals or the parties themselves. Most of the psychologists reported being involved as a treating expert in cases, and the legal professionals attested to the value this adds to the parties during custody disputes. Dr Alan emphasised the importance of doing psychotherapeutic work in addition to the forensic work. In his opinion, psychologists' were better able to identify and understand family processes, in family dispute matters, when they also worked as a therapist.

Dr Alan: "You cannot do forensic work, uh, or psycho legal work, if you have not worked within the psychotherapeutic context."

Dr Martins: "I do therapy, divorce recovery, uhm, you know, with families, adults, and children."

Dr Lewis: "I'm family-trained, you know, and I do lots of couples therapy ... and lots of, you know, family-framed work..."

Adv. Blake: “The information that a psychologist gets during therapy, giving therapy to a child is, that is so important actually to the case, to give a court an indication of how this child experiences the parent or the conflict or whatever, but unfortunately, they’re not allowed to review that information [due to confidentiality].”

Although the advocates believed that the therapeutic services offered were beneficial, they highlighted the need to be privy to some of the information that develops from therapy as it could assist the courts with regards to better decision making. This dilemma, of confidentiality and disclosure in therapeutic contexts, which was raised in the literature, highlighted the divided perspectives with regards to how psychotherapy should be managed in forensic contexts. On one hand, psychologists could be ordered to provide testimony or their opinions, while on the other, some believed psychologists should focus on the psychotherapy and remain detached from the legal processes (Lebow & Black, 2012; Lebow & Slesinger, 2016; Perlman, 2012). The role of psychotherapist is by no means inconsequential as was highlighted by the professionals interviewed in this thesis, as well as the literature surveyed. The contextual focus should; however, shift from an information giving context as is seen forensically, to a treatment context (Greenberg & Gould, 2001).

The final role that came to light was that of *consultant*. The psychologist, in a consultancy role, was viewed with disdain by some of the professionals interviewed, while others regarded this role as a quality assurance perspective. According to the literature, psychologists may be appointed as either a trial consultant or a product review consultant. A trial consultant assists the legal team to understand psychological constructs while the product review consultant tends to review work already done by another psychologist (Ackerman, 2001; Austin et al., 2011; Kaufman & Lee, 2014). In addition, the focus of a consultant remains to assist the courts in determining the BIC, and not to promote one party

over the other. This was, however, not confirmed by the findings in this study. Although, ideally, a consultant should be impartial and unbiased, the professionals interviewed had a strong opinion regarding the tendency of psychologists to attack one another, and to position themselves either for or against a particular party.

Adv. Reid: "So if you [psychologist] write a report and then I find somebody that will say No ugh! You're stupid! And then they will easily take your report and pull it apart."

Adv. McGill: "I think it should – I think a psychologist should be allowed to critique."

Adv. Hanson: "Look, we never get, I never get uh uh somebody in as a consultant. Uh you might get somebody in to advise you on whether these tests were done properly etc. etc. but I mean, you know, uh a psychologist can't advise you on how to do your case."

The findings suggest that some of the psychologists were open to the idea of someone reviewing their work from a quality perspective. Indeed many of them had reviewed other colleagues' work for the same reasons. Others were not receptive to the idea due to the perceived underlying motives of critiquing a colleague's work.

Dr Martins: "Yes. Okay. So again, I would not want to say that that can't be done because how can you not allow that? Okay. But again, I think it kind of, I think there needs to be, I don't know if I even want to say regulation. I don't know. But there needs to be some sort of definition as to how that happens. Okay. Uhm, I just think it's professional etiquette that if you get given a report from somebody to critique or to comment on, that you phone that person and tell them."

Dr Jane: "I think it [reviewing] can be quite constructive and useful then if we think about the benefit of profession as a whole ... So I think that can be useful uhm if it's done constructively ..."

Dr Alan: "These critical reports are used to destroy. Discredit the person. No, it's never written in good faith ... It's there to gun the other psychologist."

Dr Lewis: "I often do it, often do it. That's why I've had [seen] so many shitty reports and I'm happy to do it. I am happy. I know it's a horrible thing. You've got to be a bit thick-skinned about these things ... it's difficult but it really hones your understanding of ethics and procedure and methodology and it makes you very uh circumspect."

As seen above, there was some consensus that reviewing colleagues' work creates a norm for ethical and efficient practices, if the motivations for reviewing another psychologist's work was done in good faith. The idea of being motivated by less altruistic reasons was introduced. This is closely linked to the themes *Professional discord: Lack of camaraderie and support amongst the psychologists in the field* and *Bad workmanship* which are both discussed later. What is perhaps evident from this theme is the need to define and set parameters as to how, and why, one goes about reviewing another professional's work. This is in line with Kaufman (2011) who suggested that the ethical parameters need to be evaluated when critiquing evaluations conducted by other psychologists.

In summary, the above basic theme addressed the diverse roles that psychologists fulfil in care and contact disputes. The findings indicated that psychologists are most often employed as an evaluator for a matter, or a therapist for one of the parties or minor children. Several of the other roles were met with some trepidation and there were conflicting perceptions around case management, mediation and the role of a consultant.

Referrals

In practice, there is no particular protocol through which referrals are made to psychologists. However, the professionals indicated that referrals may be made by the courts themselves, the family advocate's offices, legal representatives and/or the parties themselves.

Dr Martins: "I sometimes land up with a court order just being emailed to me or faxed to me. I've been appointed. Like, do they not even think to ask me if I'm capable, have capacity? Anyway, so it can come from the courts, it comes from the family advocate's office sometimes, it comes from the attorneys a lot of the time."

Adv. Blake: "That's why we prefer, if the clients can afford it, to refer them to psychologists."

Dr Lewis: "... the referrals usually come through a court order or uhm attorneys."

Dr Alan: "No. My family law referrals come from attorneys because I insist on it."

Dr Jane: "I think the family advocate often in most cases relies on us, let the independent psychologist decide. So family advocate does [refer]... Ah sometimes I get the parties themselves and have been referred by another psychologist or lawyer."

The findings indicate that referrals are received from several sources. This is not in line with the concerns related to psychologists aligning with certain attorneys or legal firms for their income. The varied sources of referral can also be associated with the idea that the reason for referral can differ significantly depending on the referring person. Budd (2005) indicated that different people refer cases for different reasons, and with different expectations as to the outcomes of the reports. The reasons for referrals range from attorneys,

caseworkers and even family members themselves who request evaluations to gain insight into clinical issues. Indeed, there are differing opinions as to what the care arrangements of the children should be, or are unclear because of ulterior motives. This perhaps highlights the need for psychologists to clarify the reasons for a particular referral, thus preventing assumptions that may guide their methodology and procedures. This also informs the goal of the evaluation, as well as appropriately addressing the concerns raised in the referral. This links to the notion that psychologists formulate conclusions and produce recommendations that are not in accordance with the reason for referral.

Contracting is the first step

The literature makes it clear that forensic work is fundamentally different from traditional clinical work. In addition, the potential risk of doing this work is vast and so in order to ensure the rights of both clients and psychologists are protected, as well as to establish clear boundaries, the contracting phase is regarded as important. This was emphasised by the psychologists, as is seen below in several extracts from the transcribed interviews:

Mr Nate: "I have a standardised contract that sort of explains how the process works. That's usually already been sent to the lawyers or to the court so they're well aware of how they're operating, but it's just again, that we can sit and actually work through it so they're aware of the parameters, with the most important thing being that I will not be acting in the interest of either party but in the best interest of the children."

Dr Martins: "So there's the whole issue around consent."

Dr Jane: “So there’s a lot of preparatory work that has to happen before you actually start seeing anyone. So I think that’s but once you know I think as hard as it is once they [contract] is in place I know that all the T’s are crossed, I’s are dotted ... and you know it feels like a safe frame for everyone involved and me as a professional as well to proceed.”

“...I contact whoever refers me I will contact the lawyers for each of the parties and you know have a conversation with them and let them know then normally it just generally goes to the parties themselves so I will contact each one uhm and then I will send out my contract that they need to sign and we then go about setting up appointments once it’s done.”

Dr Alan: “...it must be by agreement. Because there’s a lot of ethical implications with regards to that. Uhm, secondly – it might sound a bit contradictory but it’s not, uh, secondly; both parties must be in agreement to come. Uhm, attorneys can be in agreement but parties sometimes not. So both parties must be in agreement. Uhm, they must adhere to my conditions, in terms of my time planning; my fees; uhm, my evaluative approach. Because each case differs; if I evaluate a six months old, six year old or sixteen year old child; every time the evaluation differs. So I plan, uhm, a concept evaluation and I present it to the attorneys and then they agree to it. So my criteria is very much unique; each to its case but, uhm, it starts off with everybody understanding, uhm, the process that’s going to follow and agreeing to it.”

These findings correspond with the recommendations from several authors. Ackerman (2001), Roos and Vorster (2009) and Stahl (1994) stated that contracts should be discussed and agreed upon prior to commencing any investigations, particularly with regards to fees

and payment. This fosters the parties' understanding of the process that will follow, allows for a transparent process and affords the parties an opportunity to clarify any concerns they may have.

This can also interrelated with the *problem of the referring person* described by Selvini Palazzoli et al. (1980). According to this concept, the referring person becomes an integral member of the systemic family and thus is integral to the initial referral.

Triangulation of methods and sources

Both the psychologists and the attorneys stressed the importance of triangulating data in forensic cases, and specifically in care and contact matters. Obtaining data from a discrete set of sources is regarded as unprofessional and unethical. Cross verification is seen to be an important part of achieving a level of objectivity. Methods of collecting data include; Clinical observations; interviews with the children and their parents; interviews with other sources to gather collateral information; psychometric testing and home visits.

Although the psychologists interviewed agreed to the verification of information through triangulation of the data, many of them relayed the concern that many psychologists focus on a limited number of sources and often fail to adhere to these guidelines.

Dr Lewis: "So there were at least four aspects of an investigation, right. So you have your interviews, you have your psychometric assessment, you have your clinical impression. I think these are them, and then you have collateral information. You've got to have all. You can't do an assessment with leaving out one of them. So, what happens is your uhm interviews, the information will overlap with some of the psychometric, some of your clinical impression, some of that. This will overlap with that, that will overlap but where all four

coalesce in the middle, those are your findings, and those findings generate your recommendations.”

Mr Nate: “I’ll meet with both parents for an initial interview session...I will then get a chance to start interacting with the kids ... Following that, I’ll then do uhm one session where I’ll do psychometric inventories. I’ll collect all of my collateral information from any relevant therapists, experts or lawyers ...always including multiple sources of information ...I always think of it as sort of a Venn diagram where it’s sort of clinical interviews overlapping with clinical observations overlapping with collateral information, overlapping with home visits, overlapping with standardised tools., so that where you’re making your recommendations from is an overlap from multiple sources of information.”

Dr Alan: “There is a three pillar process; first and foremost, where I, uhm, get the context of the problem from the parties, themselves. So the first one...I do that by means of clinical interviews...second; there’s the objective leg – which I think is imperative. The objective leg by means of psychometric testing and then the third leg, a very important one; is the collateral information leg. Collateral information, uhm, is as wide as God’s grace.”

Dr Martins: “And I think if you’re going to work in a forensic field, you’ve got to do things like this, you know. You’ve got to do triangulation of your data collection.”

In addition to the above, Adv. Blake and Adv. McGill were particularly critical on the overreliance of psychometric results. They were concerned that psychologists tend to ‘over-report’ psychometric properties, at the expense of other sources of information.

Adv. McGill: “And then my main criticism is that these tests are sometimes interpreted as being the alpha and the omega of the assessment whilst it shouldn’t. ... Most reports will be perhaps 80% description of the results of the psychological testing and then a paragraph or so on the evaluation with some reference to uhm, external factors ... “

Although all the psychologists stated that they made use of multiple sources of information in order to conduct comprehensive investigations, they did acknowledge that psychologists, as a whole, do not do this. This is consistent with Thompson (2012)’s findings that psychologists tended not to use multiple sources of information and were instead inclined to rely only on certain information. The use of multiple sources to sufficiently canvass the family context and related custody disputes was regarded as important throughout the literature (Budd, 2005; Goldstein, 2016c; White, 2005). This is largely in line with the findings of this study.

The theoretical orientation of psychologists

From a traditional clinical mind frame, psychologists tend to have a guiding theoretical orientation that directs their work, and from which they draw, in order to conceptualise cases and formulate treatment plans. From the interviews, it seems that although there is not one main theory that guided care and contact evaluations, there were commonalities across the frameworks used by psychologists in care and contact cases. These included family and systemic theories, child developmental theories and attachment theory.

Mr Nate: “If I were to say one, it would probably be more systemic, although I was trained psycho-dynamically ... but I don’t work sort of predominating from a particular theory. It’s much more on the basis of understanding how

everything is sort of operating in the system, but that would probably be the closest thing to a theoretical thing.”

Dr Lewis: “I still had a uhm systemic thing. So I think that that’s important... it helps such a lot because you understand family dynamics in a way that ja, I don’t know that psych dynamic people have an intuitive feel for it.”

Dr Jane: “I like attachment theory... I think that’s quite a useful one for me. I like you know the work of Bowlby you know etcetera and I think how I bring it in is looking at the parents capacity to bond and attach and form relationships which I think is more important for me then even if they do come then a diagnosis of personality disorder or whatever. I like to sometimes use a bit of Piaget in terms of sort of unpacking what a child will understand in terms of the relationship with the parents. I like Erickson a lot.”

Dr Martins: “I wouldn’t say that I really work from a particular theory to test it as such. But I will say that I come from a philosophy in terms of, almost like a systems approach, okay, where I will look at the broader kind of context for that person. Okay, or family.”

Dr Alan was the only psychologist who strongly advocated his preference to work from a cognitive-behavioural approach:

Dr Alan: “...every psychologist must have his own religion. You can’t have more than one religion and be at your theoretical paradigm. Yes. Uh, I’m very cognitively inclined - cognitive behavioural approach.”

There was resounding agreement in the literature surveyed that attachment theory is relevant during custody evaluations; however, in care and contact contexts, attachment theory

has remained largely underdeveloped (Garber, 2009; Lee et al., 2011, 2009; Schmidt et al., 2007; Shumaker et al., 2009). Attachment theory, which is widely used in therapeutic contexts, appears to lack empirical data as to its efficacy in custody matters. The psychologists agreed with the opinion of Shumaker et al. (2009) in that attachment theory could be useful in determining the parent-child relationship. Child developmental and family-oriented theories, which add to the knowledge-base and competencies of psychologists in the care and contact milieu, are also regarded as important in the field (Association of Family and Conciliation Courts (AFCC), 2006; Greenberg et al., 2004; Martindale & Gould, 2004; Pepiton et al., 2014). In contrast to the findings in this study, it has also been suggested that psychologists be aptly knowledgeable and competent in understanding child sexual abuse, domestic violence and substance abuse, all three of which are regarded as complex and multifaceted (Bow & Quinnell, 2002; Fuhrmann & Zibbell, 2012; Gava & Dell’Aglia, 2013).

Remaining within the boundaries of scope of practice

As indicated in Chapter 2, the HPCSA (at the time of writing) recognises five registration categories for psychologists. In addition, there are no formal **forensic** guidelines to demarcate boundaries and parameters within which psychologists can practise. The findings of this study indicate that there was no consensus as to which category of psychologists should be involved in forensic cases. As can be seen below, the psychological professionals leaned more towards several categories of psychologists being able to conduct forensic work, while several of the advocates indicated that clinical psychologists are preferred as the experts by the courts.

Dr Alan: “As it stands in South Africa, all psychologists – let me reiterate this – all psychologists except for one registration, I have come across that does forensic/psycho legal work and the one that I’ve never seen does it, is, uhm,

research ... Aha! Industrial [psychologists] doing family law investigations. Ja, but no, uhm, in family law, primarily; clinical counselling educational.”

Dr Martins: “...in my opinion, I think that uhm, clinical, counselling and educational psychology, should – can all do good forensic work ... As long as they stay within their scope ... for example; I don’t think that a counselling psychologist could justifiably, and I think that they could get shut down in court if they gave a diagnosis for example in a report of serious psychopathology. I don’t think that educational psychologists should be writing reports, and there are some that write reports having assessed the parents. Uhm, that’s not within their scope. Okay. Uhm, whereas I actually think that an educational psychologist would be far better trained and placed to write a forensic report where one of the children have got some serious uhm, academic challenges.”

Adv. Blake: “Clinical psychologists are more regarded more of an expert than an educational psychologist.”

Adv. Banks: “I think that is a scope of practice that is only clinical psychologists own scope of practice. But you get that educational psychologists does forensics, and they are not allowed to do it.”

There was agreement amongst the respondents that psychologists should be well trained and knowledgeable in order to work in this field. This is in line with the HPCSA guidelines for competency, as well as international standards of best practice (American Psychological Association, 2013; Association, 2010; Health Professions Act No 56 of 1974).

When all is said and done: Report writing and feedback

The final basic theme for the organising theme *In practice*, addresses the final step in the evaluation process: The report writing. The final report is regarded as a synopsis of a multi-layered, triangulated process of data collection. Report writing is a skill that is needed in order to concisely convey that which the investigation elicited, in a manner that is understandable, coherent and relevant. There is much debate around the style, the disjointed nature of reports, and the length of the reports furnished to the courts (Budd, 2005; Goldstein, 2016d; Posthuma, 2016; Roos & Vorster, 2009; Vorderstrasse, 2016). This is evident in the findings of this study, as well as the literature surveyed.

Dr Martins: “...you see a lot of psychological reports come out with a lot of psychological jargon in it... there are some psychologists who put in the biggest lot of mumbo jumbo just to try and confuse – okay? And the court doesn’t know what to do with that. Okay? On the other hand, there is terminology and there is kind of – there are in certain ways to explain something without it making it look ridiculous.”

Dr Jane: “So then there can be two ways. It’s either that you need to [write] in terms of making the psychological work presentable to the court it has to mimic that [legal context] a little bit but then on the other hand the challenge is where you can’t fit it [findings] into an either all. It’s about presenting it in a way that makes sense ... you can’t go off on a tangent with lots of jargon and psychodynamic terms and things like that.”

Dr Lewis: “Now your report then, that document, your work document then becomes an objective piece of information ... What you’ll find are psychological findings

but once it gets converted into your report that becomes uhm something that the court can work with ... It should not make findings of fact."

The advocates were in agreement that psychologists' reports were inclined to be difficult to understand, largely due to jargon (as was discussed earlier), but also due to the style of writing of psychologists. At times, the advocates experienced the reports to be too long, too complicated, or rushed. Furthermore, they felt that the impact of the results and the consequences thereof were not adequately considered.

Adv. McGill: "I don't think psychologists realise the implications of what they put in their reports."

Adv. Reid: "I don't know if it would be allowed in your reports, but to again, sort of simplify it. Do all this, the things you have to do and explain all the things you have to explain, but then maybe, at the end, break it down to more kind of practical."

Adv. Banks: "So, I think sometimes they just write a report to get it over and done with."

Adv. Blake: "It's just hurried because they are put under pressure to bring out a report."

Adv. Reid: "Or they would overstep their bounds. Then you do wonderful evaluation and then at the end of the report there's a recommendation of residency ... But then you think to yourself, but nobody asked you to make a recommendation about residency."

Adv. Hanson: "... but with reports that you work with, you want an expert that explains to the court when or what was the terms of the reference. In other words, what did this expert have to do so that you can see whether the report and recommendation is within, you know, the mandate."

It is agreed by many in the profession that a comprehensive, well-integrated report, which answers the referral question, is an integral part of evaluations (Roos & Vorster, 2009). Characteristics of quality written reports include accuracy, comprehensibility, avoidance of overly detailed explanations, and coherently deduced findings that are related to the recommendations made (Budd, 2005; Goldstein, 2016d; Vorderstrasse, 2016). As is seen above, the findings of this study are in agreement with much of the literature regarding report writing and formulating recommendations.

Theme 5: Defining parameters

Theme 5 addresses aspects of care and contact evaluations that are regarded as poorly defined, and/or controversial. These areas, which are regularly assessed in care and contact disputes, lack clearly defined parameters and theoretical grounding. In order to address these concepts, three basic themes were developed from the data.

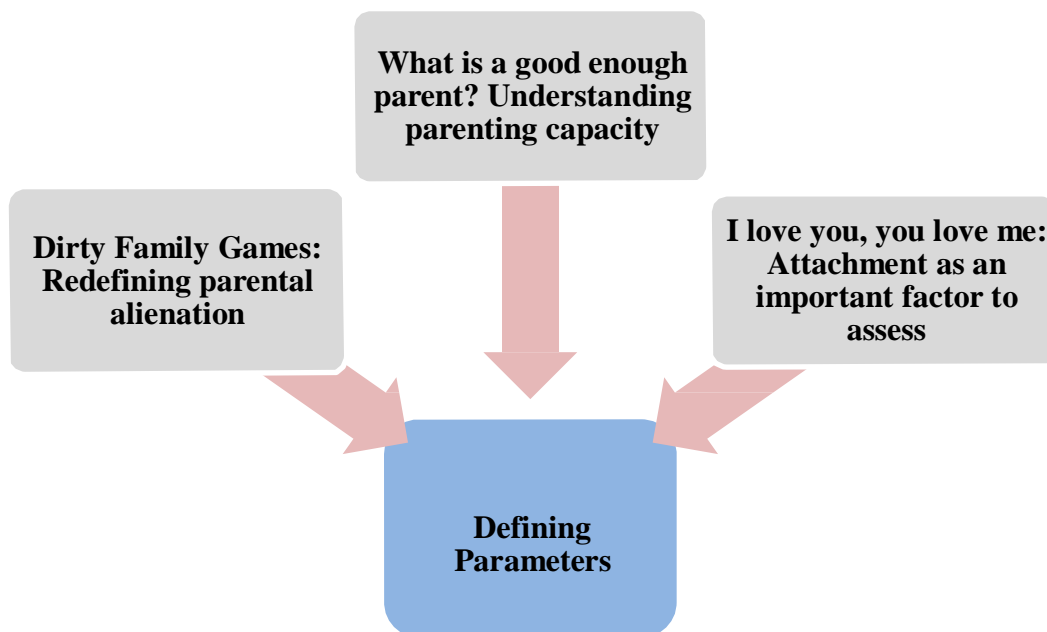


Figure 7-6 Basic themes linked to the organising theme: Defining parameters

Dirty family games: Redefining parental alienation

Parental alienation is a concept that remains largely controversial, yet at the same time forms a common thread in much of the discourse between, and amongst, the legal professionals, psychologists as well as the parties involved. As highlighted in Chapter 3, the concept has undergone major revisions in the profession. It was previously defined as a syndrome with a tendency to assign blame to one parent entirely, to currently being considered as a family pattern that resembles the underlying pathological interactions between family members (Fuhrmann & Zibbell, 2012; Kelly & Johnston, 2001; Neustein & Leshner, 2009; Saunders & Oglesby, 2016; Stahl, 1994; Walker et al., 2004).

The term parental alienation syndrome (PAS) was credited to Gardner (1987) and was defined as a child's unreasonable refutation of one parent due to the influence of the other parent. Gardner's theory, which has been heavily criticised in the literature, led some in the profession to relook and redefine the concept (Fuhrmann & Zibbell, 2012; Johnston, 2005; Neustein & Leshner, 2009).

Dr Lewis: "No, we don't talk about a syndrome anymore with parental alienation. No, that's Gardner. Nobody uses Gardner anymore ... PAS doesn't exist anymore in child custody evaluations. ... I would say 90% of the cases are hybrid cases where there is a uhm dynamic that's a function of millions of things."

Dr Alan: "The way I understand parental alienation is where the parent actively, uhm, alienates the child...blocks contact; doesn't answer the phone, uhm relocate, you know, moving to Cape Town or going after the boyfriend or the girlfriend or what have you or immigrate. Parental alienation syndrome is, the way I understand it or as Richard Gardner defines it; uhm, as, uhm, active alienation through the child, not through the parent."

Dr Martins: "I think that parental alienation or PA's gets thrown out way to, you know, so it's thrown out of the picture and allegations that are made way too much. Having said that though, it most definitely exists and there are some parents that are terrible and they really do everything they can to try and alienate the other parent."

As can be seen in the above statements made by the psychologists, the idea of parental alienation is most likely to be a dysfunctional familial pattern that is actioned by one parent, against the other, as opposed to Gardner's original theory of the child being used as a pawn. This can be further complicated when alienation becomes a tactic against one parent or evolves into false allegations of abuse.

Dr Martins: "But it [parental alienation] escalates to false allegations of physical abuse, sexual abuse, neglect, you know, all sorts of things. And those kids get put through terrible stuff, just trying to prove it."

Dr Jane: "You see I feel uncomfortable with this idea of it being a syndrome and you know as soon as you put something out there then innocent public knowledge then everyone then latches onto it well not everyone but it becomes very easy to latch onto and banding about and accuse one another of ... I think it also creates the framework then and it can sometimes be a convenient way for some parents not to take responsibility for what they might be doing to contribute to the child moving away from them by putting it all on the other party and saying oh they alienating."

Mr Nate: "I don't call it a syndrome. I don't like the Gardner modality of it, sort of that 1980 theoretical construct. I don't like it as a diagnostics syndrome for the

simple reason I think it oversimplifies a lot of what happens and I do treat it more as a function of a system with a lot of inter-relating parts.”

Dr Jane: “I feel uncomfortable with this idea of it being a syndrome. ... I think it also creates the framework then and it can sometimes be a convenient way for some parents not to take responsibility for what they might be doing to contribute to the child moving away from them ... but there’s definitely you know withholding stuff, telephone calls, obstructing visitation and even subtle ways in which there’s a lot of splitting that happens.”

These perceptions were echoed by the advocates as well, who agreed that PA is used too often as a tactic by a party, or lawyers, against one of the parties.

Adv. Reid: “I think there’s a misunderstanding of what parental alienation is typically I think there’s a, the lawyer throws it around like, every second word, and I think there’s a there’s a misunderstanding of what is parental alienation ... parental alienation, as I understand it, it’s an active alienation by a parent at a child.”

Adv. Hanson: “I don’t think it’s something new. I think it’s something that’s always been there. Uhm I mean there’s parental alienation, there’s parental alienation. I mean we know what the weapons in a divorce are. The women, if they keep the children, which is usually what happens, the women use the children and the men use the money, you know.”

The perceptions and opinions elicited from the findings of this thesis are largely congruent with other professionals who have voiced concern with regards to the definitions of, processes involved in, and consequences of, parent alienation (Kelly & Johnston, 2001).

The tendency to use PA as a tactic in family conflict, which can be likened to the problem-determined system as described by Anderson et al. (1986), perhaps succinctly portrays the amplification of the problem-determined system as accusations of false abuse are added to the already ‘problematic’ PA system. Parental alienation and false allegations of abuse are concisely captured in the descriptions of ‘family games’ as portrayed by Selvini Palazzoli et al. (1989), as well as Minuchin’s description of triangulation and coalitions (Minuchin, 1974). PA is then understood as symptomatic of a dysfunctional system in which one parent actively conspires against the other, thus maintaining the homeostatic family game.

What is a good enough parent? Understanding parenting capacity

As part of a psychological evaluation, psychologists are frequently requested to assess the parties’ *parenting capacity*. There is no single agreed upon set of criteria in the literature that comprehensively describes parenting capacity (Eve et al., 2014; Houston, 2016; Schmidt et al., 2007; White, 2005). What is agreed upon is the view that parenting capacity is multi-factorial concept that includes, amongst others, numerous parenting skills, the parent-child relationship, socialisation of the children, and the ability of the parents to understand and meet the children’s needs (Moran & Weinstock, 2011; White, 2005). However, one aspect that did not feature significantly in the interviews, which was visible in the literature, was the capacity towards a facilitative co-parental relationship. Establishing an effective co-parenting regime has been associated with more positive outcomes for family members, and less adverse consequences for the children (Ahrons, 2007; Deutsch & Clyman, 2016; Froyd & Cain, 2014; Stahl, 1994, 2008).

Further to this, assessing parenting capacity can be challenging due to the emotionally laden situation in which the parties find themselves (Budd, 2005; Schmidt et al., 2007). This is evident in the following extracts:

Mr Nate: "I think we combined it [parenting ability] as parental fitness, which is how well they can conduct a relationship with the child and parenting ability, how well they can understand it. So we look at things like empathy, affect regulation ... Uhm impulsivity their ability to actually mentalise the needs of others, how well they can basically put their own emotional needs aside in terms of relating to the other parent for the sake of a child."

Dr Martins: "So if it's really just to look at just basic parenting skills ... kind of are they in touch with their child's needs, do they pick up on their child's do they have a reasonable understanding of how their child's developmental needs and going forward what developmental needs may be appropriate."

Dr Jane: "So for me it's about uhm the capacity to provide structure, to provide you know uhm routine that it's developmentally appropriate and to provide emotional support and to uhm provide an environment and relationship that is not toxic or pathological."

Dr Alan: "So when you're talking about an effective parents; ja, I think lies there. A parents flexibility in terms of being – or trying to adhere to the child's best interests."

As seen in the findings, as well as much of the literature, parenting capacity is a core area in care and contact disputes. The assessment of a parent's capacities and abilities is regarded as essential when making decisions as to the care arrangements of minor children. A consistent aspect of parenting capacity, which was evident in the findings, is the ability of the parents to understand and meet the developmental needs of their children. The aspects identified by the psychologists in the interviews are similar, albeit not as comprehensive as several of the models identified in Chapter 2, with specific reference to Budd (2005), Eve et

al. (2014) and Houston (2016). From these models, as well as the findings above, it can be surmised that parenting capacity embodies several factors including:

1. The parent-child relationship
2. The parent's ability to recognise and meet the child's developmental needs
3. The provision of a healthy environment (physically and emotionally)
4. The parent's capabilities and deficits
5. The parent's flexibility, boundary setting and affective availability
6. The parent's ability to meet day-today demands which necessitate the abilities to set age-appropriate routine, problem solving and effective communication skills
7. The parent's level of insight and willingness to be a parent etc.
8. The parent's ability to form a functional co-parental executive system

“I love you, you love me...”: Attachment as an important factor to assess

Attachment Theory is regarded as a useful theoretical lens with which to analyse the parent-child relationship, and in essence the psychological health of the parent-child relationship (Ainsworth et al., 2015; Garber, 2009). This was regarded as a significant construct to assess as it directly contributes to recommendations made by psychologists.

Dr Jane: “I like attachment theory... I think that's quite a useful one for me, also justifying some of my recommendations.”

Dr Alan: “There's many variables, attachment and all that to look at the best interest of the child.”

Dr Lewis: “...all the family factors. You look at the age, all of those things. The age of the child, the attachment patterns...”

Attachment Theory, as discussed in the section *Theoretical orientation of psychologists*, has undergone extensive development over the years. The current view, which highlights that children may develop multiple attachments, has implications for the development of the care arrangements of children (Goldstein, 2016a; Ward, Gannon, & Vess, 2009). This notion, that children may have several Attachment figures could potentially inform recommendations of shared residency, and/or increased contact schedules with the non-residential parent. Despite the advancements of attachment Theory in the field, the assessment of attachment in the care and contact milieu is largely underdeveloped and needs further exploration (Ainsworth et al., 2015; Garber, 2009; Goldberg, 2013; Goldstein, 2016a; Lee et al., 2011; Schmidt et al., 2007).

Theme 6: Challenges and pitfalls

Throughout the interviews, the psychologists and advocates alluded to several challenges that affect the intra- and interdisciplinary associations, the psychological evaluations as well as the families that receive the services. These challenges are described in the 10 basic themes below.

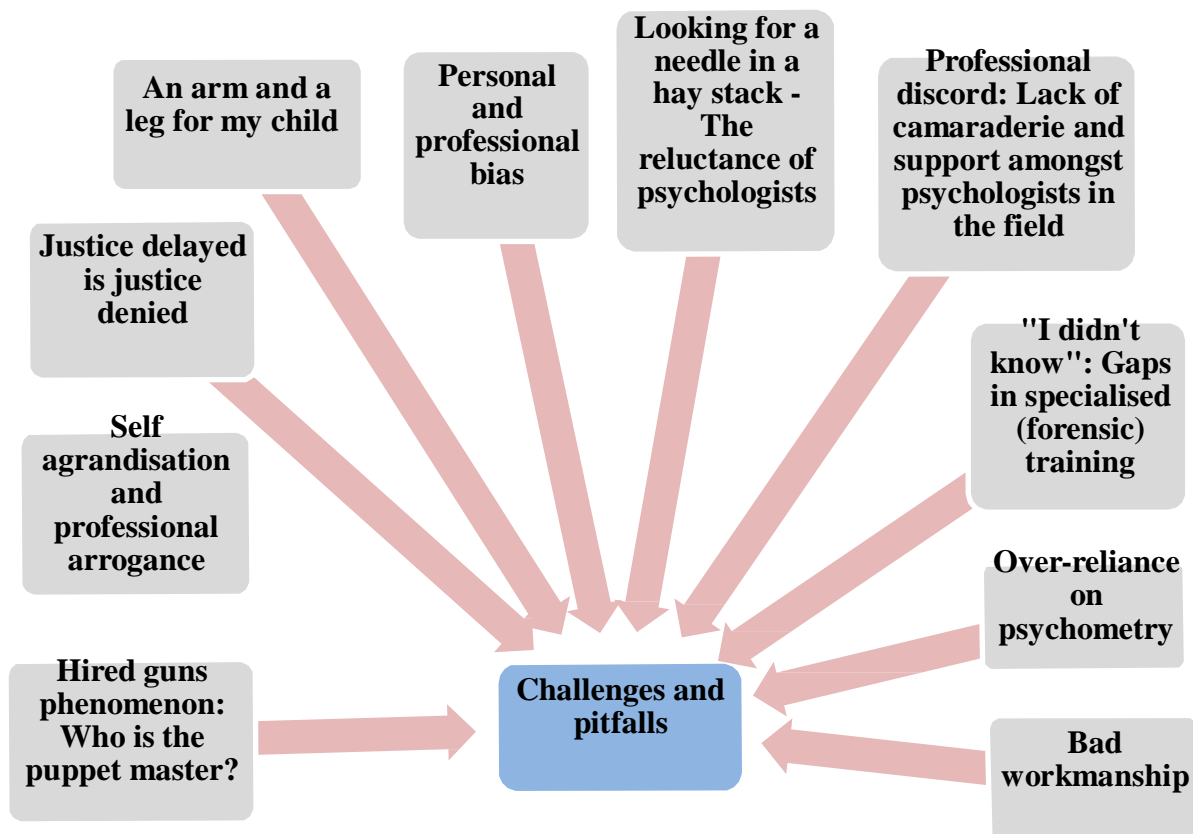


Figure 7-7 Basic themes linked to the organising theme: *Challenges and pitfalls*

Hired guns phenomenon: Who is the puppet master?

A topic that was addressed, rather predominantly during the interviews, was the idea that psychologists are persuaded, or manipulated to write a report in favour of a particular party. The phenomenon of the ‘hired guns’ places the profession in disrepute and violates several ethical guidelines. The concept of hired guns can be characterised in two ways; the psychologist-lawyer, or psychologist-payer relationship. This suggests that psychologists will sway their reports in favour of a particular legal representative (and by default the attorneys client) or the party who is paying for the evaluation. Both the psychologists and the advocates interviewed described the *hired guns* as being psychologists (or any experts) who are evidently biased and acting on behalf of a particular party.

Adv. Blake relayed several instances of working with a hired gun:

Adv. Blake: "... it's somebody that you buy to make a recommendation in your client's favour, despite the facts. I'm currently working a case where there's a hired gun..."

"... there are also useless psychologists who would not do their jobs properly, who would make a recommendation because an attorney asked them to make that recommendation in that manner."

"I looked at her report and I looked at the social worker's report and the allegations and what the kids said, and it looked like two totally different matters, totally. So I said to her just explain to me ... and her response was argh but you know, your attorney wanted me to say something favourable."

The examples above were further corroborated by several others:

Adv. Hanson: "Yes, many. I can give you names as well, many hired guns...you get these experts that get an instruction by an attorney only to discredit the report by somebody else."

Dr Lewis: "...more than that, uhm is the idea that they can't be trusted to give an unbiased and neutral opinion and that if they have a relationship with one or other attorney or if they get a lot of work from that attorney. I mean ultimately, that is the purpose of you being there. It's not to uhm find for one or either parent, but to be an expert for the court to help the court."

Adv. McGill: "They [Office of the Family Advocate]...collected a small core of psychologists to assist them, refer people to these psychologists and really to

put it bluntly – became a money making racket ... it just reeks of, of favouritism.”

Adv. Hanson: “...since the Children’s Act, it’s become a separate little cottage industry between certain uh social workers, psychologists and certain attorneys.”

Mr Nate: “... but if you’ve [psychologist] got a pre-defined aim or you’re acting on a behalf of a particular party with again, a predefined goal, I think that becomes a problem because it obscures objectivity and can cause unnecessary acrimony in the profession.”

The literature, as well as the respondent’s opinions, are alike in that the use of hired guns undoubtedly brings the profession into disrepute and casts a negative light on the field of psychology. It also insinuates that psychologists’ recommendations are based on alliances rather than on their psychological judgements (Gould et al., 2011; Swanepoel, 2010; Thompson, 2012). This suggests that findings and recommendations that result from such evaluations are not in line with the best interests of children, or their parents, but are instead swayed by premeditated factors, such as money, favour or bias. This was further reiterated in the presiding officer’s summary of the *Schneider NO and others v Aspeling and another (2010) 3 All SA 332 (WCC)* case;

“An expert is not a hired gun who dispenses his or her expertise for the purposes of a particular case. An expert does not assume the role of an advocate, nor give evidence which goes beyond the logic which is dictated by the scientific knowledge which that expert claims to possess.” (p.8)

Another aspect related to the hired guns phenomenon is the perception that psychologists are not held accountable, either due to the attorney’s reluctance or avoidance in

confronting or reporting the transgressing psychologists, or due to the HPCSA's tendency not to hold psychologists accountable. This was indicated in several of the advocates' frustration as seen in the following extracts:

Adv. McGill: "But my impression is that many of the complaints are simply dismissed – you know, they don't get attention – proper attention."

Adv. Blake: "I know of numerous clients and attorneys who've reported this specific psychologist and he's still practicing. He is still practicing ... Ja but nothing happens to him and he just carries on."

Building on the notion of the hired gun and the lack of accountability in the profession, there is real concern amongst professionals apropos the potential damage such practices may have on clients. This necessitates an interrogation of the nature of the bias. As is evident from the above excerpts, many professionals believed that psychologists are knowingly biased. What is perhaps not clear from the findings is the view that unskilled and incompetent, perhaps naïve, psychologists who, unbeknownst to them, become involved in sub-standard and dubious practices.

Self-agrandisation and professional arrogance

Arrogant, glib, lacking humility ... are adjectives used by many of the professionals, in this study, in their descriptions of certain psychologists. These terms denote that psychologists are viewed as embodying a sense of entitlement and arrogance, which generally manifests in over-charging, refusing to communicate with the legal representatives and attacking other psychologists' work.

Dr Lewis: "I think people are flippant about these things. They're glib ... they think their clinical impression is good enough, you know, that they think that their

intuitive experience in a therapeutic context is good enough for this context and also that those intuitive uh clinical impressions that they have are well-founded.”

“So you have clinicians who say I can tell you what the right thing is here. I can tell you in the first session where these children should be. So it’s a lack of humility.”

Adv. Reid: “...maybe a bit of arrogance...”

Dr Alan: “You must know the nature of the beast. Don’t do this and say, “I’m going to do this just on the side.”

Adv. Reid: “Oh, I don’t want to be as pessimistic to say money ... or maybe a bit of arrogance.”

Adv. McGill: “It’s a sort of “I know it all.”

As highlighted in the literature, forensic psychology is regarded as an area of expertise (Association of Family and Conciliation Courts (AFCC), 2006; Krüger, 2004; Louw & Allan, 1998; Pickar, 2007; Scherrer & Louw, 2003). However, there appears to be an inherent risk in inadvertently being misguided by the internal responses of haughtiness and an inflated sense of self-importance. Fasser (2014, p. 429) stated that these professionals tend to regard themselves as “having arrived”, and while their knowledge and expertise are valuable, they are most often “calibrated by their need to conserve rather than to explore, their need for certainty over and above uncertainty, and their need to be pragmatic rather than using broad-thinking”. Adv. McGill pronounced that psychologists believe, at times, that they are *above* doing certain work, for example conducting home visits:

Adv. McGill: "I do not see any reason why psychologists cannot conduct the home visit...I think some regard themselves as above doing home visits."

Justice delayed is justice denied

According to many of the advocates, there is a tendency for psychologists to take a long time to furnish a report. This raises concerns as to the efficacy and usefulness of the reports at the time of the release due to the time period that has lapsed. For example, the legal process may have evolved; the parties themselves may have made changes in their lives; and emotions may have swayed. Several of the advocates voiced concerns relating to the potential impact that a lengthy assessment may have on the minor children, particularly in cases where children are subject to alleged abuse, neglect and a toxic environment. The claim that psychologists are untimely with regards to their reports contrasts with the opinions of Dr Lewis and Dr Jane who stated that, on average, evaluations take approximately six to eight weeks to complete.

Adv. Blake: "Some of them take extremely long to do the report ... Well they take six to eight months, the psychologist."

Adv. Hanson: "Because sometimes it takes so long for these reports to come out and so many things happen in the meantime, that they may have an effect."

Dr Alan: "My shortest one is six weeks, my longest one is four years ... But usually, it takes three to six months."

Dr Lewis: "Eight weeks. For me, eight weeks and probably if I had no other work, you could do it in four, but I never do that."

Dr Jane: “...it probably takes the you know with the availability of people three to four weeks max in terms of assessment time and then I normally try and do the report two weeks that follow so probably four to six weeks.”

This concern, which is not highlighted in the literature, may be particularly applicable to the South African context. One then questions the impact of practising and conducting such complex and multifarious evaluations without the necessary skills and abilities. This could also be closely linked to the shortage of psychologists who are willing to do this work, and the resultant high case load of psychologists (elaborated on in the section *Looking for a needle in a hay-stack – The reluctance of psychologists*).

An arm and a leg for my child

A pertinent point of contention relates to the fees charged by psychologists for custody evaluations. There were varying opinions across the two professions with regards to what is considered an acceptable fee. Psychologists stressed the complexity and time consuming nature of comprehensive investigations, while advocates believed that psychologists over charge and should instead be more conservative and less expensive in their fees. As highlighted earlier in this chapter, there is a discourse in the profession that legal representatives are permitted to charge exorbitant fees for their services; however, psychologists, who are traditionally regarded as a ‘helping profession’ should practise more humility and modesty when charging fees.

Adv. Blake: “... it’s so costly, the Pretoria psychologists, they charge between 30 and R50 000 for a report. In Jo’burg, it’s about 60 to R80 000 for a report. Now parties can’t afford it. If you’re involved in costly legal battles, they simply don’t have the funds to do it and sometimes, the report comes back and you’re

very disappointed with the outcome or the way in which the investigation was done ... It's too costly. It's too costly."

Adv. McGill: "I think there should at least be – if not a limit to fees, there should be a guideline. The fees – the fees really is my major uhm, problem for excluding. So say, let's say 90% - 95% even... Potential clientele... people who need it most – don't get it."

The idea that psychologists should charge less for forensic services is perhaps interconnected with two factors. The first appears to be linked to the devaluation of psychologists, as was elucidated on in the theme, *Devalued*. The second factor is most likely related to the lack of guidelines and professional considerations as to the composite nature of evaluations.

Mr Nate: "I suppose in thinking about, I think there could be a standard minimum ... However, do I think they should be a ceiling put on it, I don't think so... , I would charge for instance R1000 an hour for what I'm doing and I put a ceiling personally of R50 000. I will not go above that. However if someone has got 25 to 30 years' experience on this, I see no reason why they can't be allowed to charge more than what a standard practitioner wants because this is obviously an area of professional expertise."

As can be seen from the extracts, fees for psychological services is a contentious issue in the forensic context. As is the case with the lack of practice guidelines in South Africa, so too are there no guidelines or norms as to the acceptable range of costs (Roos & Vorster, 2009). Despite the lack of formal guidelines, there is agreement that forensic psychology is a taxing career that leaves psychologists open to being scrutinised by their peers. However, it is advised that all financial implications of such evaluations be discussed and agreed upon at the

outset of cases, prior to embarking on any data collection procedures (Ackerman, 2001; Health Professions Act 56 of 1974; Pepiton et al., 2014; Stahl, 1994).

Personal and professional bias

Bias, both personal and professional, can be linked to several themes throughout this thesis, but most appropriately to the themes *A muddy reputation* and *Hired guns phenomenon*. There is consensus that biased practices are not unique to the psychological profession, but can be seen in the legal realm as well.

Adv. Blake: “Whether they grew up in an Afrikaans environment, whether they grew up in an English environment. That makes a huge difference. The age gap, you know it’s like the judges. The old judges believe children belong with the mother. The younger judges are more open to why they can’t share the kids”

It is apparent in the literature that psychologists should be aware of, and maintain, a level of self-reflexivity. This is not intended to remove bias, which is regarded as an inherent attribute, but rather to limit the impact that such bias may have in care and contact cases (Cohen & Malcolm, 2005). Further to this, if one examines the literature and the findings of this study, there appears to be two levels of bias. The first is related to an implicit personal bias, while the second an explicit bias.

The implicit bias, which is associated with a psychologist’s own beliefs around families, may manifest in their tendency to formulate recommendations that are in line with their belief structure, or their likes or dislikes for a particular party, or a particular trend amongst colleagues. This could also become apparent when findings are over-valued in support of one’s hypothesis (Pickar, 2007). This can be seen in the following extracts:

Dr Martins: “...its quite clear that they are being very biased... Towards one party. Or biased in terms of one type of thinking.”

“...I would like to think that people don’t think like this anymore; but every so often it appears that it’s not the case, but you know like where the whole concept of maternal preference...”

Adv. Blake: “I find that trend and I find it differs in Pretoria and Jo’burg as well. The Jo’burg uhm psychologists tend to use a starting point as joint primary residence, whereas Pretoria, they are still on the one should have primary residency, the other one should have rights of contact.”

The explicit version of bias tendencies is linked to the psychologist’s inclination to align with a particular party because they are paying for the evaluation, a particular attorney to maintain favour and/or a continued stream of income.

Dr Lewis: “... the fact that if one person is responsible for the payment, they have an expectation that you’re going to find for them and you have to work with that and you mustn’t fall prey to the guilt that they are paying and you’re not finding for them.”

These findings correspond with what has been written by peers in the profession who caution psychologists to guard against biased practices (Cohen & Malcolm, 2005; Masilla & Jacquin, 2016; Pickar, 2007; Stahl & Martin, 2013; Zumbach & Koglin, 2015).

Looking for a needle in a haystack – the reluctance of psychologists

Looking for a needle in a haystack aptly describes the dwindling number of psychologists who are willing to embark on care and contact work. Despite the initial attraction to the field, the minority cohort is diminishing rapidly. The reasons for this are

multiple, and are associated with the high stress levels, the risk of being reported to the board, the adversarial nature of disputes and the possibility of being called to court to testify.

Adv. Reid: "I think unfortunately the, the psychologists uhm that are willing to do these kind of matters, are dwindling fast. Uhm, because, uhm, a lot of the, lot of these parents tend to take you guys to the council."

Adv. Banks: "That is the thing in the end, but unfortunately the pool are so small. That they [psychologists] do not want to do forensic work any longer."

Adv. Blake: "There are only a few in the field who are willing to do this [work]."

As can be seen from the extracts above, the legal teams do not have a large pool of psychologists at their disposal. As seen in the literature, the reasons as to why many psychologists are dissuaded from doing care and contact work include the increase in board complaints and disciplinary action, as well as the high conflict nature of cases (Fasser, 2014; Krüger, 2004; Martindale & Gould, 2004; Pickar, 2007). These factors essentially contribute to the gap in the field. This is evident in the following psychologists' perspectives:

Dr Alan: "It's an unpleasant context. Very much an unpleasant, acrimonious context filled with psychopathology. Where the psychologist becomes the target of the frustration because they have to play god in deciding where children has to stay, it's a huge responsibility... I do not do as many as I did in the past, I, uhm, select them."

Dr Martins: "I issued my report. I didn't recommend in her favour. And, uhm, she reported me..."

“I mean, maybe it’s just the nature of the cases that I deal with now, that are really, really difficult are highly, high conflict. Uhm, so it’s become a lot more difficult in the field.”

Dr Lewis: “So that was what the hearing was about and uhm they found me not guilty. It was horrific, it was a changing point in my life. Oh no, it [being reported] was stressful. Couldn’t live, couldn’t sleep, it was horrific. It is the most terrible thing to happen...”

The reluctance of psychologists to be involved in such cases, and the resultant small sample to choose from has created a paradoxical knock on effect. Those who have a good reputation for producing quality, unbiased and ethical work tend to be consulted. This creates a perception, which may or may not be accurate, that there are alliances, or favouritism in the field. This can be seen in the following statement from Adv. Hanson:

“...it’s maybe networking on the one hand, hired gun on the other hand.”

In addition, these preferred professionals have a heavy case load, which could contribute to the perception of the legal teams that psychologist take long to furnish a report, again putting pressure on an already over-burdened and taxing system.

Professional discord: Lack of camaraderie and support amongst the psychologists in the field

A surprising, yet obvious, trend noted throughout the interviews relates to the professional discord and lack of camaraderie amongst psychologists. The tendency to attack one another is rather tongue in cheek if one considers the underlying philosophy of the profession. The inclination towards enmity towards the profession is perceptible not only to psychologists, but to the legal profession as well.

Adv. Reid: "... from our side, we have this thing of aaah you are very easy to attack each other... you write a report and then I find somebody that will say No ugh! You're stupid! And then they will easily take your report and pull it apart without following the right rules."

Dr Martins: "...this whole current kind of 'trend' where you will have one report; if you don't like it – you will get another psychologist. So now you have got two opposing psychologists, uhm, and then they try and put you up against each other which I think is just ridiculous. And also very sad that our profession plays into that."

"I think also that uhm, so the other challenges are that as a profession; we don't work together...it's almost like psychologists just don't trust each other... you try and get a psychologist to share some of their stuff with you – there's no – not no chance. And that really irritates me. Because really? There is so much work out there – what are you – are you worried somebodies going to steal your work?"

Adv. Hanson: "...you get these experts that uhm get briefed only uh, or get an instruction by an attorney only to discredit the report by somebody else. They don't do the evaluation themselves but then they file these lengthy reports where they now critique the other uh experts report and that is frowned upon by the judges because remember, if you're an expert, you're supposed to be and that is the one thing that we knock all the experts on during cross-examination, is you're supposed to be impartial and objective."

Krüger (2004, p. 297) described this hostility and the tendency of psychologists to attack one another as the "battle of the experts". Further to this, there is an implication for the

mental health field in that psychologists could “fall prey to perpetuating the very problem “we (sic) seek to cure” (Keeney, 1983, p. 23). The acrimony that results from this is also appropriately associated to the basic theme *Hired guns phenomenon* in which the psychologists attest to the tendency of attorneys, or parties, to employ a psychologist solely for the purpose of unscrupulously critiquing another’s report. This is succinctly described by:

Dr Alan: “These critical reports are used to destroy... Discredit the person. No, it’s never written in good faith... It’s there to gun the other psychologist...”

Further to this though, as was hinted at by the professionals interviewed, is that there is a tendency for psychologists remaining isolated and disconnected from peers in the profession. This appears to be a result of many factors.

“I didn’t know”: Gaps in specialised (forensic) training

In agreement with much of the literature, there is consensus amongst the professionals interviewed that there is a significant gap in training psychologists in the forensic context. This gap potentially opens the door to increased error and unethical practices.

Mr Nate: “I think that’s a big part of it but I think the other part of where the challenge comes in is the lack of a sound sense of training and methodology behind it and I think that’s the thing ... I didn’t know the specific methodology employed in all of this ... I think that’s definitely a gap in my training.”

Dr Alan: “...lack of training and, uh, misunderstanding the context but that comes down to training again.”

Dr Jane: “So people that uhm you know have done investigations on sexual abuse with no training, no specialisation. They have provided no evidence that they’ve

had training in what is quite a specialised type of assessment and proceeded with it.”

Adv. Hanson: “Experts are not being properly prepared, not knowing all the literature.”

Adv. McGill: “I think the psychologists are very well suited to do parenting plans... But there you also need – you need a proper uhm, training for a person to draft a good parenting plan.”

The opinion of the psychologists and advocates are coherently allied to the vast majority of the literature. Over the last several decades there has been an increase in training programmes internationally; however, according to Rodolfa et al. (2005) and Varela and Conroy (2012) the available clinical training is not sufficient for the forensic context. This is echoed by Stahl and Martin (2013), Vorderstrasse (2016), and Zumbach and Koglin (2015) who indicated that the training is not adequate. This, which is particularly true in the South African context, highlights the dire need to develop comprehensive training programmes to sufficiently train psychologists in the forensic field.

Over-reliance on psychometry

Psychometric evaluations form a fundamental part of care and contact disputes, and psychologists often conduct evaluations to formulate recommendations in line with the BIC principle. According to the advocates interviewed, psychologists tend to over-rely on psychometric instruments. This consequentially results in heavily skewed reports that lack integration. Indeed, both the psychologists and advocates agreed that these instruments should form only a part of the evaluations that assist the psychologists to confirm or disconfirm hypotheses, rather than being the main source of information.

Mr Nate: *“I don’t place it as the end-all, be-all. I kind of use it as an additional thing to supplement because I will usually see it overlaps but it’s not where sort of my principal attention is focused.”*

Dr Alan: *“Some people give too much weight to psychometric testing ... It doesn’t replace the psychologist.”*

Adv. Blake: *“You know those personality tests ...In my opinion, it does not assist at all because I’ve almost never seen the outcome of that report which indicates that the one person is a better parent than the other one ... In my opinion, they should go to greater lengths to get certain information from the kids, because the one party, the one parent might have a nicer personality, but he or she might not be the better parent.”*

“Nine-tenth of the report is spent on evaluating these test results.”

Adv. McGill: *“I think very often these tests have been conducted quite unnecessarily ... And then my main criticism is that these tests are sometimes interpreted as being the alfa and the omega of the assessment whilst it shouldn’t ...Most reports will be perhaps 80% description of the results of the psychological testing and then a paragraph or so on the evaluation with some reference to uhm external factors...”*

White (2005) suggested that, as part of a forensic evaluation, psychologists should avoid an over-reliance on psychological instruments and instead should make use of multiple sources of information. This is supported by Thompson (2012) who found that psychologists tended not to rely on multiple data collection methods, thus producing questionable results.

Bad workmanship

Apart from some of the praise and positive feedback received about psychologists' endeavours, there was ample commentary on the sub-standard work and indicators of bad workmanship voiced by both psychologists and advocates. This is an unfortunate situation as care and contact disputes are one of the most challenging areas of work (Brandt et al., 2005; Budd, 2005; Fuhrmann & Zibbell, 2012; Kelly & Ramsey, 2009; Pepiton et al., 2014; Pickar, 2007; Roos & Vorster, 2009; Stahl, 1994).

Dr Alan: "Where psychologists think, you know, "Let me quickly do this" ...I think it's clinically irresponsible because then – ...Psychologists make the mistake and then when they fall into hot water, their defence is, "Yes, but I didn't have enough time." Point is that's not an excuse, then create enough time for you."

Dr Lewis: "There are multitudes, badly written reports, non-consequential, recommendations plonked on descriptions, there's no connection between them, not having done a proper evaluation. I mean having done house visits and connections with one side of the family and not even considered for the other side of the family."

Dr Martins: "...there is a report where the person has really – in my opinion; clearly acted unethically... for example; if somebody has uhm, consulted with mom and already done assessments on the children and not consulted with dad, and they make a recommendation regarding residency you know, and contact, parental rights and responsibilities... I think that's wrong ... but you have got to show you know, that you know what you are doing... they write these reports that have massive impact on people's lives and the outcome of cases or whatever it is. And ja, it's really bad."

“...there has been bad workmanship out there and as a professional we haven't done ourselves justice there.”

Dr Martins: “...where there is really bad workmanship and then you know, it needs to be reported. I'm not opposed to that. I'm really not, but on the other hand I also think this 'game playing' that attorneys to do, that as soon as a report comes out and it's not in their clients favour; they suggest to the client that they report them.”

Dr Jane: “So really the lack of sort of scientific investigation around ... It was really uhm you know lack of thorough investigation, no history was taken for that child. I mean no sense that maybe whatever behaviour was being presented may have had other roots so you know that kind of thing. Sometimes inappropriate tests done or not enough psychometrics done.”

Adv. Banks: “So they take the history and they do the tests, but they actually don't integrate most of it to get to the recommendation in the end ... “I think sometimes they just write a report to get it over and done with ... one report for instance, is just copied and paste again.”

Adv. Blake: “Uhm most of the times, one could see that because it took so long, they lost feeling for the matter. It's just hurried because they are put under pressure to bring out a report. They do it hurriedly.”

The above extracts critique psychologists' lack of fundamental training in conducting comprehensive investigations. These criticisms suggest that investigations, which tend to lack balance, are not grounded in psychological theory and empirical evidence. In addition, investigations tend to be rushed and reports tend to lack integration, leading to thin and weak

findings. This is perhaps in contradiction to earlier themes in which psychologists and advocates stated that reports take too long and are often too theoretically and technically laden. These contradictions point to a need to refine psychological work in a manner that is understandable to the legal system.

Theme 7: The nature of the beast

The child care and contact milieu is without a doubt one of the most challenging, complex and multifaceted work environments as reiterated by several authors and professionals alike (Brandt et al., 2005; Budd, 2005; Fuhrmann & Zibbell, 2012; Kelly & Ramsey, 2009; Pepiton et al., 2014; Pickar, 2007; Roos & Vorster, 2009). These sentiments attest to the many imbedded challenges that are characteristic of forensic work, but more specifically to those in child care and contact evaluations, which came to light in the analysis of the data in this thesis. These characteristics can be described from a process-oriented perspective that is in line with the problem-determined system (Anderson et al., 1986). This theme, *The nature of the beast*, specifically addresses the inherent challenges of care and contact work, and is comprised of four basic themes.

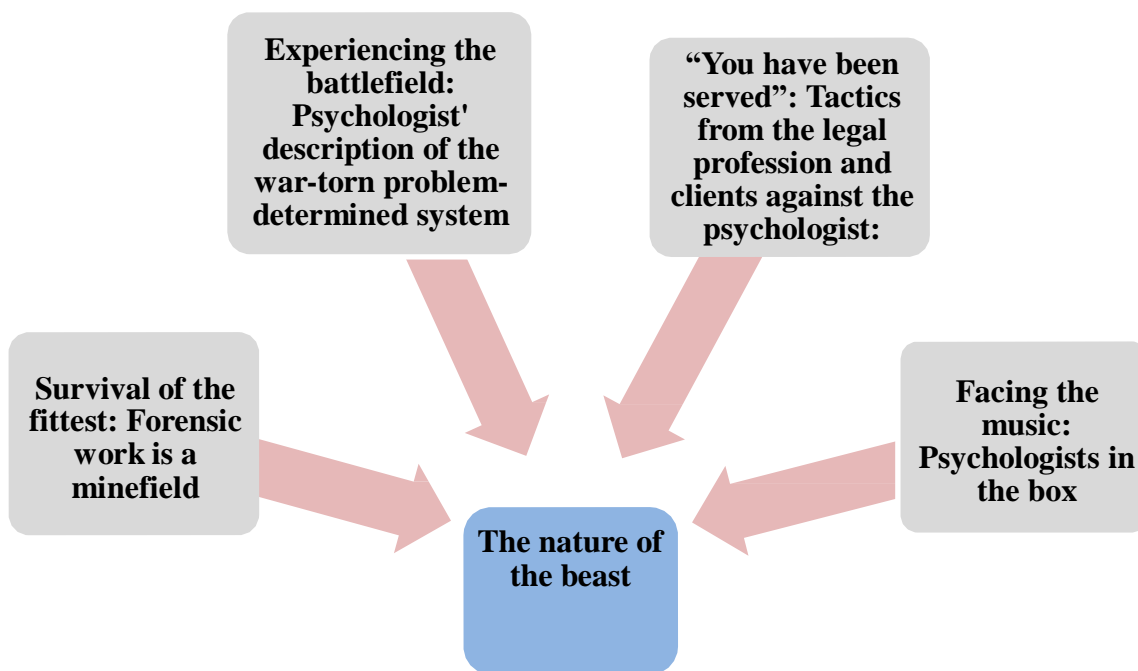


Figure 7-8 Basic themes linked to the organising theme: *The nature of the beast*

Survival of the fittest: Forensic work is a minefield

The advocates and psychologists described the forensic context as being analogous to war, in that the forensic field connotes acrimony and hostility in care and contact disputes. The war-like constructions are evident in the locutions, ‘battle’, ‘minefield’, ‘hostile’ and ‘dangerous’ and can be appropriately linked to the mechologic language associated with war (Snyders, 2003). Care and contact disputes are characterised as complex, adversarial and challenging, and there is an assumption that the professionals are ‘attacked’, by psychologists and legal representatives alike, and need to ensure their survival in the profession.

Dr Martins: “It’s become much more acrimonious now. people have become a lot more educated too in terms of their rights and how things work and that sort of thing, but I think the legal profession has become a lot more, I don’t know, just cut-throat.”

Adv. McGill: "I once had a psychologist from one of the Universities, she was a professor at one of the Universities and she dabbled in assessments. I tore her to pieces. She became ill during the course of the trial."

Adv. Blake: "...one day I'm going to get the psychologist in court and I'm going to cross-examine him and I'm going to give hell."

Dr Martins: "But there are other attorneys who are ... cut throat, and they – I mean they are called 'street fighters'. You know? Or they call themselves 'bulldogs'."

Dr Alan: "Because, uhm, the goal is - the exclusive goal - is to discredit your opinion."

The above extracts provide evidence of professionals' experiences in the forensic context. It is natural that one would expect professionals to make every attempt to guard against being 'annihilated' by peers in the profession, legal representatives and the parties who present for assessment.

Dr Lewis: "So you have to be, all the time, on your guard. You have to uh confirm things at different stages. You have to give updates, you have to be sure that you are not being played because the people that come now, they nod, they're difficult."

Adv. Blake: "You can't be 'pally-pally' with the attorneys. It doesn't work that way because attorneys are only 'paly-paly' with you for one reason, to influence you. I think they [psychologists] get a lot of pressure from attorneys because uhm maybe without saying it clearly, they try to influence the psychologist."

"Psychologists...are very often scared of the very sort of direct approach of lawyers. And that is why they exclude them. And there should be more uhm,

sort of uhm, mutual respect and confidence in the functions of the various professions.”

Dr Lewis: “So that was what the hearing was about and uhm they found me not guilty. It was horrific, it was a changing point in my life. I was sick.”

As one can see from the above, the forensic field, which is deleterious, has the underlying presumption that there is a dire need to win, because the alternative may be ruinous to one’s profession. A trend in the field is to be ‘torn apart’ as seen in Adv. McGill and Blake’s’ statements above. In accordance with the literature, the majority of psychologists felt that, at some point, they were at risk for stepping on legal ‘landmines’. Furthermore, they sensed that, as society becomes more litigious, so does the public become more litigious (Krüger, 2004; Nortje & Hoffman, 2015; Pickar & Kaufman, 2013). This theme can also be strongly linked to the next two themes: *Experiencing the battlefield: Psychologists description of the war-torn problem-determined system* and *You have been served: Tactics from the legal profession and clients against the psychologist*.

Experiencing the battlefield: Psychologists’ descriptions of the war-torn problem-determined system

The fear and burden of combative cases, which take a toll on professionals, could succinctly explain their lack of willingness to enter into Forensic Psychology. The following excerpts reflect psychologists’ experiences of the war-like situation in care and contact disputes.

Dr Jane: “...it’s quite hard work from the point of view of kind of seeing people hating one another in that way and extent to which that could play out ... So, there’s

the emotional component of it which is really the um seeing that aspect and I don't think it is ever lost on me..."

Dr Alan: "It's an unpleasant context... Very much an unpleasant, acrimonious context filled with psychopathology."

"...some colleagues might disagree with me – but this field – the family law field is one of the most ethical fields that you – that a psychologist can work in. Why? Because you are attacked on ethics all the time."

Dr Martin: "...it's not an easy field to work. It's very high risk..."

Dr Lewis gave a candid account of how she experienced being reported to the HPCSA and the resultant impact it had on her:

Dr Lewis: "It was horrific, it was a changing point in my life...I had shingles, ja physically sick."

The above extracts reveal the inherent personal and professional risks that are embedded in the care and contact environment. These risks ultimately impact on the psychologists' physical, mental and emotional health. Dr Alan succinctly summaries the field:

Dr Alan: "It's the most dangerous field of psychology to work in"

You have been served: Tactics from the legal profession and clients against the psychologist

Regardless of whether a complaint to the HPCSA, against a psychologist, is warranted or not, it is a frightening and overwhelming experience. Psychologists are expected to defend their methodology and justify their practices in the hope that they are not sanctioned or

disbarred from practise. As the statutory body that governs psychologists' work, the HPCSA receives numerous complaints, which appear to be steadily increasing with time, for both non-forensic and forensic matters, (Nortje & Hoffman, 2015; Zumbach & Koglin, 2015). Being reported to the board tends to create a dent in one's confidence and professional self-image. According to Fasser (2014) psychologists often question their professional integrity when they are reported.

Dr Nate: "...if my recommendations aren't in favour of one of those people, I can largely kind of expect a backlash against me..."

Dr Martins: "...you can pretty much, uhm, you issue your report and there's really a good chance one of them will report you to the board... on the other hand I also think this 'game playing' that attorneys do, that as soon as a report comes out and it's not in their [attorney] clients favour; they suggest to the client that they report them [psychologist]."

Dr Lewis: "That's nerve-wrecking, you know, because you know that uhm the person who likes your report is going to be really nice to you and the people that don't like your report are you going to try and kill you."

With the previous theme 'watch your back' in mind, the above extracts demonstrate that being reported to the board is one of the hazards of the job. Four of the five psychologists interviewed had been reported, some more than once; however, none was found guilty or sanctioned by the HPCSA. Some attributed being reported as a legal tactic on the part of the legal team for whom the report did not find in favour. Others attributed it to parents who were disgruntled and targeted the psychologist:

Dr Alan: "These people do not know the woods from the trees and I've argued this and I will argue it very strongly, uhm; they are psychologically ill because of the divorce process and who becomes the target then if they do not agree? The psychologist...So they attack the psychologist."

Dr Martins: "With all, reporting all the professionals. I mean I know of another psychologist ... well respected ... does a lot of forensic work ...they had the courier arrive four times in one week... Four different complaints ... it's ridiculous ... It's just so that that one, that party can stand up in court and say well, I've reported this psychologist... To try and neutralise the report. That's what, it's a tactic. It's a tactic that the lawyers use."

"I also think this 'game playing' that attorneys to do, that as soon as a report comes out and it's not in their clients favour; they suggest to the client that they report them."

Adv. Banks: "Being reported ... whenever they [reports] are not in one party's favour."

Dr Lewis: "I had a father who reported me. The HPCSA came back saying that they felt that I had, you know, I'd acted ethically and correctly, whatever else, no problem. He then reported me again."

These excerpts are indicative of the ensuing problem-determined system in which professionals become part of the acrimonious and problematic patterns. In essence, a parent may redirect his/her blame from the other parent to the professional who did not find in their favour. According to Scherrer, Louw, and Moller (2002), a quarter of the complaints against psychologists in South Africa were related to child custody cases. Similarly, in the USA, between one and two-thirds of all custody evaluators were reported (Bow et al., 2010).

Facing the music: Psychologists in the box

If one speaks to any psychologist who practises Forensic Psychology, a reference is likely to be made to the surety that, at some point, one will be reported to the HPCSA and/or be called to testify in court. Even though expert testimony in court is a standard practice in order for the legal fraternity to test the theories and findings of the experts, there is a strong aversion to testifying amongst psychologists. This may be due to the nature of cross-examination and the ‘war-like’ approach of the legal representatives, as well as the expectation to justify one’s competency and skills. All but one psychologist, Dr Jane, found testifying to be unpleasant.

Adv. Blake: “No I don’t think it’s a regular occurrence because psychologists don’t like to come and testify. Nobody likes to come and testify and I think it very seldom happens because normally parties are so exhausted money-wise and otherwise.”

Dr Alan: “I have testified in many cases, in family law cases. Many. But I would say it’s rare... for the psychologist to eventually end up in the box ...from my experience in testimony in family law cases, it’s completely different as to personal injury; criminal; clinical. Because, uhm, the goal is - the exclusive goal - is to discredit your opinion.”

Dr Jane: “But what it really entailed was me reading my report and uhm then I think they asked me one or two questions and more around explaining some of the concepts and that was it so I thought okay this isn’t so bad.”

“You know I mean courts themselves are not a glamorous place at all. You know it’s not like the movies. It’s gloomy and awful but I think uhm you know in terms of I’ve always felt it quite positive and validating.”

Dr Martins: “...it all depends on whose uhm, [laughing] who’s cross questioning you and who is hearing the matter ... I’ve had lots of experiences giving evidence where, you know, it’s been fine. Your evidence has to be tested. And I agree with that ... And a robust argument is good. I mean cross questioning is never fun, being cross questioned. But then you get others that are not like that and they just, they make it very personal. They just go overboard and that’s not okay.”

Adv. Banks: “They [psychologists] are very wary to do that. They will do anything to stay out of the, out of the box.”

From the above, it can be deduced that psychologists are hesitant to testify for several reasons. First, they may not be fully prepared as to what to expect in court. Second, the tendency for the legal team to lambast their testimony for the sole purpose of discrediting. However, it may not be solely a negative experience if the legal teams are professional and conduct themselves with a sense of collegial respect for their colleagues.

Theme 8: Checks and balances - ensuring ethical practices

To ensure that they remained impartial, unbiased and ethical, the psychologists who were interviewed indicated that they used particular measures to guide their methodologies and practices. These served to safeguard, as far as possible, their work and themselves against disgruntled family members, acrimonious colleagues and ethical repercussions from the HPCSA. This section examines the areas of good practice as identified by the psychologists interviewed. The leitmotif of this section, which comprises six basic themes, is succinctly described by both Dr Lewis and Adv. Banks:

Dr Lewis: “...there are lots of things that you have to caution against in your process and you need checks and balances.”

Adv. Banks: “If there is not a check and balance system in the end, what are we going to do in South Africa?”

The organising theme, *Checks and balances: Ensuring ethical practices*, is strongly related to the views of several authors who have written about ethical practises (Association of Family and Conciliation Courts (AFCC), 2006; Cohen & Malcolm, 2005; Greenberg et al., 2004; Martindale & Gould, 2004; Milchman, 2015; Posthuma, 2016; Roos & Vorster, 2009).

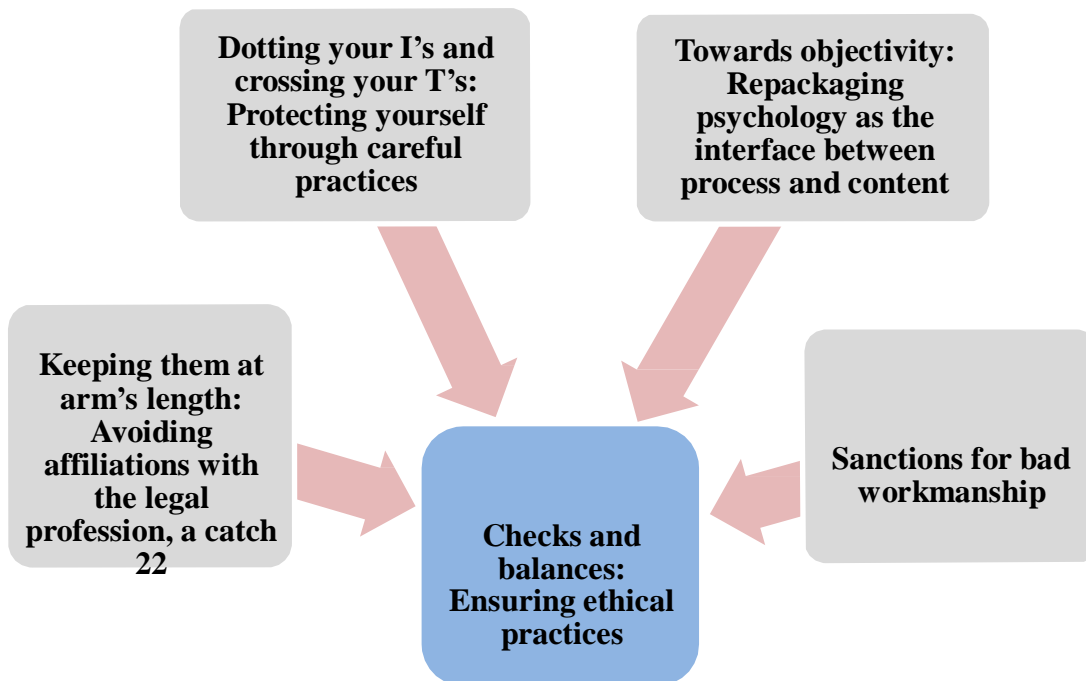


Figure 7-9 Basic themes linked to the organising theme: *Checks and balances: ensuring ethical practices*

Keeping them at arm's length: Avoiding affiliations with the legal profession, a catch 22

In order to maintain impartiality and independence, the participants avoided affiliating themselves with any particular law firm. One psychologist, Dr Alan, also avoided being contacted directly by the public for the same reasons.

Dr Alan: "No. My family law referrals come from attorneys because I insist on it but no, uhm, no particular firms."

Mr Nate: "I usually, they sort of, I keep at arm's length [any one particular law firm] just because I don't want to be compromising in terms of subjectivity. People had offered as much but I wasn't comfortable with it in general. So no, I don't work in particular ones, no."

Dr Lewis: "No, definitely not. I don't want to be affiliated to a firm I think all sorts of other dynamics come into play. You can never be [connected to specific law firms] because you'll lose your objectivity and neutrality."

The 'catch 22' occurs when a psychologist has obtained a reputation as being ethical, unbiased and competent. This reputation makes psychologists attractive to legal teams, not because they agree to sway their findings, but on the contrary, because they will not.

Dr Jane: "... people that have used me in the past will use me again more or less."

Dr Lewis: "...the law firms phone you, not because you're attached to them but because they know who you are"

Dotting your I's and crossing your T's: Protecting yourself through careful practices

Several of the psychologists spoke of being 'pedantic' and 'on guard' when conducting care and contact evaluations. In essence, this theme describes the measures taken by psychologists to maintain a paper trail, and to ensure transparency and fair practice.

Dr Lewis: "A system that keeps me uhm appearing as transparent and clean and uhm unbiased as possible and also a paper trail that uhm can be supported in the event that I'm reported ... I'm becoming pedantic."

"So, you have to be, all the time, on your guard. You have to uh confirm things at different stages. You have to give updates, you have to be sure that you are not being played because the people that come now ... they're difficult."

Mr Nate: "I think it's important that both know it's transparent and it's fair as well otherwise, they do start to worry collusion on one side or the other ... I'll include both parties and both legal representatives [in emails], always uhm because one of the things I explain to them is by virtue of it being a forensic process, there is no confidentiality ... I will put it in an email so everybody is aware of where we're at."

Adv. Hanson: "I would always advise uh any expert involved in a matter that if one attorney contacts you, alright, or one party contacts you on an issue, if you answer, you CC it to the other party, okay. So that you always are perceived to be neutral and transparent and you're not for or against the other party."

The above passages link with the idea of ensuring that the professional is perceived as neutral, unbiased and ethical. This includes keeping a paper trail in the eventuality of being

reported or if a dispute arises as to the process. All communication, between professionals and parties, are kept transparent and open to ensure that the process is not one-sided. In addition to the above, Dr Lewis states that it is important to have a good professional support system to rely on for peer supervision. This provides a psychologist with a space to examine their findings and to ensure that any biases or errors made in the process have been rectified:

Dr Lewis: "I've been in the field for ages. If I've got an issue, I phone my colleagues, peer supervision all the time. I say look, just tell me what you think, this is my thinking in this particular matter, this is why I'm thinking this, what do you think ... Ja, to have those checks and balances as."

Cautious practises tie in with the thematic presentation of care and contact disputes as being akin to 'war', where professionals should be armed with enough ammunition and protective measures to safeguard themselves in the event of being called to court, or being reported to the HPCSA.

Towards objectivity: Repackaging psychology as the interface between process and content

This theme addresses the attempts of psychologists to work towards a level of objectivity. Objectivity is seen as a significant concept, especially in terms of the interface between the fields of psychology and law. Although some professionals realised that psychology is not a science, and as such, can never be completely objective, they did speak of using rigorous measures to achieve some level of objectivity. These measures included the use of psychometric data, using multiple sources in collecting collateral information and referring to evidence based literature to substantiate findings. However, some psychologists were aware of the impossibility of true objectivity and provided methods of circumventing any bias.

Dr Lewis: “...you can’t be objective. It’s impossible. However, if you believe you’re objective, then you are going to be far more vulnerable to uhm confirmatory bias, all of those biases that are talked about in the literature around uh custody matters ... So, at least if you start off saying, okay I am a dependent observer. That is what I am. Now how can I then delimit the information in the best possible way so that what gets presented is at least an approximation of a description that reflects how this family functions.”

Mr Nate: “...[use] multiple sources of information and try as far as possible to use standardised tools to back up what you’re doing because I think again, if I’m thinking of a potential cross-examination.”

Dr Alan: “...second; there’s an objective leg [psychometric testing] – which I think is imperative.”

Dr Jane: “...it’s obviously useful information to have [emails, whatsapps, court documents, etcetera.], but you know it’s definitely more subjective and a bias source so uhm what I find really useful is are the people that are involved in the children's life that are more objective.”

“I think for me it’s so important to uhm cite research, to ground it to an extent in sort of a practice guidelines in terms of research that has been done and to stay uhm current and on top of that.”

Dr Lewis summarised the above perspectives in her statement:

“So in other words, the complexity of your investigation is wide but lots of people will say but he lied about me there, he said that. I ignore that actually. Ultimately, when you look at the findings, the findings are a coalescing of the

information of commonality between all aspects of the things and that then forms a more objective...a more complex picture ...”

For a psychologist, even in the forensic context, to be completely objective is regarded by several authors as impossible (Allan & Louw, 2001; Fasser, 2014). This is evident in the snippets from the transcripts above. As Cohen and Malcolm (2005) stated, a psychologist who attempts to act in a purely scientific manner runs the risk of overlooking their own bias and subjective perceptions. This, inadvertently, may affect their evaluations. Due to the political and cultural contexts in which professionals work, adopting a participant- observer position is regarded as an ethical and congruent position (Allan & Louw, 2001; Cohen & Malcolm, 2005; Fasser, 2014).

Sanctions for bad workmanship

The theme *You have been served: Tactics from the legal profession and clients against the psychologist*, addressed the notion of psychologists being reported by disgruntled family members and legal representatives who are dissatisfied with the outcome of their cases. Although this theme, *Sanctions for bad workmanship* is also linked to the trend of reporting psychologists to the statutory body, the vantage point is somewhat different. In the previous theme the reporting was regarded as an attempt to discredit the psychologists as part of the ‘win-lose’ game, in other words as part of the battle of care and contact disputes. In contrast, this theme hones in on the unethical, inferior and biased practices of some psychologists. Consistent with the literature, the professionals all agreed that ‘bad’ work must be reported. There was a sense that the sub-standard professionals should be eliminated thus ensuring that the profession regains a respected reputation.

Dr Martins: “Bad work needs to be reported too, you know. ... But so, I haven’t got a problem with that. But I think there needs to be guidelines. I think the HPCSA is getting used and abused badly by the legal system.”

Adv. Hanson: “Unethical behaviour like you won’t believe it and I’ve known that specifically this one psychologist that I’m thinking of. There’s been many complaints laid against him.... but nothing happens to him and he just carries on and he caused us so much damage.”

Theme 9: Responsibility Consciousness

The two sub-themes, which comprise this theme, address the participants’ responsibilities and their awareness thereof. It is important that psychologists ensure that they consider both sides of the [parents] story and produce a report that does justice to the situation and is in the best interests of the child.

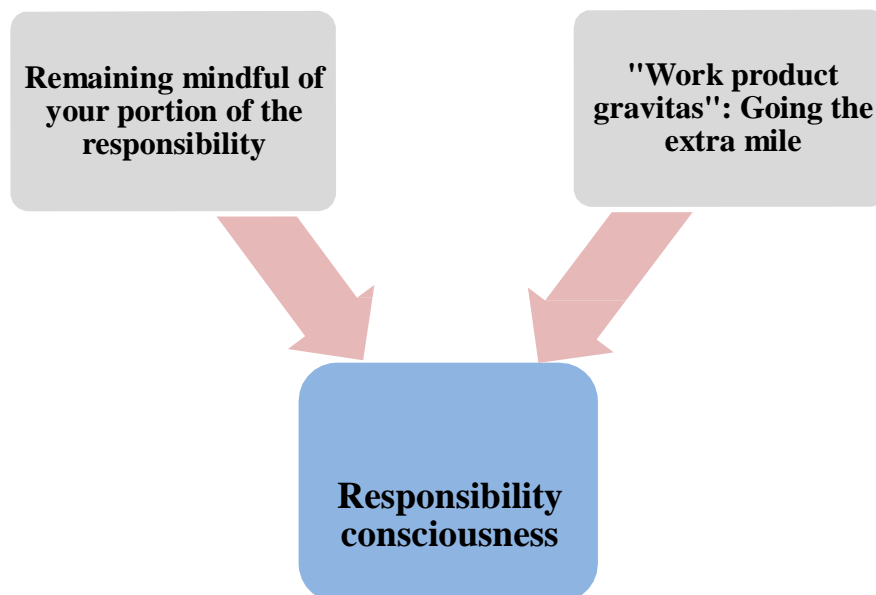


Figure 7-10 Basic themes linked to the organising theme: Responsibility consciousness

Remaining mindful of your portion of responsibility –giving equal opportunity

The psychologists frequently spoke of being ‘conscious of the huge responsibility’ of their obligations. Words and phrases that were indicative of this high level of consciousness included ‘weight of’, ‘play god’, ‘you have to own it’. Not all psychologists felt this way though, some mentioned cases of other’s unethical behaviour by hired guns and careless and shoddy workmanship. However, the psychologists interviewed in this study appeared to accept responsibility for their work.

Mr Nate: “...she [supervisor] asked me how I was feeling and I said I’ve never been more scared in my life and she said good [laughs]...it made me extremely mindful of being very careful and conscientious in terms of what I’m doing, both for myself and the other person’s sake because I mean the first thing that made me anxious was just because of the weight of the decision where you like, I actually sat there and I thought, oh and sort of naively so. Someone could not see their child possibly because of something I say and that felt like a big deal actually and I kind of immediately felt okay, this is very serious.”

Dr Lewis: “You’ve got to be conscious of uhm the responsibility...”

Dr Alan: “...the psychologist becomes the target of the frustration because they have to play god in deciding where children have to stay, it’s a huge responsibility and, uhm, my dealings with this, I found psychologists underestimate it.”

Dr Jane: “...you obviously are presented with a huge amount, a portion of that responsibility.”

Dr Martins: “...You know, I’m not saying that I am rigid on what exactly, but you have got to show you know, that you know what you are doing... they write these reports that have massive impact on people’s lives.”

The sentiments raised by the psychologists confirmed the literature in that reports are heavily relied on to assist the courts to make decisions that are in the best interests of the minor children (Bow et al., 2002; Gould-Saltman, 2005; Greenberg et al., 2004; Kelly & Ramsey, 2009). The gravity of the responsibility is perhaps appropriately captured by both Adv. McGill and Adv. Banks, who stated:

Adv. McGill: “I don’t think psychologists realise the implications of what they put in their reports.”

Adv. Banks: “Both the lawyers and the psychologists should, especially when it comes to children, adopt an attitude of: “Come what may – we must act responsibly and we must work together to ensure that the best interest of the child is served...”

Work product gravitas: Going the extra mile

The strong sense of responsibility felt by the psychologists translates into care and consciousness when it comes to their work. They relayed being conscientious, careful and thorough in their work due to the reliance upon their recommendations. A good product may also avert the need for further litigation and reduce acrimony in the situation. Again, this contributes towards recommendations for the best interests of the child. In addition, a good work product is a safeguard against them being reported. This is apparent in the following extracts:

Mr Nate: "I need to be extremely conscientious about what I'm doing and I think I liked that because it sharpened my analytic, clinical skills in a sort of way that I started to think of things a lot more because it made me think very intensively uhm in a way different to sort of conducting research or doing it sort of in your practice. You're thinking so carefully about why you're doing what you're doing, how you're analysing things and you forced to kind of think very critically."

Dr Lewis: "I try and attend to as much as possible. I think it does, the report then becomes a good intervention in and of itself. It kind of reduces litigation, it reduces the acrimony, if you're lucky."

Dr Alan: "So the point I'm trying to make, is you must just go the extra mile in order to get the full picture. That's why these evaluations cannot be done quickly in my view – it cannot be done over a weekend. It cannot be done in one day at all. It's a progressive process."

It appears from these quotes that the value of a comprehensive evaluation ensures that the court receives accurate and applicable information that has the potential to alter the lives of families. These findings are akin to the literature that has already been mentioned in line with the reliance of the psychologists' expertise to describe a problem-determined system in a manner that elucidates the problems and recommendations to assist the minor children rights.

Chapter Summary

Chapter 7 provides a discussion of the first global theme, *Psychologists' Involvement and Practises in the Construction of the Problem-Determined System in Child Care and Contact Disputes* and its related organising and basic themes. These findings largely contributed to the interpretation of the first two aims of the thesis that are discussed in the

final chapter. The following chapter provides the findings of the second global theme elicited from the data, *Where to From Here? A look towards the future.*

My Family



Drawn by: M

Age: Nine years, eight months old

Position in family: Second of two children

Parents: Divorced

Chapter 8

Findings and Discussion – Part 2

Where to From Here? A Look Towards the Future

“... with a future not clearly perceived, we do not know how to act with only one certainty left: if we don't act ourselves, we shall be acted upon. Thus, if we wish to be subjects rather than objects, what we see now, that is, our perception, must be foresight rather than hindsight” (Von Foerster, 1984, p. 192)

Introduction

Despite the lack of guidelines and models of practice in South Africa, the forensic field has been active for several decades (Hess, 2006; Jameson, 2001; Martindale, 2007; Rosenfeld & Penrod, 2011; Stahl & Martin, 2013; Varela & Conroy, 2012). With a need for clearer procedures, this chapter focuses on developing strategies for clinical psychologists. This chapter, which is essentially linked to the final aim of this thesis, suggests procedures for better practice in care and contact disputes.

Findings

The need to define the concept of an ‘expert’ and formulate a model of good practice were areas that were stressed by all the professionals who were interviewed. The findings of this chapter highlighted a need for an appropriate model that guides practices in complex nature family dispute matter. The effective training of psychologists is considered a necessity by all professionals in this study, as was the idea of bridging the professional rifts between the divergent professions. This chapter focuses on the respondents’ suggestions as to how to circumvent the concerns and identified challenges as discussed in Chapter 7.

Networks and Themes

The second global theme elicited from the data analysis, *Where to From Here? Reimagining the future* consists of one organising theme, *Working towards better practice*. Figure 8-1 and 8-2 below provide a figural demonstration of the elicited themes.

Global Theme 2: Where to from here? A look towards the future

Global theme 2, and each of the nine sub-themes, provides insight as to how the professionals believe the forensic context in South Africa can be bettered. This ultimately leads to hypotheses and the development of professional guidelines for improved practice in the care and contact milieu.

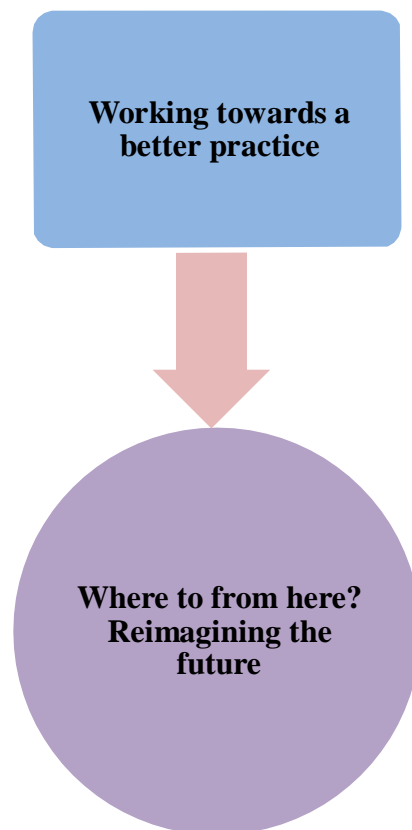


Figure 8-1 *Organising theme linked to the global theme: Where to from here? Reimagining the future*

Theme 1: Working towards better practice

The first, and only organising theme, is constructed from eight basic themes (see Figure 8-2). Each theme addresses a different aspect of a proposed standard model of practice. The focus of this theme is situated on different intra- and interdisciplinary levels. This includes a consideration for the recommended paradigmatic position in which psychologists can attend to the ethical parameters of practice, and remain cognisant of their contribution to the problem-determined system.

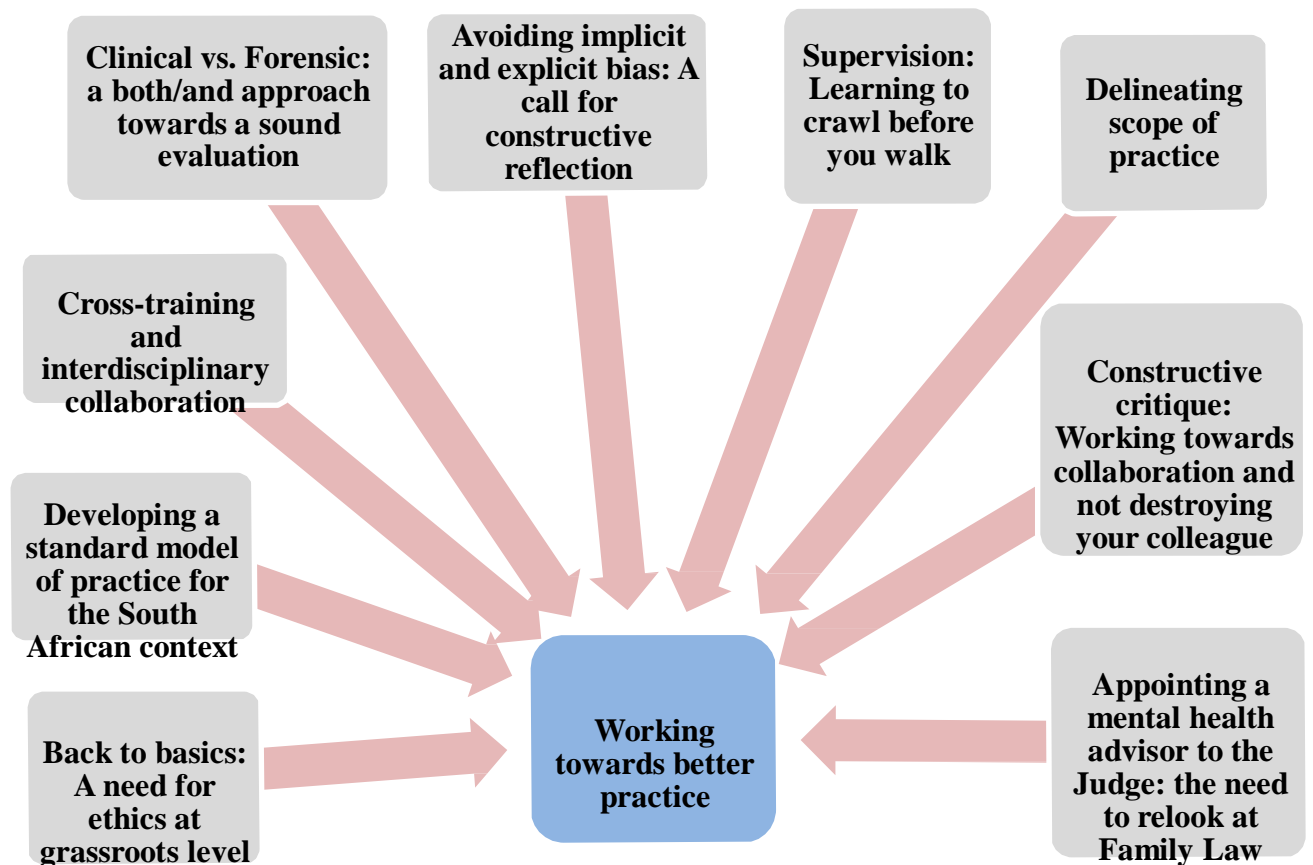


Figure 8-2 Basic themes linked to the organising theme: Working towards better practice

Back to basics: A need for ethics at grassroots level

The Health Professions Act (Act 56 of 1974), as well as guidelines from the HPCSA have navigated the practices of psychologists in South Africa. Despite ethical considerations being a focal point in the profession, both in South Africa as well as internationally, there is a concern that the forensic ethical parameters are vague and not prescribed in South Africa. This has ultimately led psychologists to rely on their own assumptions and to follow international standards.

The previous chapter identified several areas of concern in the field that contribute to increased tension, risk and possible harm to parties. Several professionals identified areas in need of thorough and comprehensive review to ensure that ethical guidelines are not transgressed:

Dr Martins: “First and foremost; I think one of our biggest challenges is that we do not have uhm, ethical guidelines in South Africa. Okay. Uhm, and I think that’s a big problem because it leads to bad workmanship ... But also, it leads to a lot of insecurity ... Ethical guidelines do provide security for you. Because at least you know then you are doing the right thing ...we want to help people and I think for that reason I think a lot of psychologists land up actually acting unethical. Uhm, and it starts from a place of good intention. But it goes badly ... there is a big need for ethical guidelines ...Because quite frankly, I don’t believe the HPCSA, has really any understanding of what really goes on the ground.”

Adv. McGill: “South Africa struggles with the whole concept of ethics in the various professions.”

This theme links to the basic theme; *Contracting is the first step* that is discussed in Chapter 7, in that the first contact made by any party or legal representative to the psychologist is regarded as the beginning of a process, and therefore is the start of the ethical journey as well.

Dr Alan: “... *your ethics start with the first contact with the attorneys.*”

A scrutiny of the psychological and legal opinions, with regards to areas that need improving, revealed that there is much clarity and consensus around specific issues. Areas that need to be clarified include that professionals avoid acting in multiple roles; guard against biased practices; engage in appropriate communication in a legal context; understand the differences between clinical work and clinical work in legal contexts, and have the necessary skills to evaluate families and to write coherent reports. These suggestions can be seen in the following extracts:

Dr Alan: “*And, uh, I get an evaluation for people; assess for sexual abuse and primary residency and, uh, relocation. All – you know, it’s a one stop shop; everything. Ethically, Try and explain that against multiple roles?*”

Dr Jane: “*There’s sometimes complaints about the reports that are too long, they don’t get to the point, are rambling.*”

Dr Lewis: “*Thank God I’m a clinical. I don’t know, thank God I’m clinical. I don’t have to think about it.*”

As previously highlighted, the specific involvement of psychologists in the care and contact environment and the lack of competency and the potential for the misuse of their expertise are areas of concern amongst several authors (American Psychological Association, 2013; Kelly & Ramsey, 2009; Krüger, 2004; Martindale & Gould, 2004; Thompson, 2012;

Weiner & Hess, 2006). Kaufman (2011) suggested that psychologists should reflect on the parameters of their contributions to the profession. This is what this thesis aimed to achieve. According to the sentiments of the psychologists interviewed, developing ethical guidelines and defining parameters of practice are the first steps towards a forensic model. These notions are echoed by the draft issue paper of the South African Law Reform Commission entitled *Family Dispute Resolution: Care of and Contact with Children (Family Dispute Resolution: Care of and Contact with Children, 2015)*. In addition, the discussion paper, as well as the findings of this thesis, indicate that the identified focal points are consistent with ethical guidelines produced by several international bodies (American Psychological Association, 2013; Association of Family and Conciliation Courts (AFCC), 2006).

Developing a standard model of practice for the South African context

There are several resources that describe the ethical guidelines and practices for psychologists and clinical practice, both internationally and in South Africa (Association, 2010; Association of Family and Conciliation Courts, 2006, Health Professions Act No 56 of 1974). However, what is lacking in South Africa is a specific focus on Forensic Psychology, and guidelines for practice that is ethical, applicable and beneficial to the profession and those who make use of these services. In addition to the necessity to revisit ethics from a forensic perspective, the professionals also voiced a need for the development of guidelines, protocols, and a model that provides a framework of how to conduct custody evaluations. The topics raised were vast and covered a multitude of areas including: There is a need for research in the South African context; a clear set of ethical guidelines applicable to forensic psychology, a collaborative approach between professions, and on-going supervision. Both professions mentioned that a lack of clear parameters creates a context for unethical practices, bad workmanship and a flawed professional system.

Dr Lewis: "...the more research that is done on this and the more uh people become attuned to the complexity of the process, uhm the more uhm finer will be the work and the better will be psychologist reputation in court."

Dr Alan: "...you must know your ethical rules from the tip of your fingers and when in doubt, phone the board and ask for advice, uhm, to clear things up because in retrospect you can't say, "Oh my goodness, I didn't know."

Adv. McGill: "And you need to have those discussions at grassroots level."

Dr Lewis: "I say supervision, I say peer supervision, I say a model standard of practice. These are the things that need to be worked on going forward"

Mr Nate: "I suppose ideally, of course, I'd want them to at least know that there are some standard sort of practices in terms of it. I mean even just the kind of the bullet list of what those tend to be can be hugely helpful to training psychologists in terms of understanding the process better."

Adv. McGill: "...there is no true interdisciplinary or even multidisciplinary approach to the issue of care or contact."

"...what presents a problem is the multiplicity of psychologists' reports."

The above comments mention the dearth of relevant South African research and applicable pragmatic and ethical guidelines, as well as the lack of camaraderie between the professions. The lack of South African guidelines is significantly linked to the heavy reliance on international standards, and the paucity of relevant South African research (Brandt et al., 2005; Rohrbaugh, 2008; Thompson, 2012; Van den Berg, 2002). This is emphasised by Adv. Banks and Adv. Hanson:

Adv. Banks: “...what is good for American children is not necessarily good for South African children... I believe that there is not enough research in South Africa.”

Adv. Hanson: “I think one must be open for new things, but I mean, I hear so many times that they want to employ stuff that works in America. I mean we don't have the American legal system nor do we have uhm the money to fund. You know, we don't have a separate family court system. That's just not the way our courts work and so South Africa has still got a very uh male-dominant society, and whether you like it or not, that's the truth.”

Adv. McGill: “ ... there is no true interdisciplinary or even multidisciplinary approach to the issue of care of contact. I think that the research done by South African Law Reform Commission will assist. But I have noted that it's mostly the Academics who talk about it... And you need to have those discussions at grassroots level.”

The themes discussed in Chapter 7, as well as the quotes above, evince that the current practices are steered by psychologists who have evolved their methods of working through experience, trial and error as well as drawing from international literature. There is a sentiment that professionals need to become mobilised to explore and develop applicable and relevant strategies that begin with discussions at grassroots level, as was pointed out by Adv. McGill. The need for training and an explicit model for practice, which were identified by several authors, (Fouad et al., 2009; Garber, 2009; Rodolfa et al., 2005) include the notion of remaining up to date with relevant and applicable knowledge and information (Flens, 2005; Fradella et al., 2007; Pepiton et al., 2014; Ribner & Pennington, 2014).

Cross-training and interdisciplinary collaboration

Kirkland (2003) stated that it is essential to recognise the relations between the mental health and legal professionals in family law matters in order to strengthen the alliance for positive outcomes. The findings (discussed in Chapter 7) resonate with Kirkland's notion that there is a need for interdisciplinary collaboration. It is, therefore, essential to recognise the interactions between mental health and legal professionals in order to work towards a collaborative relationship (Kirkland, 2003).

This was echoed by Tredoux et al. (2005) who suggested that the disciplines of psychology and the legal profession are vastly different, and so it is pertinent to acknowledge the interwoven relationship between the two fields. In other words, the paradigmatic and pragmatic differences inherent in the fields of psychology and law necessitate that professionals who work within the forensic context are aptly knowledgeable about both fields. This was mentioned by both the psychologists and advocates who stated that the lack of understanding of the others' profession creates a problematic and conflictual environment.

Adv. Reid: "I just, I just think a bit of talking to each other and maybe just cross-training ... Because if we have a better understanding then if I ask you a question, to do something for me, you will know where I'm coming from."

Adv. Banks: "...and I think the Advocates should also, that's appointed, should also be prepared, and they must also be actually [be] trained in children's development stages, because we are not."

Dr Jane: "...the lawyers are ... they not very psychologically savvy...I suppose just that I think what might be useful is so if the lawyers perhaps could also have a better understanding of what this work is."

Adv. McGill: “You know the law is all about regulating society. And if you are not familiar with the judgements of the courts in regards to say for instance – care ... and uh, contact. Then you are going to sort of come with recommendations which do not fall within the framework of the law. You need a very good basic knowledge of the court’s interpretation of the law...”

Dr Lewis: “But when you work in a forensic field, you have to kind of have a little bit of an understanding, well not a little, quite sizeable, but you have to have a little bit of a leaning towards the legal things.”

Dr Alan: “... you must know your, uhm, principles of evaluation; your ethics, your psychometrics, your laws.”

As can be seen above, both sets of professionals agreed that being au fait with the others’ profession was lacking, and was deemed as a much needed addition to the fields. The idea of bridging the crevasse between the two professions resonates with the professionals interviewed who purported that, in addition to the need for specialised forensic training for clinical psychologists (and psychologist in general), there is an additional need to cross-train both psychologists and legal professionals. This will directly assist the two fields to better understand each other’s methodologies, foster a healthier working environment, and by extension better serve the families that require assistance.

Clinical vs. Forensic: A both/and approach towards a sound evaluation

Throughout the literature, psychologists are cautioned against approaching custody matters with the same clinical mind-frame used for clinical or therapeutic cases (Fasser, 2014; Greenberg et al., 2004; Pickar, 2007; Rohrbaugh, 2008). Some of the inherent differences between these two practices included psychologists providing psychotherapeutic

treatment and intervention services to an individual and or family, as opposed to an expert, unbiased and objective opinion about a family to the courts (Fasser, 2014). Despite the recognition of the differences between these two approaches, many of the psychologists, and advocates interviewed, stated that psychologists' forensic practices benefited if they were trained clinically and therapeutically. The understanding is that this training provides a broader knowledge base to assess and understand families. However, there was also a recognition that being trained solely in the clinical and therapeutic context is not sufficient for forensic work. The above considerations are apparent in the quotes below.

Dr Alan: "You cannot do forensic work, uh, or psycho legal work, if you have not worked within the psychotherapeutic context. You must understand psychotherapy, how it works. If not, ag you know, then anybody can do forensic. You must understand the principles of behaviour, the causality, the boundaries..."

Adv. Hanson: "I personally think what is very important for an expert, if you want to do forensic work, uhm you must be able to, when you testify or when you put it in your report to say to a court, you know what, I have got a practice and my practice consists of at least so many hours therapy sessions or interaction sessions or whatever because that's the problem that the academics have. They don't have that, sit in these ivory towers."

Dr Lewis: "I still work as a clinical psychologist a lot. I do lots of, I'm family-trained and I do lots of couples' therapy, uhm and lots of, you know, family-framed work ...But you know what, and it is fortunate. Trained as a family therapist, I am telling you that even then, my uhm approach was different from psycho dynamically trained uhm people because I couldn't help but think about things

systemically, do you understand. I couldn't help it, it was my training. So it was the way, my paradigm."

Mr Nate: "I think part of why I had such high stress levels, one is because I think because we often train more therapeutically and we're really seen as a helping profession, this feels alien because it's a matter of severe acrimony and hostility, not just between the parties but also with the parties towards you and the legal representatives ..."

It appears that being trained in a psychotherapeutic, family-oriented manner may assist psychologists with the process-oriented skills needed to effectively assess and understand families in the forensic context. However, such training is regarded as not solely sufficient to produce a sound forensic psychological practitioner. And so perhaps the resolution lies in training that includes a both/and approach; process and content, subjective and objective, as opposed to a training psychologists in a vacuum.

Avoiding implicit and explicit bias: A call for constructive reflection

Rodolfa et al. (2005) indicated that reflective practices and self-assessment should form part of the foundational training and competencies of psychologists. This is further expanded on by Fasser (2014) who reiterated the need to remain self-reflexive and self-reflective in clinical and forensic work in order to remain cognisant of one's internal biases. According to Fasser (2014, p. 445), the "ability to dilute the influence of competing legal teams ... as well as the ability to work within such a powerful legal system requires the investigator to constantly be self-reflexive and self-reflective." These opinions align with the notion that total objectivity is a 'myth' and so a position of awareness is prescribed (Allan & Louw, 2001; Cohen & Malcolm, 2005; Fasser, 2014). This notion is further reflected in the voices of the professionals interviewed.

Dr Martins: "...I would like to think that people don't think like this anymore; but every so often it appears that it's not the case, but you know like where the whole concept of maternal preference... in rights and responsibilities. But that went out a long time ago. But every so often you will still see that come through."

Adv. Banks: "I am worried about a psychologist that would say something that I want them to say."

Adv. Hanson: "...it's maybe networking on the one hand, hired gun on the other hand. You, for instance, get one attorney specifically in Pretoria and he's always got, is it social worker, they're together, are they social workers or are they psychologists. I'm not sure, and if it's that attorney, I can tell you immediately who the expert is and you know, low and behold, there's never a report against that attorney's client."

Adv. Blake: "I find that trend and I find it differs in Pretoria and Jo'burg as well. The Jo'burg uhm psychologists tend to use a starting point as joint primary residence, whereas Pretoria, they are still on the one should have primary residency."

Dr Lewis: "So I think the paradigm in your head or the paradigm in my head, because of my training, is that you can't be objective. It's impossible. However, if you believe you're objective, then you are going to be far more vulnerable to uhm confirmatory bias, all of those biases that are talked about in the literature around uh custody matters. So at least if you start off saying, okay I am a dependent observer."

The essence of bias, as mentioned in the excerpts, suggests that there is a level of internal and external bias present in practices. Implicit bias tends to manifest in professionals who lean towards a particular recommendation due to their internal beliefs about individuals and families, as can be seen in the comments of Adv. Blake and Dr Lewis. Explicit bias tends to relate to those professionals who align their findings to external pressure, favour and expectations, as is seen with the hired guns concept, and can be explicated from the quotes from Adv. Banks, and Adv. Hanson.

These levels of bias could possibly be circumvented with clear ethical guidelines as discussed above. Further to this though, there is an indication that practises could benefit from aligning with a critical, and reflective framework as opposed to a top-down perspective. This is reiterated in the models of competency as proposed by Rodolfa et al. (2005), Fouad et al. (2009) and Varela and Conroy (2012) suggested that professionals who develop reflective practises and self-assessment abilities, with regards to knowledge, skills and attitudes, develop competent and accountable practices.

Supervision: Learning to crawl before you walk

In light of, and despite the lack of recognised training programmes, the psychologists were all in support of seeking supervision from experienced psychologists. Supervision was seen as a means to gain knowledge as well as offering a safety net where novice and experienced psychologists alike are afforded an opportunity to debate and navigate their way through challenges and dilemmas. Supervision as an additional resource to ensure better practice was supported by most of the professionals in this study.

Dr Nate: "I think [it is] essential. Uh actually, I don't think it's wise to do this sort of work without having a second set of eyes uhm helping you along the way, especially because there's nuances in each matter that maybe you haven't

become sort of au fait with and then you obviously have someone who has. So no, I think it's, I've got to put it as a must in this sort of work."

Dr Lewis: "...you should have some sort of supervision guidance from somebody who's been 10 years in the field or 12 years in the field or something like that because it is a minefield..."

Dr Alan: "Shadow a psychologist that does this and see ... my opinion, you cannot do this without supervision. You fall flat on your face."

Adv. McGill: "...the major major issue I have, is that I was actually wondering whether psychologists shouldn't also do a year of community service like the medical doctors? Someone will have to supervise it."

The above extracts demonstrate the professionals' recommendations for psychologists to continuously seek out supervision, both for novice professionals, and those who have extensive experience in the field, as was recommended by Dr Lewis and Dr Jane who both have more than a decade's experience in care and contact matters:

Dr Lewis: "If I've got an issue, I phone my colleagues, peer supervision all the time. I say look, just tell me what you think, this is my thinking in this particular matter, this is why I'm thinking this, what do you think."

Dr Jane: "... my supervisor will go in with an objective mindset..."

These findings are consistent with the literature in that supervision provides a resource to guard against bias and error, as well as an opportunity to gain knowledge from experienced psychologists (Cohen & Malcolm, 2005; Martindale & Gould, 2004; Pepiton et al., 2014; Pickar, 2007; Ribner & Pennington, 2014; Zumbach & Koglin, 2015). Supervision

as an additional resource and continued professional development was regarded as beneficial and necessary.

Delineating scope of practice

In line with the theme *Remaining within the boundaries of scope of practice*, it was strongly agreed by all that psychologists remain within the boundaries of their scope of practice. Despite there being no formal registration category for forensic psychology, it was strongly advised that (regardless of the registration category of psychologists who conduct forensic work), they remain consistent with the ethical parameters of their category.

Amongst the professional cohort interviewed, the clinical psychologists were more accepting than the legal professionals of other categories conducting forensic work. The advocates were of the opinion that clinical psychologists are appropriate experts to conduct child care and custody cases.

Dr Lewis: “Thank God I’m a clinical. I don’t know, thank God I’m clinical. I don’t have to think about it ... Uhm I work with counselling [psychologists] ...John [pseudonym] is educational. They do brilliant work...”

Dr Martins: “So in my opinion, I think that uhm, clinical counselling and educational psychology, should – can all do good forensic work. Okay. As long as they stay within their scope. It’s about that. Okay. Uhm, you know like for example; I don’t think that a counselling psychologist could justifiably, and I think that they could get shut down in court if they gave a diagnosis for example in a report of serious psychopathology. Okay. They haven’t been trained in that, okay. Uhm, I don’t think that educational psychologists should be writing reports, and there are some that write reports having assessed the parents,

okay, uhm, psychometrically. Uhm, that's not within their scope. Okay. Uhm, whereas I actually think that an educational psychologist would be far better trained and placed to write a forensic report where one of the children have got some serious uhm, academic challenges."

Adv. Blake: "Well, it would be their training and the clinical psychologists are more regarded more of an expert than an educational psychologist."

Adv. Banks: "I think that is a scope of practice that is only clinical psychologists own scope of practice. But you get that educational psychologists does forensics, and they are not allowed to do it."

Dr Jane: "I think it's hard to define the scope of practice, because that whole debate well just being a psychologist makes you an expert, so if you sort of – it's difficult to kind of define it as like the application."

Mr Nate: "I think the other thing that would be very useful is a simple mandate and explain the difference between expert and fact witness..."

Dr Martins, Dr Lewis and Dr Alan added:

Dr Martins: "You are not a PI, private investigator. You are not the jury and judge. You know. You are the psychologist. And, and ultimately I think what you're doing is you are giving the court, being the judge and the presiding officers psychological information that they otherwise wouldn't have."

Dr Lewis: "...you're not a finder of fact. You're a psychologist. So that is collateral information to confirm psychological hypotheses, not factual hypotheses... you've got to be very careful because it can be quite a trap. So you're not going through pleadings or through WhatsApp to prove who or what said

what. That's not your role. Your role is to get a psychological description of the dynamics in the family."

Dr Alan: "...in family law, primarily; clinical counselling educational... if it fits your scope and you can justify it, go for it."

As delineated in the Health Professions Act 56 of 1974, the five categories of registrations detail the regulations of psychologists. Although these regulations may appear to be straightforward, there are areas of vagueness that can lead to misinterpretations with regards to forensic psychology. In essence, the differences with regards to the three categories of psychologists who most often conduct forensic evaluations are those who a) assess, diagnose and intervene in clients' life challenges, developmental and psychological distress and/or psychopathology and psychiatric disorders (Clinical); b) assess, diagnose and intervene in clients dealings with life challenges, and developmental problems to optimise psychological wellbeing and disorders of adjustment (Counselling); and c) assess, diagnose and intervene in order to optimise learning and development (Educational) (Health Professions Act 56 of 1974). Although the psychologists did seem to accept other categories that conduct care and contact evaluations, the overarching recommendation lay in not *who* should conduct the evaluations, rather *how* they should be conducted. This insinuates that recognising the differences in training and skills will guide the type of evaluations done. One cannot ignore the legal fraternity's perspective with regards to the scope of practice, and the potential for the Courts to recognise Clinical psychologists as the appropriate experts.

Constructive critique: Working towards collaboration and not destroying your colleague

The relationships between psychologists tend to be characterised by enmity and hostility. The antagonistic tendencies contribute to a working context that is branded by

mistrust, suspicion, lack of support and isolation. These themes were explored in Chapter 7, specifically in the sections *Hired guns phenomenon: Who is the puppet master? Self-agrandisation and professional arrogance* and *Professional discord: Lack of camaraderie and support amongst the psychologists in the field*. Adding to these themes is the notion of collaboration instead of ‘combat’, which ultimately replicates the adversarial processes of custody matters. The professionals become a part of the problem-determined system and reproduce the animosity and conflict.

Dr Jane: “I mean if I think about it I think it [critique] can be quite constructive and useful then if we think about the benefit of profession as a whole.”

Dr Alan: “I guess it has to be done but, uhm, be respectful. You know, don’t destroy your colleague. You know, there are colleagues that make huge mistakes because of lack of experience and yes, they need to be addressed. So, I guess it has to be done.”

Dr Martins: “...so I think they need to have it in their ethical guidelines, that, you know, if you do that, that’s the process you follow. You know, yes, if a person’s done that work, you can comment on it. Absolutely, you know. I mean gosh. Bad work needs to be reported too, you know.”

Dr Lewis: “I’ve had mine critiqued ... You’ve got to be a bit thick-skinned about these things, uh but I do it and I do it, uhm, it’s difficult but it really hones your understanding of ethics and procedure and methodology and it makes you very uh circumspect about your own and it keeps you on your toes to be able to criticise somebody else’s.”

The professionals were of the opinion that offering critique and the right of parties to obtain a second opinion were not problematic. In fact, the psychologists were, for the most part, welcoming of critique as a measure to ensure quality services. The problem lies again with *how* the process of critique is done, and the underlying motive of such reviews.

Mr Nate: "I think it would make much more sense for that person then to sort of sit in a joint expert's meeting where you're sitting together discussing the idea of it before trying to draft something to counter-act that. I think that would create more acrimony in the process."

Dr Martins: "Okay. Uhm, I just think it's professional etiquette that if you get given a report from somebody to critique or to comment on, that you phone that person and tell them. I just think that that's right. You know, that's just professional etiquette, you know. So maybe it's part of what the HPCSA needs to have."

International literature describes a psychologist who acts in the capacity as a consultant. This includes either a product reviewer or a trial expert who assists the courts in an advisory capacity in matters that the court is not knowledgeable (Ackerman, 2001; Austin et al., 2011; Kaufman, 2011). These roles are regarded as an objective and balanced specialisation that allows psychologists to provide research-based information as opposed to case specific testimony, thus assisting the court in reaching decisions (Austin et al., 2011; Kaufman & Lee, 2014). This position is vastly different from the experiences of the psychologists interviewed, in that in South Africa there seems to be a tendency to attack the evaluating psychologist and discredit his/her name.

Dr Alan: “These critical reports are used to destroy... Discredit the person. No, it’s never written in good faith. Become personal. They make derogatory statements too ...”

It appears that the arrogance and inflated sense of self-importance, the favour and alliances between psychologists and legal professionals and the intra-disciplinary competitiveness add to the problems identified in this thesis (refer to the above mentioned themes in Chapter 7). Regardless, the psychologists welcomed constructive, collaborative and engaging critique and feedback, with the overarching aim of bettering the profession as a whole, and specifically psychological practices.

Appointing a mental health advisor to the Judge: The need to relook at Family Law

The final theme extracted from the findings is related to how the presiding officers, (i.e. Judges) could be better assisted in the High Court when dealing with Family Law matters. In South Africa, the judicial system does not have a dedicated family law division, and so Judges do not specialise in this domain. In addition, Judges, Magistrates, advocates and attorneys have little psychological training and expertise, which may impact on their overall understanding and appreciation of the complex psychological nature of custody disputes.

Adv. Reid: “... but one of my passions and I don’t know if I’ll ever will get there, especially in the High Court, to also have sort of a specialist uhm stream of Judges or courts for family matters. Because you now still get judges that ugh just not I don’t want to listen to a case, so they will do anything just to get rid of it!”

Although this topic was fully explored in the first organising theme in Chapter 7, Dr Martins' suggestion to side-step the tendency of the courts not understanding psychological material warrants consideration:

Dr Martins: "I think the judges need to be, or the presiding officers need to be empowered to appoint psychology assessor like you have a legal assessor. You know, like an example I use is the Oscar Pistorius case because everybody knows about it, that you had the two legal assessors with Judge Masipa. And all they do is they say, they advise on points of law. They are not there to say who's right and wrong, who, what the, you know, the outcome should be. They're there to say in terms of the law this and this or whatever. Okay. Now I think a psychology assessor would be of use or a mental health practitioner. So it's like somebody that will assist the court and navigate themselves around the psychological jargon...terminology, context..."

The proposal of having a cohort of family law Judges, being assisted by mental health professionals is perhaps unrealistic given the nature of the South African legal, societal, political and economic climate. It is nonetheless a critical and constructive approach to address the challenging and varied context of care and contact disputes.

Chapter Summary

The understanding of current child care and contact milieu, amongst and between the psychology and legal professionals, provides pertinent information to build upon. As addressed in both Chapters 7 and 8, the problematic areas, as well as areas of competency in the custody context, which were highlighted, contributed to the construction of proposed dimensions for a model of better practices in South Africa. Although there were several discrepancies within the findings, there was consensus as well, which illuminates areas of

improvement and continued development. In conjunction with addressing the aims of this study, the findings presented in the preceding two chapters are summarised and integrated in the next chapter.

My Family



Drawn by: M
Age: Eight years, three months old
Position in family: First of three children
Parents: Married

Chapter 9

Overview and Concluding Comments

“Yesterday is not ours to recover, but tomorrow is ours to win or lose”

(Lyndon, B. Johnson, 1908-1973)

Introduction

Evaluations of, and information obtained from, the problem-determined system in care and contact cases are theoretically, procedurally, methodologically and systemically challenging. In addition, the intra- and interdisciplinary relationships of, and between, professionals involved, as well as the contextual risks involved in this work, contribute substantially to the problem-determined system in numerous ways. From the outset of this study, these challenges contributed to my understanding of, and approach to, care and contact matters. The ‘war-like’ constructions depicted in this thesis mirror my own personal and professional experiences of care and contact matters as perilous. My narratives of being immobilised and uncertain in an environment of continuous pugnacity (between parties and the professionals involved), and which led to states of anxiety, uncertainty and dread, were highlighted as I began the research process. However, the plight of the affected minor children remained the substantive reason for accepting care and contact referrals in my private capacity, and in essence the decision to address this topic in the form of a thesis. My objective, as stated at the outset, was not necessarily to find a solution to the identified challenges and areas of concern, but instead to debate and dialogue about this topic in order to work towards a practice of efficacy and beneficence. This study, in which I achieved the objective of an interchange of ideas and perspectives, led to the identification of areas that need development and refinement. This construction of ideas has added to the professional debate with regards to family dispute resolution as well as the approaches to, and

perspectives of, caring for minor children. These areas are expressed below in the form of guidelines for training and practice.

Contextualising the Care and Contact Milieu

To sufficiently address the first two aims of this study, a summary of the care and contact context, as well as the contributions of clinical psychologists (as elicited from the data), is necessary. The *best interests of the child* principle remains the golden thread throughout all care and contact matters, regardless of the roles the psychologists fulfilled, their preferred theoretical orientations, and their methodologies of practice. This section, which provides an overview to abridge the findings in relation to the research questions posed, keeps in mind the guiding principle of the *best interests of the child*.

Despite both the clinical psychologists' and legal professionals' tendencies to follow the BIC as the guiding principle, their paradigmatic and underlying philosophical approaches to care and contact matters varied considerably. In fact these views may be described as being on opposite ends of the same continuum. On one end of the continuum is the modernist, absolute and dualistic purview of the legal profession. On the other end is the apparent subjective domain of psychology. The rejection of one ideology over the other is a modernistic tendency and goes against the paradigmatic scaffold of this study. An ideal position, therefore, would be somewhat removed, where psychologists adopt a both/and perspective. Reality, as intersubjectively constructed in a relativist context, epitomises a significant shift in that the process of understanding human systems is the consequence of inter-active and cooperative interactions between people (Becvar & Becvar, 2013; Goldenberg & Goldenberg, 2013; Hoffman, 1990). This implies that a more congruent and appropriate perspective would be to recognise both sets of linguistic perspectives and ideologies as essential to the survival and growth of human systems, in this case the families (Snyders, 2003). The premise of this thesis embodied this shift and I purport that a modernist

stance is not a viable position to understand the complex nature of care and contact disputes from a psychological perspective. This suggests that an ethical position lies in the awareness and reflexivity of a second order perspective. The risk of potential error is increased when clinical psychologists take an absolute 'expert' position of knowing, while remaining ignorant of the potential for bias. This implies that the move towards an ecological way of understanding offers an ethical and congruent position from which to conduct care and contact evaluations.

For these reasons, a reflective and reflexive stance is stressed on the part of clinical psychologists (Fasser, 2014; Hoffman, 1990; Keeney, 1983). A reflexive stance in understanding complex family systems, which is an appropriate position, allows professionals to work towards understanding human systems and the problems they present (Anderson, Goolishian, & Winderman, 1986). The reflective and reflexive position creates an opportunity for psychologists to remain mindful of their contribution, how they observe the problem-determined system and their constructions of the 'problems'. This perspective, which encourages insightful awareness of inherent bias tendencies, endorses an ethical position from which to conduct evaluations. The modernist perspective of linearly formulating a family diagnosis is therefore confronted as a decontextualised approach that is disconnected from the family ecology. A second order perspective lends itself to a participatory epistemology where the modernist first order stance is contextualised rather than rejected. This position is succinctly captured in Keeney's idea that the profession of psychology can perpetuate the problems they seek to 'cure' if a position of 'expert objectivity' is maintained at the expense of a critical thoughtful position (Keeney, 1983, p. 23). Accordingly, the conclusion lies in psychologists remaining aware of the participant-observer position, and that their methodologies, procedures, findings and recommendations

are more accurately described as 'objective' in a relativist, intersubjective context. This contextualised position is further described below in Figure 9-1.

A critical, reflexive epistemological approach to care and contact evaluations

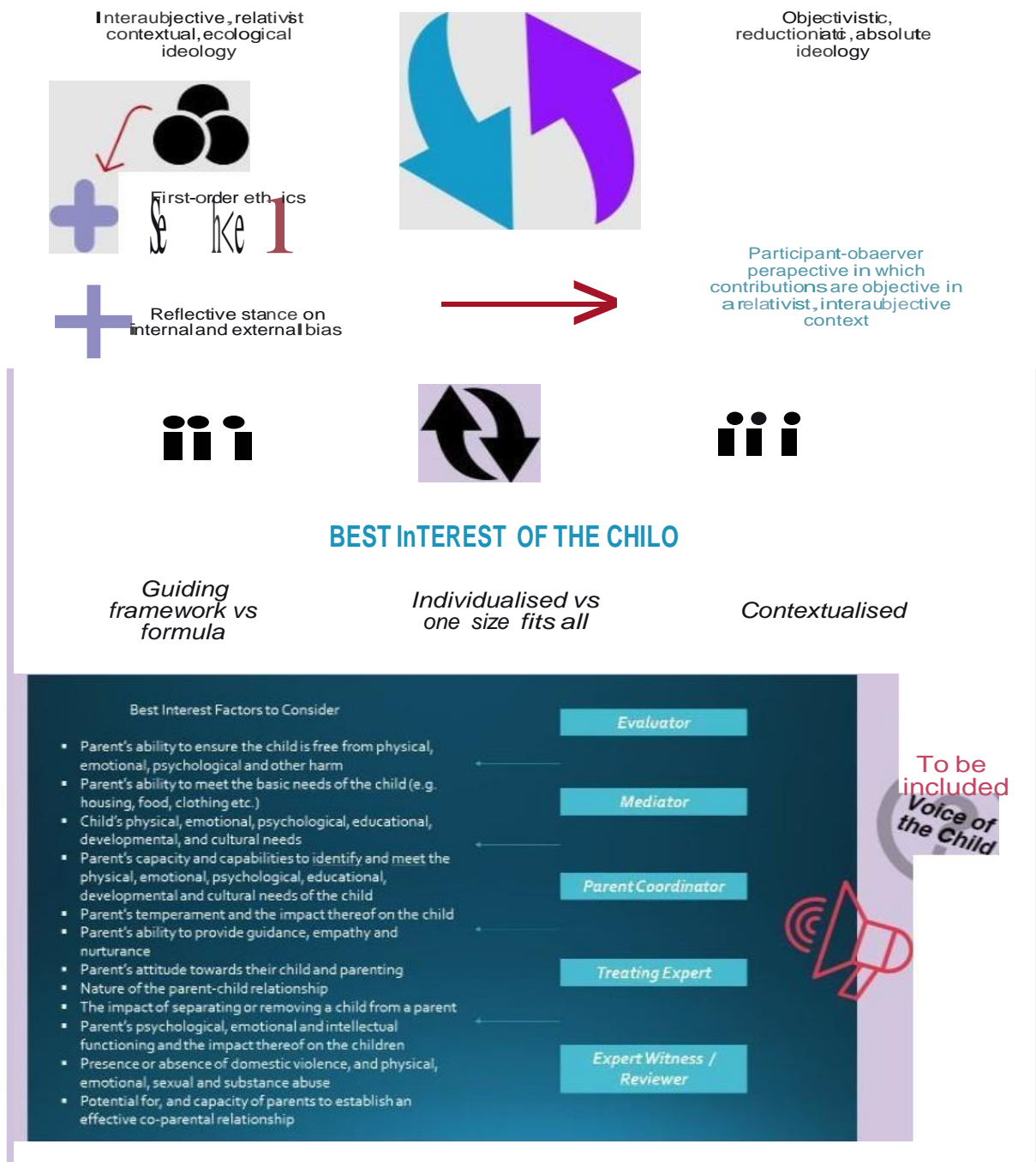


Figure 9-1A critical, reflexive epistemological approach

The paradigmatic position described above succinctly associates with the introduction of the BIC. With the introduction of the Children's Act in 2005, a child-centred paradigm was infused for both the psychology and legal professions. The application of the act has been critiqued in that there is an over-valuing of 'parents' rights' despite the wellbeing of children being central to the act. This, which obscures the evaluative processes, is further compounded by (a) the apparent opaque and vague nature of the best interest of the child principles and (b) the inconsistency around what these principles entail, and therefore how to assess the best interests of children. Instead of a one size-fits-all approach, it is advocated that each case is regarded as unique and individualised to sufficiently address the children's physical, mental, emotional, psychological and academic wellbeing (see Figure 9.1).

Although the findings of this study, in conjunction with the literature surveyed, do not produce a definitive answer as to what the BIC encompasses in totality, the credence of the principle as a *guide* is accepted. Furthermore, an additional element of the care and contact work that appears largely overlooked is the *voice of the child*. Despite the tendency of professionals, both psychologists and advocates, to accept the importance of the voice of the children in care and contact evaluations, and in essence endorse the concept as an integral part of evaluations, in practice this is not seen to fruition. Despite studies supporting the inclusion of the children's voices as a valid aspect (Barrie, 2013; Fuhrmann & Zibbell, 2012; Thompson, 2012), it remains largely absent in the larger legal and political systems, as was evident in the narratives of the respondents. The tendency to ignore children's voices and their experiences of their familial crisis provides an indication of the 'psychological climate' as described by Porter (1950). The psychological climate of not including the children's voices in the decision-making process leans towards the assumptions that their experiences, opinions, feelings and perspectives, and by extension themselves, lack value and worth (Porter, 1950).

The factors that contributed to the significance and justification of this research (lack of training, high conflict and risk of being reported) were evident in both the literature as well as the findings of this research. This suggests that psychologists who are involved in care and contact matters face professional perils that perpetuate the problem-determined system. The factors that contributed to the problem statement as well as the professional perils are depicted in Figure 9.2 below.

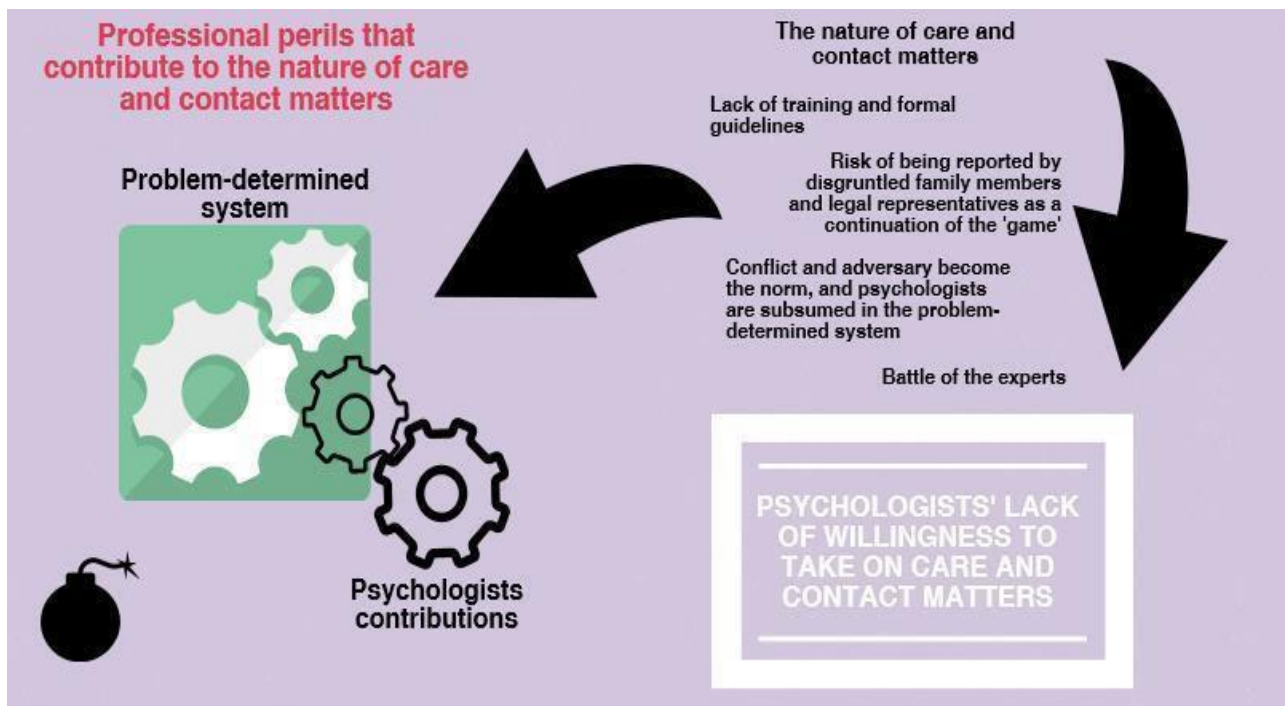


Figure 9-2 Professional perils contributing to the nature of care and contact matters

The evaluative practices that psychologists undertake are multi-layered and complex. This is further complicated by the lack of training and formal guidelines to provide parameters for clinical psychologists' procedures and methodologies in working towards recommendations that would best serve the minor children's interests. These, as highlighted in Figure 9-2, were stressed by the clinical psychologists interviewed. From the above, it is clear that, from the outset, the care and context milieu is tainted with some confusion and reticence that filter down to impact the roles and practices of clinical psychologists. This diffidence can be addressed through a paradigmatic position of relativity, reflexivity and

ecology where each family matter is addressed on his/her own merit in a contextualised position. This is in contrast to a perspective of finding ‘the truth’, the parent who is ‘right’, or the ‘winning’ party. It is my supposition that once clinical psychologists have ‘adopted’ the position as described above, their mandated responsibilities and duties become clarified and unambiguous. This brings the above summary to a narrow focus that facilitates answering the first two research questions (and aims) of this thesis: a) What are the current psychological practices of clinical psychologists in the care and contact milieu, and b) how do these evaluative procedures inform their recommendations and adhere to the best interest of the child principle. To remain consistent with the interpretive exploration of this study, a detailed description of these areas is provided in the two preceding chapters. In the next section I summarise the different roles of clinical psychologists and their practices that contribute to the expert opinions that are provided to the legal system.

Consistent with the literature, the capacities that the clinical psychologists fulfilled included a) evaluator, b) mediator, c) parent coordinator, d) treating expert/therapist, and e) reviewer.

Table 9-1 *Identified roles of clinical psychologists*

ROLE	DESCRIPTION
Evaluator	<ol style="list-style-type: none"> 1. Psychologists assess the psychological, emotional and relational functioning of parents, children and families. 2. Psychologists are involved with the family for a discrete period of time, with a mandate to objectively address the reason for referral. This includes: Psychological functioning of family

	<p>members, child and adult psychopathology, parent-child relationships, residency, contact, parenting-capacity, relocation, and parental alienation.</p>
<p>Mediator</p>	<ol style="list-style-type: none"> 1. Psychologists assist in facilitating and managing the parental conflict in order to dilute the adversary and to work towards settlement of the care arrangements in an interactive, and collaborative manner. 2. Mediation is regarded as a facilitation of an interactive and cooperative process of conflict resolution, problem solving and negotiation between parties in order to develop and adhere to an agreed upon parenting plan and co-parenting skills. 3. Mediation as an alternative dispute resolution process is supported; however, there is reluctance on the part of psychologists to undertake mediation. 4. Despite the presumption that mediation arbitrates the conflict, the findings suggest that the mediation process mimics a litigation process. This implies that mediation becomes a continuation of the problem-determined adversary as opposed to a solution-focused collaborative process.
<p>Parent coordinator</p>	<ol style="list-style-type: none"> 1. Psychologists assist parties to implement, apply and maintain the agreed upon, or court ordered,

	<p>parenting plan in the best interest of the minor children.</p> <p>2. Parental coordination is described as a quasi-judicial role and although the aim is to minimise conflict, the replication of yet another platform for parents to battle each other thus increasing psychologists' reluctance to act as coordinators.</p>
Treating expert	<p>1. Psychologists provide psychotherapeutic intervention to parties, children or families.</p> <p>2. The role of therapist, or treating expert, in the forensic context is largely supported; however, the ethical implications of confidentiality and feedback are areas that warrant further exploration.</p>
Reviewer	<p>1. In addition to the above roles, the role of reviewer was viewed with some ambivalence.</p> <p>2. On one hand, the 'second opinion' that the reviewing consultant (psychologist) provides was regarded as a quality assurance measure.</p> <p>3. On the other hand, this role was regarded as an 'attack' by the reviewing psychologist on the evaluating psychologists' work. This reinforces the reputation of psychology as a divided and unsupportive profession.</p>

With specific focus on the evaluative procedures, there was consensus that the methodologies of psychologists varied greatly and that each choose their own structure and methods based on their clinical training and the experience that they had gained over the years of practice. The clinical psychologists, who contributed to this thesis, tended to make use of multiple sources of data to inform their psychological opinions. Each approached family dispute matters in an individualised manner, and guarded against using rigid and inappropriate methodologies. Their experience as reviewers of other psychologists' work did; however, highlight the many shortfalls and areas of privation that taint the profession. In addition, the clinical psychologists were of the opinion that reviewing others' work, which forced them to remain cognisant of their own practices, contributed to their reflective position (described earlier). These practices, which are consistent with the body of knowledge reviewed, add to the notion of a comprehensive practice that makes use of an arsenal of methods and procedures. Multisource ecological assessment, as opposed to a linear, all knowing, expert position is therefore supported as an element of good practice (Foster, 2016; Fuhrmann & Zibbell, 2012; Hynan, 2016; Lobel, 2016; Meyer, 2016; Pepiton, Zelgowski, Geffner, & de Albuquerque, 2014; Roos & Vorster, 2009; Thompson, 2012; White, 2005; Zumbach & Koglin, 2015). It is purported that data collection and analysis within a systemic and reflexive paradigm provide a context for an apt interpretation of the family system and the ensuing difficulties. This critical triangulated, multisource process is demonstrated in Figure 9-3 below.

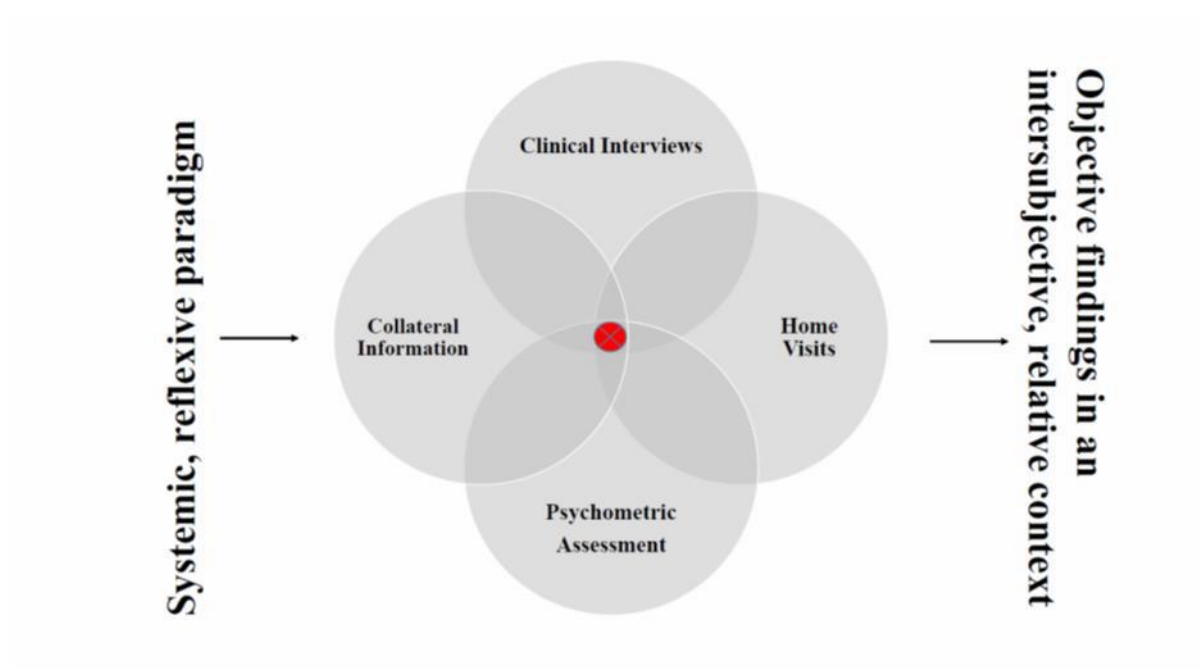


Figure 9-3 *Triangulated data collection in a systemic and reflexive paradigm*

The triangulated approach includes assessing parents (and parental figures), children and the parent-child relationships across all sources (Association of Family and Conciliation Courts (AFCC), 2006; Fuhrmann & Zibbell, 2012; Gould, 1999). These three aspects, which encompass several intricate features, contribute to the understanding of the parent-child relationship as well as the psychological functioning of each of the family members. The information gathered ultimately informs conclusions as to the aspects of best interest, and finally the recommendations that are furnished to the judiciary. The process of triangulating data and the use of multiple methods of data collection create a platform for an objective process, as far as is possible, in a relativist, intersubjective context. In this way, such a process provides a framework for reduced risk of unethical practices. An example of this process, and the ‘family games’, can be seen in Selvini Palazzoli’s description of imbroglio and instigation, as well as Minuchin’s description of coalition and triangulation, which were discussed earlier on in this thesis (Selvini Palazzoli et al., 1989; Minuchin, 1974).

In sum, the specific roles of psychologists are numerous, and although their practices and approaches vary to some degree (including differences in theoretical orientations, procedures and methodologies), there are a few common threads that are apparent. First, the role and contributions of clinical psychologists are substantial contributors to a difficult process. Second, there is an overwhelming sense that bias and poor quality practices defeat the purpose of the BIC, and therefore go against the underlying goal of this work. Third, the absence of guidelines is clearly evident and a training model of best practice is without a doubt needed.

The following section, which takes into consideration the above summary, the literature reviewed as well as the findings elicited in this thesis, provides proposed guidelines to address the identified gaps and inform practice. These guidelines, which contribute towards addressing the final aim of this thesis, are not exhaustive, but are a step in the ‘right’ direction.

Guidelines for Better Care and Contact Practices

The guidelines suggest that psychologists work towards a collaborative and engaging space, to reflect on, rework and refine the processes in care and contact evaluations, which are difficult, challenging and complex tasks. A summary of the guidelines can be seen in Table 9-2 below.

Table 9-2 Guidelines for training and practice

AREA OF FOCUS	DISCUSSION
<p>Bridging the chasm between the psychological profession and the legal fraternity</p>	<ul style="list-style-type: none"> - Despite care and contact disputes presenting predominantly in the scope of the legal fraternity, clinical psychologists are often included in the professional cohort that evaluates and assesses family dispute matters. - The underlying paradigmatic frameworks of the two professions is vastly different. A complementary approach is therefore essential. - A ‘both/and’ approach suggests that both ideologies (positivist versus relativist) are needed in order for families involved in custody disputes to survive and grow.
<p>Paradigmatic position in an ecology of intersubjectivity</p>	<ul style="list-style-type: none"> - A psychologists’ position is best described as a relativist, contextual and intersubjective ecology in a mechologic, modernist context. - Context is important as opposed to applying a blanket rule to families’ e ecological struggles. - A reflective, reflexive and critical stance to care and contact evaluations is purported. - Maintaining critical awareness of bias, and the impact thereof, on evaluations, is ethical in conduct care and contact evaluations.
<p>Theoretical orientation</p>	<ul style="list-style-type: none"> - The following theoretical approaches have been identified as relevant in training programmes: <ul style="list-style-type: none"> ▪ Systemic, Ecological and Cybernetic theories ▪ Family and Child developmental theories ▪ Attachment theory and parent-child relationships ▪ Parenting capacity ▪ Child and Adult psychopathology (and the impact on parenting capacity) ▪ Psychological assessment ▪ South African Family Law, legal knowledge and training (including legislation, court processes, expert testimony, and inter-disciplinary relations).
<p>Intra-interdisciplinary relationships</p>	<ul style="list-style-type: none"> - Endorse the involvement of psychologists and advocates (extending to other legal professionals) towards contributing towards, and facilitating a collaborative intra- and interdisciplinary approach. - Recognise the contribution of psychology as one part of a complex legal milieu. - Avoid biased liaisons and favour between professionals as inherently problematic, and unethical. - Maintain a competent and proficient professional relationship with all parties, peers and other professionals.

	<ul style="list-style-type: none"> – Avoid alliances and associations with legal representatives
<p style="text-align: center;">Methodology</p>	<ul style="list-style-type: none"> – With regards to specific methodological practices, the following guidelines are proposed: <ul style="list-style-type: none"> ▪ Clarify the reason for referral ▪ Contracting is the first step to a transparent and informed process (includes all levels of ethical considerations as outlined by the HPCSA and legislation) ▪ Triangulation of methods and sources of information ▪ Ability to produce an integrated, logical and substantive report to justify recommendations ▪ Maintain a paper trail of ‘evidence’ and data
<p>Redefining, reworking and refining definitions and assessments of concepts</p>	<ul style="list-style-type: none"> – To appropriately address the following concepts in the evaluative processes, definitional clarity is needed: <ul style="list-style-type: none"> ▪ <i>Parenting capacity and co-parenting potential</i> <p>Parenting capacity, as a central concept of family evaluations, lacks definitive criteria. However, there is a consensus as to the multifarious aspects embedded in the capacity to parent effectively, these include: Multiple parenting skills, the parent-child relationship, socialisation of children and the ability for parents to identify and successfully meet the needs of their children. These factors of parenting capacity are not straightforward, and become more complex to assess in light of the emotionally laden nature of child care and contact evaluations. The examination of the literature and the findings of this study revealed several core areas that need to be assessed when determining a parent’s abilities and deficits in parenting. Amongst others, these include a parent’s ability to a) identify and meet developmental needs of children, b) meet day-to-day demands, c) be affectively available d) set age-appropriate boundaries, be flexible, and solve problems and e) employ effective parenting skills and manage parenting deficits. In addition, the impact of psychopathology, or the symptomatology thereof, on parenting and the potential for parents to develop an effective co-parental relationship are aspects that are to be included in the assessment of parenting capacity.</p>

▪ ***Parent alienation***

Parent alienation, which has undergone some revision, has been described as a ‘real’ phenomenon that is accepted in the judicial system despite a lack of theoretical validity. There is consensus that parental alienation exists as a continuation of the families’ pathological processes and relational discord and often features in high conflict cases. These findings are in line with the views of Selvini Palazzoli, Cirillo, Selvini and Sorrentino (1989) and Minuchin (1974) who described cross-generational coalitions and complex family tactics that are usually instigated by one parent against another. This implies that the concept of parent alienation ought to be viewed as a systemic pattern of behaviour that was most likely embedded in the systemic family games long before the family presented for evaluation. Viewing parental alienation as a linear concept runs the risk of missing the factors that contribute to such processes. Allegations of parental alienation are often used as a tactic by parties as well as legal representatives. This adds to the complex and combative nature of care and contact disputes, and ultimately augments the construction and maintenance of the problem-determined system. This is further complicated when the accusations of parental alienation escalate into false allegations of physical, emotional, psychological or sexual abuse by one party.

▪ ***Attachment and the parent child-relationship in the context of care and contact disputes***

Although Attachment Theory has been extensively researched in the field of psychology, the assessment of attachment in the custody arena is lacking, despite being regarded as a relevant and appropriate contributing factor in assessing the relative ‘health’ of parent-child relationships (Garber, 2009; Lee, Borelli, & West, 2011; Lee, Kaufman, & George, 2009; Schmidt, Cuttress, Lang, Lewandowski, & Rawana, 2007; Shumaker, Deutsch, & Brenninkmeyer, 2009). This is an area that was identified as relevant in evaluations and perhaps warrants a comprehensive exploration.

<p>Understanding the perilous nature of, and challenges associated with care and contact disputes</p>	<ul style="list-style-type: none"> - The reputation of psychologists in the care and contact milieu is tainted with negativity and disdain due to the: <ul style="list-style-type: none"> ▪ Hired guns phenomenon ▪ Professional discord between psychologists ▪ Potential to replicate problem-determined processes through a lack of skills, biased practices, a linear approach to matters and a lack of awareness as to scope and boundaries of practice
<p>Ethical parameters</p>	<ul style="list-style-type: none"> - Knowledge and application of the following ethical parameters and considerations are required: <ul style="list-style-type: none"> ▪ A practice guided by beneficence ▪ Bill of Rights <p>In addition, psychologists need to</p> <ul style="list-style-type: none"> ▪ remain within scope of practice ▪ be conscious of one’s responsibility and the impact, and significant influence, of psychological input on cases and the court’s decision making ▪ maintain clinical, scientific and legal knowledge ▪ obtain and maintain the necessary competency in care and contact matters ▪ be knowledgeable of relevant research and development of theory in the field ▪ refrain from acting in multiple capacities ▪ address ethical considerations in the forensic context (i.e. to provide parties with clear, transparent and unbiased information as to the evaluative processes and procedures, as well as the reason for referral, confidentiality etc.) ▪ have a fair, ethical and comprehensive approach to matters ▪ avoid implicit and explicit bias through constructive and critical reflection and supervision ▪ maintain professional supervision for a substantial period of time ▪ be cognisant of first-order ethical consideration for forensic psychology and care and contact evaluations (including open channels of communication, transparency of methodology, triangulation of data gathering, limits to confidentiality, expert knowledge, record keeping and unbiased practices ▪ be mindful of second-order ethical considerations (reflexive, reflective and critical stance towards practices, bias and competency)
<p>Areas needing further exploration</p>	<ul style="list-style-type: none"> - The following are areas that need further elaboration: <ul style="list-style-type: none"> ▪ The identification and assessment of the voice of the child

	<ul style="list-style-type: none">• The assessment of substance abuse in care and contact matters• The assessment of child physical and sexual abuse in conjunction with care and contact evaluations
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Critical Reflections and Recommendations for Future Research

In line with the epistemology of constructivism, and the principles of reflectivity and reflexivity, it is appropriate to pay careful consideration to critical aspects encountered in this study.

This thesis, which was positioned within a constructionist paradigm that is subsumed in constructivist epistemology, centres on the presupposition that experiences, and therefore reality, are shaped and constructed intersubjectively. The findings suggest that a position of observer-dependence be recognised and a reflective position on the part of the psychologist be adopted. The positivist models associated with the legal fraternity view matters in a dualistic manner in which reality is seen as absolute. Creating a universal model for care and contact evaluations to fit with the legal professions' empiricist tendency poses a paradigmatic dilemma and a practical challenge. While the solution may not be to mirror the legal profession, there is a consideration to reframe and re-package the intersubjective process of assessing a family into a manner that is more understandable to the courts and the legal representatives. This potentially requires the development of a 'parallel' process that embodies the guidelines provided above. However, the reworking of psychological approaches is not entirely sufficient on its own, and warrants a model of cross-training to be developed. This study highlighted the need, as expressed by the psychologists and advocates, for a better understanding of each other's' work and thus a cross-training model is endorsed as a channel to connect both approaches. In this way, a clearer and more appreciative understanding of each profession may facilitate a collaborative interdisciplinary working relationship. This could potentially manifest as a 'team approach' in which several professionals (e.g. psychological evaluator, mediator, case manager and family advocate) work together on a matter.

An additional point of critical reflection lies with the selection of respondents. In order to address the research problem sufficiently, I identified three groups of professionals who were experienced and knowledgeable of care and contact matters. The three groups that were initially identified were clinical psychologists, advocates and Judges. As the upper guardian of all minor children, and in the position of presiding officers of care and contact matters, Judges were seen as appropriate professionals to interview. All efforts were made to engage with the Judges; however, these attempts were unsuccessful. It is recommended that, due to the apparent reluctance of High Court Judges to take on family dispute matters (as indicated by the advocates), Judges be included in future explorative research.

In addition, although a concerted effort was made to ensure that the group of respondents were diverse across gender, race and age, the final group of respondents were predominantly white females for both the psychologist and advocate groups. This was further compounded by the fact that relatively few clinical psychologists undertake care and contact evaluations. Although I do not view the current respondent cohort as problematic, the possibility exists that different insights may have been uncovered if a more diverse group were interviewed. Furthermore, the demographic profile of care and contact professionals as white females, which reflects the perception of stereotyped gender roles, as well as possible social, cultural and political views in South Africa, warrants further exploration.

Furthermore, the selection of the psychologist cohort was limited to the clinical category only. As a registered clinical psychologist, I intended to remain within the scope of my registration; however, I do acknowledge that care and contact matters are not limited to the clinical category. By excluding other professional categories I may have inadvertently limited the data collected.

South Africa is a diverse country, with diverse familial, societal, and cultural practices. This study explored the practices and the efficacy of such practices in care and contact matters. However, it may be helpful, and in fact necessary, to explore the cultural sensitivity of care and contact evaluations in order to ensure that these services are relevant and applicable to the South African population at large.

An area that is largely overlooked in care and contact matters is the voice of the child. In spite of professionals advocating that more emphasis be placed on the experiences of children, this is not practised, particularly during litigation. In light of this, further exploration into how the voices of the children can be assessed and integrated into care and contact evaluations, without drawing the children deeper into the conflict and discord, is needed. Methods to elicit the voices of the children could involve non-directive techniques such as story-telling techniques, the use of play animals and metaphorical objects, puppets and the like. These could be covered by a process and developmental view of the evolution of specific families in dispute.

Although the issues of substance abuse, domestic violence and sexual abuse were addressed in this study, I by no means did justice to these three areas. While these three areas did not form a large portion of the research statement nor feature predominantly during the interviews, they are highlighted as risk factors in care and contact cases. For this reason, it is recommended that future studies explore these areas in depth to better understand them with regards to care and contact evaluations, and to develop effective ways of assessing and providing recommendations for the children involved in affected families.

The findings regarding mediation and parent coordination point to a difficult process that resembles the parental conflict, as opposed to focusing on a collaborative solution-focused

process. As indicated above, this is particularly true of high conflict cases. An area of exploration is suggested for cases where mediation has been successful.

Conclusion

If anything, this thesis has demonstrated the paradigmatic, theoretical, procedural, methodological and ethical labyrinth that is care and contact disputes. I believe through this work I have only begun to chip away at the iceberg of complex family processes in contested custody cases. To determine the best care arrangements for children, which is not an easy feat, requires a substantive and comprehensive approach to matters in a reflexive, critical manner. The dangers of remaining limited by professional arrogance, lack of training and power struggles add to the problematic nature embedded in custody work.

Through the interviewing process, I not only gathered essential data to develop this thesis, but also added to my own knowledge base, and gained a critical appreciation for the weight that this kind of work carries for psychologists, as well as the impact thereof on families, and especially the minor children. We are fortunate to be debating these complex ideas in an era of accountability, and if we are to recommend care arrangements of minor children, we owe it to them to chip away at the iceberg and develop appropriate and beneficial training programmes and practice guidelines. *Is that not the right thing to do?*

“If I should labor through daylight and dark,

Consecrate, valorous, serious, true,

Then on the world I may blazon my mark;

And what if I don't, and what if I do?”

(Dorothy Parker, n.d.)

My Family



Drawn by: C

Age: Thirteen years, one month old

Position in family: First of two children

Parents: Married

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AppendixA- Ethical Clearance



Ethical Clearance for M/D students: Research on human participants

The Ethics Committee of the Department of Psychology at Unisa have evaluated this research proposal for a Higher Degree in Psychology in light of appropriate ethical requirements, with special reference to the requirements of the Code of Conduct for Psychologists of the HPCSA.

Student Name: Nikki Themistocleous **Student no.** 32303157

Supervisor/promoter: Prof F.J.A. Snyders **Affiliation:** External supervisor

Title of project:

Forensic Psychology Evaluations in Primary Residency and Contact Disputes (Child Custody Disputes): A South African Perspective

The application was approved by the departmental Ethics Committee on the understanding that precautions will be taken to protect confidential information related to persons indirectly referred to in this research (e.g. case studies), so that information which could be used to identify these persons or breach their rights to confidentiality will not be made available.

Signed:

A handwritten signature in black ink, appearing to read 'P Kruger', is written over a horizontal line.

Prof P Kruger
[For the Ethics Committee]
[Department of Psychology, Unisa]

Date: 25 February 2014

Appendix B - Consent Form 1



RESPONDENT CONSENT FORM

Dear Dr / Mr

Thank you for agreeing to be a respondent in my Doctoral study entitled: *Forensic Psychology Evaluations in Primary Residency and Contact Disputes: A South African Perspective*.

The aim of the current study is to explore the current practices of clinical psychologists and the roles they fulfil within the psycho-legal context, with a specific focus on primary residency and contact disputes. In addition to this, this study aims to explore how the evaluation procedures used by clinical psychologists inform their recommendations to the Court in such matters, and in so doing, adhere to the "best interests of the child principle". It further aims to work towards identifying areas that need further investigation, and formulating guidelines and frameworks in order to promote the proficiency in the conduct of and evaluations by clinical psychologists.

Participation in this study is voluntary, and respondents are free to withdraw at any point without consequence. No identifying information of respondents will be made available in any form and the only parties that will have access to data collected are the researcher and the thesis supervisor, Prof FJA Snyders.

Interviews will be audio recorded and transcribed, and all data will be securely stored in the researcher's offices at the University of South Africa.

The results of this study will be published in the form of a doctoral Thesis and will be available through the library at the University of South Africa.

Should respondents need debriefing after the interviews, this will be provided.



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I _____

agree to take part in the above mentioned study, and acknowledge the following conditions:

- I participate voluntarily, and have not been coerced in anyway
- I understand that no compensation will be afforded to me for my participation
- I understand and acknowledge that information I share will be used as part of a higher qualification of the said researcher, that of PhD (Psychology) at the University of South Africa. Further, I understand and acknowledge that the final study will be published in the form of a doctoral thesis and will be made available through the library of the University of South Africa.
- I understand that I may withdraw from the study at any time, without any negative consequences. In such a case I therefore acknowledge that any information shared by myself will not be used as part of the study.
- All identifying information shared by myself will be kept in a safe and secured location by the researcher, and the only individuals who will have access to such information will be the researcher and the thesis promoter.
- I have been explained, and therefore understand, the conditions of anonymity and confidentiality.
- I consent to the interviews being audio recorded

Signature

Date

Profession



Appendix C – Consent Form 2



RESPONDENT CONSENT FORM

Dear Adv.

Thank you for agreeing to be a respondent in my Doctoral study entitled: *Forensic Psychology Evaluations in Primary Residency and Contact Disputes: A South African Perspective*.

The aim of the current study is to explore the current practices of clinical psychologists and the roles they fulfil within the psycho-legal context, with a specific focus on primary residency and contact disputes. In addition to this, this study aims to explore how the evaluation procedures used by clinical psychologists inform their recommendations to the Court in such matters, and in so doing, adhere to the "best interests of the child principle". It further aims to work towards identifying areas that need further investigation, and formulating guidelines and frameworks in order to promote the proficiency in the conduct of and evaluations by clinical psychologists.

Participation in this study is voluntary, and respondents are free to withdraw at any point without consequence. No identifying information of respondents will be made available in any form and the only parties that will have access to data collected are the researcher and the thesis supervisor, Prof FJA Snyders.

Interviews will be audio recorded and transcribed, and all data will be securely stored in the researcher's offices at the University of South Africa.

The results of this study will be published in the form of a doctoral Thesis and will be available through the library at the University of South Africa.

Should respondents need debriefing after the interviews, this will be provided.



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I _____

agree to take part in the above mentioned study, and acknowledge the following conditions:

- I participate voluntarily, and have not been coerced in anyway
- I understand that no compensation will be afforded to me for my participation
- I understand and acknowledge that information I share will be used as part of a higher qualification of the said researcher, that of PhD (Psychology) at the University of South Africa. Further, I understand and acknowledge that the final study will be published in the form of a doctoral thesis and will be made available through the library of the University of South Africa.
- I understand that I may withdraw from the study at any time, without any negative consequences. In such a case I therefore acknowledge that any information shared by myself will not be used as part of the study.
- All identifying information shared by myself will be kept in a safe and secured location by the researcher, and the only individuals who will have access to such information will be the researcher and the thesis promoter.
- I have been explained, and therefore understand, the conditions of anonymity and confidentiality.
- I consent to the interviews being audio recorded

Signature

Date

Profession



Appendix D – Consent Form 3



PARENT INFORMED CONSENT

CHILD ASSENT

I _____ (Name and surname of parent 1)
and _____ (Name and surname of parent 2),
give permission and consent to Nikki Themistocleous, Clinical Psychologist and Lecturer, to use
my child's drawing as part of her Doctoral Thesis. I have read all the information above, and
have clarified any uncertainties. I understand and acknowledge that:

1. My child's drawings will be used for research purposes, and will appear in the final manuscript of Nikki Themistocleous' doctoral thesis,
2. No personal or identifying information will be made available at any point and all information will be treated ethically and respectfully,
3. No analysis of any drawings will be done by any party, as the use of the pictures is symbolic in nature.

Child's age: _____ (years and months)

Child's position in the family: _____

Marital Status of Parents: _____

Child's Choice of Pseudonym: _____

Name of the child's drawing: _____



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Appendix E - Interview Guides

INTERVIEW SCHEDULE

GROUP 1: CLINICAL PSYCHOLOGISTS

PART A

Either a Biographical information questionnaire was given to the participant or a face to face interview was conducted to ascertain level of education, Doctorate studies, years of experience, the capacities in which they had worked in psycho-legal (PRCD) court appearances, and board complaints against them (if any).

PART B

Although Forensic Psychology has been around for decades, it is only recently that it seems to be gathering steam and focus from an academic perspective in South Africa, and so can be described as a relatively young branch of psychology. Many psychologists are attracted to this work, but do not anticipate the exacting nature of it. So, let's start off with your specific involvement in the field.

Involvement in Psycho-legal work (PCRD)

1. Can you describe how you got involved in psycho-legal work?
 - a. If PRCD not mentioned, to explore how they became involved in this area of speciality
2. What formal training have you had in this field?
3. From the questionnaire, I see you have been involved in this field for XX years, can you describe in which capacity/roles you were appointed?
 - a. Explore as assessor, case manager, mediator, therapist
4. What has your experience been like in this field in general?
 - a. More focused questions on roles as stated above
 - b. Experience in court if relevant
5. So, if we look at some of the definitions of Forensic Psychology, for example the APA (2013) definition "*applying the scientific, technical or specialized knowledge of psychology to the law to assist in addressing legal, contractual and administrative matters*" or Roos and Vorster (2009, p. 1), these indicate that forensic psychology can be defined as the "application of psychological knowledge to the legal field - how do you conceptualise the relationship between the legal profession and psychology?"
6. Can you talk me through, from start to finish, the processes you follow when a case has been referred to you for psychological assessment?
7. Are you connected to, or work in conjunction with, a law firm?

Best Interest of the Child Principle

8. So currently the aim of most of the work of psychologists in PRCD context, whether assessment, case management, mediation, etcetera is to formulate recommendations that are in line with the “best interest of the child” principle, and the Children’s’ Act provides some guidelines as to what to consider when doing this. But in your opinion, how do you understand this principle?
9. What factors do you take into consideration when determining the best interest of the child principle?
10. In what way do you go about trying to answer this question? (What aspects of a case are important for you to investigate or explore that could assist you in reaching recommendations around BIC principle.)
11. Sometimes a referral is made for an assessor to evaluate the parent’s *parenting capacity* – what do you understand by this?
12. How much value do you believe the court places on the recommendations of psychologists in these matters?
13. One concept that seems to be rather controversial is “Parental Alienation” – according to some theorists (example Kelly and Johnston, 2001) the definitions of this term are problematic; however, it is used and ‘assessed’ in this line of work. What is your understanding of, and opinion of, parental alienation?
 - a. How do you think psychologists could accurately identify this syndrome?

Challenges psychologists face

14. In your experience, what are the main challenges psychologists face when doing this kind of work?
 - a. Challenges you have experienced personally?
 - b. Have you been reported to the board? If so for what and what was that experience like?
15. What, in your opinion, are some of the major concerns you have identified with regards to the work done by other psychologists in this field?
 - a. What areas need improving?
 - b. Have you come across bias?
 - c. Poor quality reports?
 - d. Poorly trained psychologists?
16. What is your opinion about psychologists writing commentary reports based on other psychologists’ reports?
17. What competencies do you think psychologists should have to do this work?
 - a. In your experience, what do psychologists do well in this kind of work?
 - b. And what areas do you think psychologists need to improve on? What are some of the errors made by psychologists?

Psychological assessments

18. If you are appointed as a psychologist to conduct a psychological assessment of a family, what tests do you use in general and why?
 - a. Explore the areas that are most controversial, for example MCMI-III/IV; projective tests
 - b. Many tests that are used are not normed for the South African population, what is your opinion with regards to this?
 - c. In your experience, which tests are mostly contested in a court of law
19. Do you provide feedback to the clients/family members?
20. Do you do any home visits?
21. Who do you mostly obtain collateral information from in your investigations?

Reputation of psychologists

22. Psychologists often have a bad/negative reputation in court, and there have been judges who have been quoted as having negative comments around the work psychologists do (whether assessment, expert testimony, case manager etc). In your opinion, what are the reasons/possible reasons for this?
23. What do you think of the delineation of scope of practice with reference to psycho-legal and custody work?
24. So, in a court of law, when a psychologist is requested to submit a report, or provide testimony, it is expected that the psychologist is not biased, and provides objective and factual information. However, psychologists often work with certain theoretical frameworks in mind that could help to explain the dynamics of a given family. Do you have a particular theoretical orientation that you work from when doing this work? Can you elaborate?
25. What is your understanding of the term ‘hired guns’?
26. The cost of evaluations, mediation, case management, expert testimony differ significantly from psychologist to psychologist, what in your opinion should be considered when setting a fee? What is an acceptable price/charge/cost for an evaluation/mediation/case management etcetera.
27. What would your advice be for any young psychologist who wants to get involved in PRCD?

INTERVIEW SCHEDULE

GROUP 2: ADVOCATES

Biographical Information

1. How long have you been practising as a Family Advocate?
2. How long have you been working closely with psychologists in custody matters heard in Court?

Experience with Psychologists

1. Can you describe how you conceptualise the relationship between the legal field, and the field of psychology?
2. Can you describe your experience in working with psychologists in custody matters?
 - a. In what capacity/roles have the psychologists been appointed in?
 - b. Assessor? Case Manager? Mediator? Expert witness? Consultant?
3. What is your professional opinion or perception of psychologists who work in this field?
4. How important do you think the work done by psychologists is in assisting the Court in making decisions?
 - a. In your opinion, does the work done by psychologists effectively assist the court in making decisions around the best interests of a minor child?

Opinions around the work done

1. In your experience, how would you describe the contribution psychologists provide to custody matters?
2. What, in your opinion, are some of the challenges psychologists' face working in the forensic context?
 - a. Elaborate on areas identified
3. Expert testimony? Providing evidence? Consultant?
4. What areas do you think psychologists do well in custody work?
5. What areas do you think psychologists need to improve on in custody work?
6. What is your opinion around appointing an additional psychologist to review the report of the evaluating psychologist?

Appendix F- Co-coders Certificate

Coding Certificate | 2017

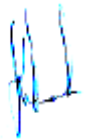
THIS IS TO CERTIFY THAT

I, **Jennifer Graham**, in my capacity as an independent Research Consultant,
have co-coded and themed the qualitative data

for the study exploring:

**Care and Contact: Psychologist's Contributions to the Problem-
determined Process in South Africa**

I declare that I have reached consensus with Nichola Themistodeous on the
major themes and sub-themes arising from the coding of the data.
This was confirmed during a consensus discussion had between us on the
11th of April, 2017. I have also provided her with a coding report
detailing my findings.



Jennifer Graham

Date: 11-April-2017

Appendix G -Editors Certificate



Date: 13 June,2017

To whom it may concern

I confirm that I have edited the following thesis:

Author: Nikki Themistocleous

Title: Care and contact: Psychologists' contributions to the problem-determined process in South Africa

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