



Communication issues in care and protection cases

Sandra Porteous discusses effective communication and collaboration between lawyers and social workers in care and protection proceedings. This article is from the paper presented at the Third Annual Butterworths LexisNexis Child and Youth Law Conference in 2004

Introduction

Communication between lawyers and social workers at its simplest level means talking to each other. Each of us has the ability to do that, but effective communication involves something more and entails not talking past one another. Talking past one another generally occurs when people are attempting to communicate, but, because they are from different backgrounds with different values, roles and expectations, the messages become distorted or misunderstood. Lawyers may understand social work discourse in a way not intended by social workers and vice versa.

Lawyers and social workers have different styles of communication and each group has unique language and concepts, some of which have acquired their own specific meanings. Better communication therefore involves understanding each other's values, roles and expectations.

Effective communication is an integral part of any collaborative working relationship. Any collaborative approach draws on the professional strengths, skills and abilities of social workers and lawyers to achieve good outcomes for children. This means that each needs to understand and respect the other's roles and collaborate within the limits of those roles and responsibilities.

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Barriers to effective communication: is the brain to blame?

Does cerebral hemisphericity have a part to play in the difficulties with

communications between lawyers and social workers? One author suggests that the difficulties between social workers and lawyers and the differences in personality styles and values may have roots in their different brain functioning (Lau, 1983). Put simply, most lawyers tend to use the left side of their brain, while

most social workers tend to favour the right. According to Lau, those with strong left hemisphericity may exhibit obsessive/compulsive characteristics, while those with strong right hemisphericity may exhibit hysterical personality traits. (It is important to note, as the author does, that these labels are used in a non-pathological sense to describe styles, not disease.)

Those with the former characteristic approach almost everything in a narrow, analytical way, even when such behaviour may not be beneficial. Whereas those with the latter deal with every situation in a global, holistic manner, rarely analysing details in any direct way. We might all recognise something of ourselves and others in these profiles, but differences in styles and difficulties in working together have less to do with brain hemisphere than the statutory roles of each profession and the overarching principles of the Children, Young Persons, and Their Families Act 1989.

Other barriers to communication

In 2003 I presented a paper to the Second Butterworths LexisNexis Child Law Conference that focused on collaboration and conflict in care and protection cases, which drew on research undertaken as part of the requirements for a post-graduate Diploma in Child Advocacy at the University of Otago (Porteous, 2003). That research was a small qualitative study on the subjective understandings of the participants' (counsel for child and social workers) views of their own and the other professionals' role in care and protection proceedings. It studied in particular how well these roles promoted the welfare and interests of children and ways to avoid duplication and/or conflict inherent in a system where two professionals are both promoting the welfare of children. Several areas where conflict was evident were identified:

- various interpretations of the Act and its principles
- different perceptions of welfare and interests of the child
- lack of understanding of each other's role and role definition
- unclear boundaries and overlapping roles.

The research found that social workers and counsel for child had different understandings of the Act and the application of its principles. Social workers were critical of lawyers, whom they thought did not understand the philosophy of the Act and how it related to social work practice, such as determining the appropriate level of intervention necessary to protect children and promote their welfare. Social workers felt they had a holistic or family-centred approach to welfare, as was required by the Act, and thought counsel for the child had a fragmented approach to welfare and interests. Lawyers, on the other hand, did not think social workers paid due regard to the legal criteria and requirements of the Act, did not understand the threshold tests for intervention in s.14 and were slow in taking action.

The Act encourages both these approaches: the family-centred and the individualistic. The principles in ss.5 and 13 place a particular emphasis on the importance of the role of family, including extended family, and participation of family in decision-making and the care of children. These are the principles that underpin outcomes-focused social work practice. A lawyer's approach, however, is more likely to be client-centred, focusing on the evidence, whether the statutory criteria are proven and what options will promote the welfare of an individual child. Lawyers will tend

to see family solutions, where family dysfunction is evident, as not always being a realistic option in promoting welfare and interests.

The research also found that individual professionals had different perceptions of their own role definition and that of the other professional group. Unclear boundaries and overlapping roles were identified by both professions as a source of enormous confusion and conflict. Counsel for child attributed this in part to poor social work practice and also to the fact that an investigatory role was often expected of counsel by the court. Social workers, however, were critical of counsel for child who carried out investigations without the necessary skills or expertise to do this. They believed counsel's role should be limited to inquiries, not investigations and risk assessments.

While there may be benefits in the overlapping of professional roles, including situations where a failure by one professional may be picked up by another, the duplication of tasks is wasteful of resources and can lead to conflict situations. Research in the UK into the deaths of children in care (Reder, Duncan and Gray, 1993) identified role definition between professionals as crucial to good practice. It showed that without clearly defined roles, professionals can lose sight of their primary function and intrude into the tasks of others.

I drew the following conclusions in my research paper:

- Both professional groups at times took on roles for which their professional training does not equip them.

- Overlapping roles were likely to lead to duplication of effort and role conflict between social workers and lawyers.
- The blurring of roles was likely to add to confusion about the correct roles of each profession.

As a result, the efforts of legal and social work professionals may not always deliver the best outcome for the child.

In their research for the Department of Courts on the role of counsel for child, Gray and Martin looked at levels of professional satisfaction from

working together in care and protection proceedings (1998). They found 73 per cent of counsel for child were "satisfied or very satisfied with co-operation". In comparison, 46 per cent of social workers said they were very satisfied with how professionals worked

together on Child, Youth and Family cases and 23 per cent expressed dissatisfaction. The contrast in the satisfaction levels is marked and may in part be due to the differing perceptions of the role each has in the Court process – counsel for child are likely to see themselves as the more dominant player in that forum.

A way forward

While members of both professions work in care and protection, there is little professional interaction between the two groups except when they are involved in the same court proceedings. Although some initiatives may exist at a local level, there is no national programme for joint training or seminars where issues relating to care and protection and the respective roles may be discussed.

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Before any discussions about training can take place, both professions need to know what shared understandings exist of the roles and functions of each group. As a first step there needs to be a joint effort to clarify the roles and responsibilities of each group and identify ways in which collaboration can occur.

Further research in this regard was one of the recommendations made by Morris et al in a research paper analysing roles and responsibilities of youth advocates (Morris, Maxwell, Shepherd, 1997). The study's primary purpose was to identify the core and non-core functions of youth advocates and where there were areas of consensus and divergence about the youth advocate's role.

The authors of the report found that there was a shared understanding about the role by the youth advocates themselves and the other professionals working in the youth justice area. In addition, where there were divergences or discrepancies, these could be explained by the "differences in police, Child, Youth and Family, Youth Court and judicial approaches, by a lack of common interpretation of key concepts and by the tensions that needed to be balanced in the system".

An earlier study undertaken in the US, again in the area of youth justice, looked at the expectations of social workers and lawyers regarding their own role in juvenile courts and each professional's perception and expectation of the other's role (Brennan, 1971). The study arose following a series of decisions by the Supreme Court that affirmed the right of an accused child to legal representation and due process. This led to a greater involvement of lawyers in juvenile court proceedings. Where traditionally social workers took on a variety of

legal and quasi-legal, as well as social work, roles. In a questionnaire of 21 tasks and roles, social workers and lawyers were asked to identify, first, whether they thought they or the other profession or someone else entirely should perform the role and secondly, how they thought that other profession would respond to the question.

Actual role consensus was held to exist when one professional believed the task was their responsibility and the other agreed or when neither thought it was their responsibility. Actual role disagreement existed when both professionals wanted to assume the role, one professional wanted to assume the role but the other professional would not allow it and one professional gave responsibility for the role to the other, who did not accept it.

The authors found a considerable degree of disagreement over actual and perceived roles. Social workers thought they had responsibility for 14 of the tasks in the questionnaire, but lawyers thought that social workers should have responsibility for only five. Lawyers believed that nine of the tasks were part of their role, while most social workers thought that only one of the tasks was the lawyers' function. Disagreement over role function was most apparent at the pre- and post-adjudication phases, with social workers wishing to perform legal tasks in the pre-adjudication phase and lawyers wanting to assume therapeutic functions in the post-adjudication phase.

The reasons given by the authors for this apparent divergence included, first, that work in the juvenile court was traditionally a responsibility of social workers and, secondly, the differing values, understandings and training of both groups. A further factor, and one which

has relevance for current discussion, is that some of the tasks identified have both legal and therapeutic components. When this is evident, professional roles and responsibilities are less clear with a greater potential for disagreement.

In care and protection proceedings, tasks are likely to be a mixture of both.

The value of improving working relationships between lawyers and social workers in order to achieve better outcomes for children was realised in the Children Can't Wait Project which originated in the Pacific Northwest of the US (Johnson, Cahn, 1992). This project aimed to minimise delays in the legal processes involved when moving children from state to alternate family care after a decision had been made that these children would not be returning to their original family home. Drawing on available research, the programme focussed on multi-disciplinary training to "promote role clarification and improve each profession's understanding and acceptance of the other's area of expertise". Training on the other's professional role was seen as essential and was found to improve performance. For lawyers, there was an increased participation in cases and for social workers, better preparation for court proceedings. The ability to work collaboratively was also recognised as promoting "improvements in the legal and administrative structure of systems including the structure of relationships and working arrangements between the two professions". Better case planning, improved communication between lawyers and social workers, clear timeframed interventions, increased parental involvement and specific court orders, all allow for efficient use of the court time and reduce delays within the court system.

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Conclusion

Increasingly, there is a call for professionals involved in care and protection cases to work together for the benefit of children (Brown, 2000). However, social work training at a

tertiary level contains minimal coverage of child protection law and procedures. While Child, Youth and Family's induction training deals with care and protection in some depth, including working with other professionals, it does not include

training on the roles and relationships between social workers and lawyers. All practising lawyers must have a degree in law, but in many cases would have received no specialist training in working in an inter-disciplinary environment. Specialist training for counsel for child involves some training on developmental psychology and communicating with children, but topics cannot be covered in any depth and there is minimal coverage of care and protection proceedings. There is no separate practice note for counsel for child undertaking care and protection work.

How each profession chooses to take up the challenge so that they stop talking past one another is a question for each profession, the Family Law Section and Child, Youth and Family. It is crucial to draw on the skills and expertise of lawyers and social workers to develop training that meets the needs of those who are practising in a multi-disciplinary environment. Collaboration can only occur within the limits of each profession's roles and responsibilities, but, to be effective, both lawyers and social workers need to understand and respect each other's viewpoints and differences.

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