

**BECOMING A WITNESS:  
SUPPORTING YOUR CLIENT IN  
COURT**

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**TARGET AUDIENCE:**

- Workers who provide counselling and support services for clients going through family law parenting proceedings, especially clients who are victims of family violence.

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**WHY?**

- In family law parenting matters the Court needs information about the impact of family violence on victims.
- This need for information is not general or theoretical.
- It is a need for information specific to this victim and her family.

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**Section 60CC Family Law Act: How a court determines what is in a child's best interests**

**Primary considerations**

- 2) The primary considerations are:
  - a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
  - b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

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(2A) In applying the considerations set out in subsection (2), the Court is to give greater weight to the consideration set out in paragraph (2)(b).

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**Section 60CC Family Law Act: How a court determines what is in a child's best interests**

**Additional considerations**

- 3) Additional considerations are:
  - a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views.
  - b) the nature of the relationship of the child with:
    - i) each of the child's parents; and
    - ii) other persons (including any grandparent or other relative of the child);

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**Section 60CC Family Law Act: How a court determines what is in a child's best interests**

- f) the capacity of:
  - i) each of the child's parents; and
  - ii) other persons (including any grandparent or other relative of the child);
 to provide for the needs of the child, including emotional and intellectual needs;

...

- i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

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**Section 60CC Family Law Act: How a court determines what is in a child's best interests**

- j) Any family violence involving the child or a member of the child's family;
- k) if a family violence applies, or has applied, to the child or a member of the child's family--any relevant inferences that can be drawn from the order, taking into account the following:
  - i) the nature of the order;
  - ii) the circumstances in which the order was made;
  - iii) any evidence admitted in proceedings for the order;
  - iv) any findings made by the court in, or in proceedings for, the order;
  - v) any other relevant matter;

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**Section 60CC Family Law Act: How a court determines what is in a child's best interests**

- l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- m) any other fact or circumstance that the Court thinks is relevant.

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**What you have to say is relevant and important**

- Corroboration is crucial when we are dealing with a crime which takes place in private.
- Your opinions count:
  - Section 76(1) Evidence Act  
Evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed.
  - Section 79(1) Evidence Act  
If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge...

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**But you are not the Court's expert....**

- Both the *Family Law Rules* and the *Federal Circuit Court Rules* contemplate the appointment of a single expert or Court expert to give evidence about significant matters in issue.
- In parenting matters, this is commonly a child and family psychologist or psychiatrist who meets with the whole family and undertakes an holistic assessment, with focus on special forensic issues affecting that family.
- In other cases, a Family Consultant provided by the Family Court or Federal Circuit Court may prepare a Family Report.

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**But you are not the Court's expert....**

**Rule 15.41 Family Law Rules:**

This Part (other than rule 15.55) does not apply to any of the following:

- a) evidence from a medical practitioner or other person who has provided, or is providing, treatment for a party or child if the evidence relates only to any or all of the following:
  - (i) the results of an examination, investigation or observation made;
  - (ii) a description of any treatment carried out or recommended;
  - (iii) expressions of opinion limited to the reasons for carrying out or recommending treatment and the consequences of the treatment, including a prognosis...

(\*Rule 15.55 requires disclosure of your report to other parties to the proceedings, including the Independent Children's Lawyer.)

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**Rule 15.41 Family Law Rules:**

continued...

(b) evidence from an expert who has been retained for a purpose other than the giving of advice or evidence, or the preparation of a report for a case or anticipated case, being evidence:

- (i) about that expert's involvement with a party, child or subject matter of a case; and
- (ii) describing the reasons for the expert's involvement and the results of that involvement;

(c) evidence from an expert who has been associated, involved or had contact with a party, child or subject matter of a case for a purpose other than the giving of advice or evidence, or the preparation of a report for a case or anticipated case, being evidence about that expert's association, involvement or contact with that party, child or subject matter...

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### How will your evidence be given?

- In family law matters, your evidence “in chief” is given in written form.
- It should be in the form of an Affidavit.
- BUT...
  - It is usually acceptable for the Affidavit to annex a report (or reports) you have prepared (together with the letter requesting a report and your *curriculum vitae*).
  - Sometimes, the Court will accept your report into evidence without it being annexed to an Affidavit.

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### What should your Affidavit / Report include?

- Your relevant qualifications, training and experience.
- A history of your dealings with the client.
  - Dates, time frames of contact
  - Source of referral
- Observations:
  - Client’s presentation:
    - physical and emotional
    - then and now
- A description of your work:
  - Practical help – referrals made
  - Therapeutic assistance - CBT?
- The future:
  - Plans for ongoing work

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### What can your Affidavit / Report include?

- Opinions which are based upon your direct observations of your client.
- Example:
  - You cannot say: “Paul was a perpetrator of coercive controlling family violence in his relationship with Kathy”.
  - You can say: “In her sessions with me, Kathy described a pattern of coercive controlling behaviour by Paul which included:
    - Limiting her access to finances by restricting her access to cash and credit cards;
    - Taunting her with comments like, “fat pig” and “lazy cow”; and
    - Destroying Kathy’s possessions including cutting up her clothing and smashing her ornaments.”

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**Top Tip**

- Remember that evidence from you is probably already before the Court in the form of your clinical / running notes, produced in compliance with a subpoena.
- Make sure the contents of your report are consistent with the notes you have made.

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**Cross-examination**

- If you have sworn an Affidavit or prepared a report to be used in evidence, you can be called for cross-examination.
  - That means: you will be asked questions about your work with the client.
- Cross-examination – also referred to as “testing” the evidence - has two primary purposes:
  - To elicit favourable concessions; and
  - To undermine your evidence.
- You will be cross-examined by the other parent’s (party’s) legal representative and the Independent Children’s Lawyer. The Judge may also ask you questions.
- Cross-examination is not confined to the contents of your report or Affidavit.

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**The process:**

- First question: religious oath or affirmation?
  - Asked by the Court officer when you are sworn in.
- Evidence in Chief
  - This is undertaken by the legal representative for your client
  - Name, occupation, professional address.
  - Confirmation that the contents of your Affidavit / report are true and correct.
  - This is the time to make corrections!
  - Sometimes your evidence can be updated at this point (with the Judge’s permission).
- Cross-examination
- Re-examination
  - This is undertaken by the legal representative for your client.
  - An opportunity to clarify you evidence / clear up misunderstanding.

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**Top tips for surviving cross-examination**

- Listen to the question and answer only what is asked:
  - Keep your answers as brief as possible.
  - Don't "second guess" the cross-examiner's intention.
- Take your time:
  - If you don't understand the question, say so!
    - It's OK to ask for it to be repeated or reframed.
  - If you see a legal representative getting to their feet during or just after a question is asked – wait!
    - This usually means that an objection is going to be made to the question.
    - Wait until the judge resolves the objection and the question is re-framed before answering.

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**Top tips for surviving cross-examination**

- Tell the truth!
  - Make appropriate concessions.
  - Don't prevaricate.
  - If you do not know the answer, say so.
- Don't argue with the cross-examiner.
  - Remain calm and thoughtful.
- Look at the Judge when you are giving your answers.

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**Options for cross-examination**

- Sometimes distance and professional commitments make personal attendance at Court difficult or impossible. If this is an issue:
- Get your client / their lawyer to ask about you giving your evidence electronically:
    - By audio visual link ("AVL"); or
    - By telephone.
  - Have all relevant documents in front of you if this permission is granted by the Court.
  - Interposing you evidence at a convenient time.

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**Not called for cross-examination?**

- The case may have settled.
- Your evidence is unchallenged and has been accepted by the Court.

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**“Dos” and “Don’ts”**

- Do outline your professional background, training and experience in your written evidence.
- Do refer to your clinical notes when preparing report or Affidavit.
- Do remained focussed on your client, their presentation and their issues.
  - Be focussed on specific observations, not theories or generalities about family violence victims.
- Listen carefully to the questions you are asked and respond succinctly.
  - Don’t be defensive of your client.

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