

The Columbus Project in the Family Court of Western Australia: A model of reflective practice

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Introduction

The Columbus Pilot project (Columbus) conducted in the Family Court of Western Australia (FCWA) during 2001 – 2003, was established to deal with cases that are characterised by violence. Within the context of Columbus, the Family Court, and in particular, the Family Court Counselling Service (FCCS) is in a unique position to identify the needs of parents in terms of the most appropriate interventions to address issues ranging from anger management, dealing with a violent partner, or “customising” parenting skills for a parent who has been living with an abusive partner. The role of the counselling service (social scientists) in assessing risks and needs, developing appropriate interventions, and assisting clients (be they the perpetrator or the victim, adult or child) to develop new skills, is core business in the concept of the individualised case management approach inherent in Columbus.

As noted in our article in Family Matters last year (Murphy, Kerin & Pike, 2003), the FCWA in Perth commenced the Columbus Pilot project in July 2001 to individually case manage matters involving allegations of spousal violence, child abuse or sexual abuse, and family violence where there were significant risk issues in respect of the children. The Columbus Pilot project has not only acted as a catalyst for a number of changes in the Court but has also become a model of reflective practice as both the judicial officers and the counselling service staff developed new skills and knowledge, and refined their joint practice in this very difficult area of family litigation and dispute resolution. This seminar discusses how the Columbus process of jointly chaired interdisciplinary conferences in the FCWA has influenced the evolution of a model of reflective practice.

What is Columbus?

The Columbus Pilot project was developed to assist, enable, and encourage separated parents to acknowledge the debilitating effects of continuing conflict, violence or abusive behaviour, and to encourage couples to resolve their differences over contact and residency issues without recourse to prolonged litigation in the Family Court. Columbus extended the concept of differential case management in the earlier Project Magellan that was conducted in Victoria in the late 1990s (Brown, Sheehan, Frederico & Hewitt, 2001).

In Columbus, all matters involving allegations of violence or abuse are referred to the Manager of Family Court Counselling for assessment of the presenting risk factors and other selection criteria (for instance, the Columbus Pilot was limited to couples living in the Perth metropolitan area where the various support services were available or to those who had not been engaged in previous litigation).

Cases are then individually managed (not just fast tracked) through a series of family conferences which are jointly chaired by an interdisciplinary team consisting of a designated registrar¹ and a Family Court counsellor until either a stable, safe contact regime is established or the matter is progressed through the general court system. The proceedings of conferences are confidential from the Court and so are not admissible in evidence (thereby providing the potential to explore issues especially disclosures of violence or abuse) and to discuss options for managing the situation in both the short and longer term without prejudice to either party. The process also includes referrals to therapeutic services and education programs such as the very successful Contact Orders Program *Mums and Dads Forever* (Attorney-General's Department, 2003; Dickinson, Francke & Murphy, 2003).

The evolution of Columbus

In 1999, two FCSS counsellors attended a briefing on Project Magellan in Melbourne and returned to Perth with a vague plan as to how this innovative approach might be expanded to include cases involving allegations of domestic violence, drug or alcohol abuse, and mental health issues. From this genesis a series of meetings with judicial officers led to an interdisciplinary working party being established to develop a framework for such a case conferencing process. In the event, the expanded case conferencing process was limited to domestic violence and family violence and became known as the Columbus Pilot Project².

The Columbus Pilot project was implemented in July 2001 with an inter-disciplinary team of three registrars and five counsellors. From January 2002 the remaining four registrars gradually became involved in the project and, later that year, a further two counsellors joined the team to maintain the gender balance. The pilot concluded in December 2002 by which time 155 cases had been referred to the programme of which 62 were excluded for a variety of administrative reasons. The remaining 93 matters proceeded through the individualized case management process until either a safe stable contact regime was established or the parties failed to agree and the matter was returned to the normal court process for judicial determination.

The joint conferencing process was continued into 2003 in order to manage matters already in the programme and to maintain levels of expertise. As a consequence, the remaining four counsellors also became involved albeit to a lesser extent, pending the outcome of the evaluation in late 2003. By this time, all eight registrars and twelve counsellors were conducting Columbus-style conferences.

Integral to the Columbus Pilot has been the work of the Columbus Reference Group which is chaired jointly by the Director of Court Counselling and the Principal Registrar. This group of professionals from both government and non-government agencies in the "Family Court sector" meets quarterly to review the progress of the Pilot project, suggest avenues for improvement or modification in the program, provide input into the development of inter-agency collaborative protocols,

¹ Registrars in the Family Court of Western Australia hold the dual appointment of Stipendiary Magistrate.

² The Columbus process has since been expanded to include matters where there are allegations of drug abuse.

and provide guidance to the evaluation team. Members of the Reference Group have also been instrumental in promoting wider community support together with an awareness of the pressures on the general Family Court system through the Family Law Foundation.

The processes inherent in developing and implementing the Columbus Pilot raised a number of issues and challenges to the established practice within the FCWA. There were issues around professional boundaries as the social scientists (counsellors) and legal practitioners (including magistrates) wrestled with concepts around roles, process, and outcomes. This paper discusses the Columbus Pilot in the context of it being a model of reflective practice in the FCWA.

The authors have evaluated the pilot programme and a full report is being presented to the Chief Judge in late April 2004.

A Model of Reflective Practice

Throughout the period of the Pilot, the Principal Registrar and the Director of Court Counselling jointly chaired fortnightly meetings of all available members of the registrar / counsellor teams to discuss and refine approaches and practice issues within the inter-disciplinary conferencing process. These meetings were extended to three weekly during 2003 as personnel became more familiar with the processes, and now continue on a monthly basis to ensure consistency of approaches within the project and to refine practice issues where necessary. The evaluators were privileged in being able to attend each of these planning and review meetings.

During these meetings, the Columbus staff grappled with a variety of issues such as:

Protocols within the conference

- Modes of address – how would registrars be addressed; how would the various professionals (registrars, counsellors, child representatives, and legal practitioners) address each other in the conference setting?
- How would clients be addressed?
- Dress codes: levels of informality?
- Location and layout of conference rooms and who sat where?

It was agreed that the conferences would be as informal as possible with each registrar / counsellor team deciding whether to dispense with formal titles or whether clients would be addressed by their first names. All conferences took place within the Counselling Service area of the Court building thereby reinforcing the difference of approach between these and other court conferences. The formal large boardroom-style table of the usual court conference room was replaced by a more informal layout of coffee tables and tub chairs, and there is no prescribed seating arrangement for the various conference participants. This reduced formality contributed to one of the most consistently positive outcomes of the process reported by clients - namely the feeling of being heard and acknowledged by the person in authority.

The traditional practice of the parties' lawyer sitting next to the registrar has now been amended so that the parties themselves sit alongside the registrar in all other court conference settings.

Format and timing

- Who would say what and when?
- Scheduling and timing.

Initially there was some consideration of the necessity for some form of Standard Operating Procedures (SOP) and draft guidelines were developed. However, as each registrar / counsellor team developed their own unique ways of working based on their individual strengths and preferences, it was agreed that being too prescriptive might constrain the flexibility and creativity that had emerged within the conferences. Although this lack of prescription suited the original teams, it proved more problematic for the new teams who grappled with the different roles required in the joint conferencing processes.

The conferences were scheduled to convene at 11.30am. There were two reasons for this. The first was the registrar's early morning conferences within the existing Court schedule. The second was the lesson from the evaluation of project Magellan that considerable time could be spent in the conference trying to identify issues. It was therefore decided that each party would individually spend about 30 minutes with the counsellor before the conference in an attempt to clarify issues and possible areas of consensus before the conference convened. This allowed the counsellor to brief both the registrar and the child representative before the conference. This then allowed them to jointly develop or refine a conference plan and to identify potential options to explore with the couple.

A disadvantage of this timing is that the conference frequently extended well over lunchtime for all participants. The counsellor's day began with preparation at about 9.00 am and ended with writing the file notes after the parties had been debriefed and the implications of the outcomes were clearly understood. The counsellor / registrar team then met later for a team de-briefing. As one counsellor noted early in our evaluation process "you forget about eating on Columbus days".

Administration

- Maintaining conference records.
- Developing strategies for obtaining input from external agencies.
- Scheduling and allocation of personnel.
- Integrating return conferences.

Separate 'Columbus' files were created and held within the Counselling Service. These became the case planning documents and contained detailed (privileged) information that was used by the counsellor to manage the case in consultation with the Child Representative. Protocols for the transfer of information were negotiated with the statutory authority (DCD) and for referral to external service providers. The scheduling and allocation of personnel included linking counsellor and registrars diaries for return conferences, a task complicated in this jurisdiction by the need for both registrars and counselors to individually go on circuit to different parts of the state. It also included establishing mixed-gender registrar/counsellor teams to reduce the potential for perceptions of bias within the conferences.

All of this had to be integrated with the requirements for parents to undertake programmes with external services (e.g. Mums and Dads Forever), or the time required for services such as DCD and Court Expert to investigate and submit reports.

Legal considerations

- When a matter is returned to the defended list, is it appropriate for the counsellor to continue, and what is the level of their involvement i.e. does the counsellor attend pre-trial conferences?
- What is the role of the child representative in the conferencing process?
- What is the position of legal practitioners supporting the parties?

The continual review of practice within Columbus has highlighted the unique circumstances of individual matters and the need for flexibility in managing the cases. As a consequence, these three issues, together with associated practice and procedures as well as training and professional development requirements are still evolving.

Changes to the way of conducting core business

- Recognition of other peoples' expertise.
- "Horses for courses".
- Nature of the clientele.
- Continual assessment and re-assessment of system.
- Input into case assessment.
- Applications with other client groups.
- Training and PD implications.

The inter-disciplinary collaboration between the social scientists and lawyers (including judicial officers) has led to an acknowledgement and recognition of the different skills and professional competencies inherent in other professions. The Columbus process requires inter-disciplinary collaboration and a particular style of working with very difficult clients. Over the course of the Pilot it has become apparent that some registrars, and indeed some counselors, are not overly comfortable with this approach while others embrace it as professionally very satisfying. The notion of specialization ('horses for courses') has been raised in the course of the evaluation. The nature of the underlying allegations means that Columbus clients are, by definition, among the most challenging population in the Family Court system. This has required Columbus staff to have realistic expectations of potential outcomes – the conferencing process does not guarantee a different outcome – some people can only resolve their issues by going to trial.

The expectation of regular Columbus team meetings and the ability to inject new ideas, or question current practice, has become an integral part of core business in the Family Court of Western Australia. This practice has allowed lessons learned in the Columbus Pilot to inform initiatives with other client groups to address issues such as drug or alcohol abuse as well as the planning and implementation of the case assessment conferences being introduced in FCWA in July. It has also highlighted the role of external evaluators and the need for objective assessment of new processes.

In addition it has identified the need for training and PD initiatives such that the FCWA has hosted practice-orientated professional training and development seminars in collaboration with university departments (as ‘Winter Schools’) and government departments such as Multi-Cultural Affairs.

Discussion

As noted previously (Murphy, Kerin & Pike, 2003) the Columbus Pilot project has acted as a catalyst for change in a number of areas of the Family Court system in Perth.

Columbus has provided an opportunity for the registrars, counsellors, lawyers, and clients involved to experience a new way of working within the legal system. It is not quite the same as collaborative lawyering - the new and strongly endorsed way of working in the family law court system in some jurisdictions in the USA - but it certainly utilises and builds on many of the same principles.

Columbus has demonstrated that a change in the nature of registrars’ involvement in the conferencing process can have a significant impact on outcomes, not only for clients but just as significantly on the level of satisfaction for the registrars, children’s representatives, and the lawyers. Some clearly embrace this new method of working as an exciting, innovative way to work and utilise their new-found skills in other Court settings. Others find it frustrating and unsatisfactory and question whether the process promotes earlier settlement of matters (Pike & Murphy, 2004, in press).

Columbus has clearly differentiated between those lawyers who are “gladiators with a primary professional duty of zealous representation” (Tesler, p.968, 1999) and those that are prepared to re-think the role of the lawyer and the nature of the client-lawyer relationship (Cooper, 1998) - to see themselves as “in the ranks of the potential healers of at least some of the ills of the argument culture”(Tesler, p.995, 1999).

All parties (parents, lawyers, counsellors) are confronted with the knowledge that violence is a reality of contemporary family life for children in these cases. Therefore the Columbus process provides an opportunity for the registrars and the social scientists to examine what support is currently available for children who experience violence. As noted in the recent parliamentary inquiry into joint custody, these services are not adequate to fully support either the Court or the parents seeking assistance (House of Representative Standing Committee on Family and Community Affairs, 2003, Conclusion 3.26).

Other issues identified by parents in the evaluation include:

- whether it might be possible to develop more meaningful ways to really hear the “child’s voice” in these cases;
- whether the Court needs to do more in order to promote psychological wellbeing and to minimise the intergenerational transmission of violence that sees the cycle of violence repeat from one generation to the next; and
- whether we as a community are truly achieving the principle enshrined in the Family Law Act of operating “in the best interests of the child”.

The parliamentary inquiry report also suggests that these three areas require detailed examination (House of Representative Standing Committee on Family and Community Affairs, 2003).

These also raise the question as to whether a process such as Columbus provides the Court with a unique opportunity to more effectively assist children to deal with, cope with, and recover from family violence. There is abundant psychological evidence to show that exposure to family conflict, even as a spectator, is detrimental to children's psychological wellbeing. Exposure to family violence is therefore, not surprisingly, identified as a severe risk factor for children's physical and psychological development (House of Representative Standing Committee on Family and Community Affairs, 2003; Johnston, 1999, 2003).

As noted above, these areas are highlighted in the report of the Parliamentary Inquiry into child custody and include the concept of the Family Court becoming the centre of a number of inter-disciplinary research and professional education initiatives involving social scientists, legal academics, and practitioners. In Perth, the Columbus Pilot has acted as a catalyst for many of these changes to at least be considered, discussed, and in some cases implemented. These initiatives have led to practitioners in many areas developing a greater understanding of the Family Court and its processes, and promoting new collaborative working relationships – the Pathways vision of the Family Law Pathways Advisory Group report in 2001 which was subsequently endorsed by the government (Williams, 2002; Commonwealth of Australia, 2003).

Conclusion

Lessons learned from the Columbus Pilot are informing the development of the Case Assessment Conference model (also advocated in the Parliamentary Inquiry Report) which will commence in the Family Court of Western Australia in July this year. The Columbus program itself continues to evolve to meet the challenges of parents suffering from mental illness or abusing various substances. Each of these new initiatives is being developed by joint working groups of registrars and counsellors and involves representatives from the Family Law Practitioners' Association as well as government and non-government agencies of the family law network.

This collaborative approach of evolutionary practice represents a model of reflective practice in the Family Court system in Western Australia.

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