Combatting a Dangerous American Export: The Need for Professional Regulation of Psychologists in the New Zealand Family Court

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I. Introduction

This Article is the third in a series that explores the role that unreliable American pseudo-psychology plays in the New Zealand Family Court's inadequate responses to family violence. In "Endangered by Junk Science," I argued that the Court relies upon "expert" opinion evidence based on behavioral-science principles, forensic methods, and fallacious statistical reasoning that lack both foundational and as-applied validity to determine children's best interests and that the result has been entrenched pseudo-scientific mythologies that endanger women and children, immunize violent fathers, and silence children's voices.[1] In "Sub Silentio Alienation," I argued that these failures are the result of implicit associations and cognitive barriers, gender bias, and the close relationship between Family Court Judges and court psychologists, which preclude internal reform.[2] In this Article, I advance a third cause of the failure of the New Zealand Family Court to respond adequately and appropriately to unreliable expert evidence: the inability of the New Zealand Psychological Board (NZPB) to regulate and address the pseudo-science of parental alienation (PA) in the same way that American psychology boards have.[3] This inability stems from the insistence by the courts in Aotearoa, New Zealand that they possess a de facto monopoly on determining the qualifications, ethics, and reliability of their expert psychologists. The result has been the inundation of pseudo-psychology in the Family Court, much of it generated by for-profit American consultants who are not academic researchers, do not publish in peer-reviewed psychology journals, and some of whom have been disciplined by psychology boards in the United States for their professional misconduct.

II. Background

For several decades, the courts in Aotearoa New Zealand have stymied attempts by the NZPB to address professional misconduct by psychologists who offer unreliable evidence in the Family Court. Instead, the courts insist that they are competent to regulate the practice of court psychologists and that the NZPB should not step in when the courts fail to do so.

1. Carrie Leonetti, *Endangered by Junk Science: How the New Zealand Family Court's Admission of Unreliable Expert Evidence Places Children at Risk*, 43 Child.'s Legal Rts. J. 17 (2022) [hereinafter Leonetti, *Endangered by Junk Science*].

2. Carrie Leonetti, *Sub Silentio Alienation: Deceptive Language, Implicit Associations, Cognitive Biases, and Barriers to Reform* (forthcoming 2023) [hereinafter Leonetti, *Sub Silentio Alienation*].

3. In this Article, "forensic psychology" refers to the application of the scientific, technical, or specialised knowledge of psychology to assist in resolving legal, contractual, and administrative disputes. It covers forensic psychology not just in the narrow sense of the criminal-justice system (fitness and insanity evaluations, risk assessment), but also assessments performed for child-protection and private-custody cases.

In the related cases of *Haye v Psychologists Board*[4] and *Staite v Psychologists Board*,[5] the NZPB sought to discipline two psychologists, Dr. Haye and Dr. Staite, for their dueling forensic evidence in the Family Court, but the Board was rebuffed by the New Zealand High Court. The facts underlying the *Staite* complaint were as follows. In the Family Court, Mother made allegations that Father sexually abused Child. The Family Court requested a report from Dr. Staite regarding Child's best interests. Dr. Staite opined that Mother was better at fostering Child's independence and expressiveness than Father.[6] He reached this conclusion without a structured observation of Child interacting with Mother or Father.[7]

The Family Court did not address Dr. Staite's methodology, complaining instead that he had not answered all the questions directed to him in the Court's brief of instructions and instructing him to do so.[8] Dr. Staite expressed concern that answering all the questions in the brief might heighten the conflict between the parents and demanded additional payment for the supplemental report.[9] In the supplemental report, he opined that Child had a stronger attachment to Mother than to Father, Father had a compulsive personality style that made for a less healthy home environment, and joint custody was not working because of the acrimony between Mother and Father.[10] Father filed a complaint with the NZPB under the now-repealed Psychologists Act alleging that Dr. Staite committed professional misconduct by failing to use professional objectivity and integrity, support his judgments with clinical data, guard against misuse or bias in his assessment, and justify his interpretation of his assessment procedures with current scientific literature.[11]

In *Haye*, Dr. Haye faced a series of complaints in the NZPB arising out of both court-appointed and privately retained evaluations in the Family Court, including the report prepared for Father.[12] The complaints were made by mothers to whom her reports were adverse.[13] Dr. Haye had a history of minimizing reports of domestic violence and child abuse and finding that mothers were fabricating claims even when there was significant evidence supporting them.

In one case in which there were allegations of child sexual abuse against Father, Dr. Haye recommended a change in custody from Mother to Father, despite substantial corroboration of the abuse. *As a result of Dr. Haye's recommendation, Daughter was exposed to further sexual*

4. *Haye v. Psychologists Board* [1998] 1 NZLR 591 (HC).
5. *Staite v. Psychologists Board* (1998) 18 FRNZ 18 (HC).
6. *Id.* at 22.
7. *Id.* at 21.
8. *Id.* at 23.
9. *Id.* at 23–24.
10. *Id.* at 25.
11. *Id.* at 25–26.
12. *Haye*, 1 NZLR (HC) at 591.
13. *Id.*

abuse by Father and one of his friends.[14] Dr. Haye claimed that Daughter did not "directly state that she was sexually abused" despite Daughter's submission that she had been "continually molested by him and his friend (not in prison for molestation)."[15] Mother complained to the NZPB that Dr. Haye had dismissed her concerns about sexual abuse from the outset.[16] In another case, Dr. Haye opined that, despite Father's documented history of family violence, Mother's fears for Children's safety in his care were "not reality-based."[17]

Before the NZPB, Dr. Staite conceded that the psychometric measures that he used in his evaluation "had questionable validity for use in these circumstances" and that he did not acknowledge their lack of as-applied validity in his reports.[18] The NZPB found Dr. Staite guilty of professional misconduct.[19] The Board found that he failed to adopt an appropriate methodology for his investigations, provide supporting clinical data for his assessments, base his conclusions on adequate evidence, and appropriately qualify his opinions.[20] Specifically, the Board found that Dr. Staite engaged in inadequate sampling, used psychometric measures with questionable as-applied validity in a forensic context, and overstated his data-collection measures to inflate their validity.[21] The Board also found that Dr. Staite failed to indicate clearly how he gathered his information or the strategies that he used or to provide objective referents by which his conclusions could be judged.[22] The Board explained the necessity of identifying data-gathering strategies and their basis, identifying the limits to the reliability of the data and their weight, advancing conclusions in a way that makes clear how they were reached, and justifying clinical and professional decisions by demonstrating their evidentiary basis.[23] The Board noted that anyone seeking to assess the strength of Dr. Staite's conclusions would have to "make a leap of faith (which is not appropriate in our profession) of expecting that the report writer 'knows best' and has done things properly."[24] In essence, the Board found that Dr. Staite had a methodologically insufficient basis for reaching his conclusions.[25] The NZPB also found that Dr. Staite had been biased toward Mother and against Father in both his assessment processes and resulting conclusions and that his lack of a standardized assessment procedure facilitated biased decision making.[26] They noted that he made

14. *Id.* at 597.
15. *Id.* at 598.
16. *Id.* at 605.
17. *Id.* at 597.
18. *Staite*, 18 FRNZ (HC) at 38.
19. *Id.* at 29.
20. *Id.* at 32.
21. *Id.* at 35–36.
22. *Id.* at 37.
23. *Id.*
24. *Id.*
25. *Id.* at 39.
26. *Id.*

conclusions about the parties' home environments that were "essentially unsupported" and "not based on standardized evaluations."[27]

In the first case in *Haye*, the NZPB found Dr. Haye guilty of professional misconduct for failing to detect Father's abuse of Daughter and failing to recognize and state the limits of her competence.[28] The Board also found that Dr. Haye had been selective in weighing clinical material and dismissive of Mother's allegations of sexual abuse and found Dr. Haye's claim that there was no evidence of abuse to be "disturbing."[29]

In the second case in *Haye*, the NZPB found that Dr. Haye had given significant time and weight to Father's claims that he would discontinue his use of family violence but did not give corresponding time and weight to Mother's fears that that the violence would repeat.[30] The NZPB concluded that Dr. Haye failed in her obligation to secure training and supervision to be competent in assessing claims of child sexual abuse.[31]

Both Haye and Staite appealed the NZPB's findings. The High Court overturned the Board's discipline in both cases, even though, in *Staite*, the Court upheld most of the Board's findings.[32] Both Justices critiqued the NZPB's perceived "interference" in Family Court's processes by insisting on regulating the ethics and professionalism of forensic members of their profession.

The High Court Justice, in reviewing Dr. Staite's discipline, admonished the NZPB that it should "act with caution" in disciplining Family Court report writers.[33] He found that "one would expect Family Court Judges to become aware, very quickly, of psychologists whose reports are not of a high standard and to ensure that such psychologists are not invited on subsequent occasions to provide reports."[34] The Justice reviewing Dr. Haye's discipline similarly found that Family Court Judges were "in a good position" to assess claims of misconduct against court psychologists because they possessed "a comprehensive knowledge of the particular proceeding" and "a full knowledge of the rules, practices and procedures of the Family Court."[35]

These claims are surprising and dubious. The whole point of expert evidence is that the witness possesses expertise in a field in which the court does not. If judges possessed sufficient expertise in forensic psychology, they would not need expert evidence from forensic psychologists. Whether a particular psychologist should be disciplined for the methodology that they used in reaching conclusions conveyed to the court is even further afield of the competency of judges. As discussed

27. *Id.*
28. *Haye*, 1 NZLR (HC) at 591–96.
29. *Id.* at 591–92, 598.
30. *Id.* at 598.
31. *Id.* at 597.
32. *Staite*, 18 FRNZ (HC) at 41; *Haye*, 1 NZLR (HC) at 606–07.
33. *Staite*, 18 FRNZ (HC) at 20.
34. *Id.*
35. *Haye*, 1 NZLR (HC) at 602.

in greater detail below, judges and lawyers lack the expertise to assess competency in forensic psychology. While judges might be competent to determine whether a psychologist complied with the court's instructions for the report, they cannot sufficiently regulate the validity and reliability of a psychologist's forensic methodology. On the contrary, decades of courts admitting and relying on junk psychology clearly establishes that they cannot.[36] In rejecting the NZPB's findings about Dr. Staite, the High Court Justice often candidly acknowledged that he did not understand the Board's concerns, and his discussions of Dr. Staite's use of psychometric measures demonstrated this lack of understanding.[37]

Not only were the High Court's claims that Family Court judges were able to regulate bad psychological evidence dubious, under the facts of *Staite* and *Haye*, they were demonstrably false. In both sets of proceedings, the psychologist gave unreliable evidence, and the Family Court relied on it—in the second case in *Haye*, by awarding custody of a child to a father who sexually abused her and continued to do so. Not only was the Family Court not *able* to identify this evidence as unreliable, it *did not* do so, as its award of custody to Father demonstrates.

In both cases, the High Court found that while the NZPB had jurisdiction to regulate the practice of psychologists in the Family Court, the jurisdiction was "qualified" by the "Family Court's comprehensive control" over the forensic reports that it requested.[38] The High Court's reasoning was labyrinthine, based on the statutory requirement that the physical reports prepared by evaluators remain in the custody of the Family Court, the Family Court's inherent authority to exercise its statutory jurisdiction, and what it described as the special relationship between the Family Court and its psychologists, which extended to the right to determine their qualifications.[39] This logic is tortured. Expert witnesses offer evidence in all manner of disciplines in all manner of cases. The courts' inherent supervisory authority over the conduct of litigation has never extended to regulation of the rules of professional conduct for other types of expert witnesses. It is an extraordinary claim that is being made with regard to the regulation of the conduct of psychologists who give evidence in the Family Court.

This reservation of jurisdiction is also arguably ultra vires. The Health Practitioners Competence Assurance Act (HPCAA) delegates to the NZPB the authority to set the terms and scopes of practice for psychologists and prescribe qualifications for each scope of practice.[40] The Family Court, however, reserves to itself a gatekeeping role regarding its psychologists, even refusing to provide the NZPB with

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36. Leonetti, *supra* note 1.
37. *Staite*, 18 FRNZ (HC) at 36.
38. *Haye*, 1 NZLR (HC) at 600.
39. *Id.* at 601–02.
40. Health Practitioners Competence Assurance Act 2003 (HPCAA) ss 11(1) & 12(1) (N.Z.).

access to psychologists' court reports for consideration in disciplinary proceedings.[41]

The High Court also invoked the talismanic "specialist Court with particular expertise" language that so often insulates unreliable and folkloric decision making in the Family Court from meaningful appellate scrutiny.[42] In an even more shocking passage, the High Court admonished that the "psychologists code of ethics" had to give way when it was "incompatible with Family Court practice."[43] The Justice insisted: "A psychologist filling a Family Court role is entitled to be judged against a code of ethics which is compatible with Family Court practice, not vice versa."[44] He also insisted that "it was not for the board to tell Dr. Haye how she should have discharged her duties to the Court. It was for the Court to respond to the information provided in Dr. Haye's report."[45] These are incredible claims. The rules of professional conduct for psychologists were developed by expert psychologists to preserve the integrity of their discipline and protect the public from poor practice. If Family Court practices are incompatible with ethical practice by psychologists, surely it is the practices of the Family Court that must be reformed.

Both Justices adopted an agency view of the relationship between forensic psychologists and the parties who retain them, essentially finding that the test of professional misconduct should be customer satisfaction. The Justice reviewing Dr. Staite's discipline held that he owed no duty of care to the parties or Child.[46] He also found that the requirement that an evaluator provide reasons for their conclusions was not a matter of professional ethics but rather "a matter to be determined primarily by client and psychologist."[47] He held: "If the client is satisfied with the extent to which conclusions are backed by reasons," then there was no basis for the NZPB to find professional misconduct.[48] The Justice reviewing Dr. Haye's discipline reached a similar conclusion, suggesting that, when privately retained, a forensic psychologist only owed a duty to the party retaining them and, therefore, could not commit misconduct regarding another party in the proceedings.[49] This suggestion is belied by the Code of Ethics for Experts in New Zealand, which requires all experts to act impartially and not as advocates for one party.[50] It is also disastrous public policy. Adversarial adjudication is not enhanced by parties retaining partisan experts beholden to one side. This is the whole purpose behind HCR Schedule 4. The retaining party on whose behalf an expert

41. *Haye*, 1 NZLR (HC) at 606.
42. *Id.* at 601.
43. *Id.* at 603.
44. *Id.*
45. *Id.* at 606.
46. *Staite*, 18 FRNZ (HC) at 31.
47. *Id.* at 38.
48. *Id.*
49. *Haye*, 1 NZLR (HC) at 604.
50. *See* New Zealand High Court Rules 2016, Schedule 4.

offers a one-sided opinion would never complain to the NZPB about their conduct. This is not evidence that the expert has provided reliable evidence. On the contrary, a "satisfied customer" in an adversarial process is likely evidence of the opposite. The case involving Dr. Haye is a perfect example of the nonsensical nature of this claim. Dr. Haye ignored Mother's and Daughter's reports of Father's sexual abuse and recommended that he be given custody of Daughter. Of course, Father is not going to complain about that recommendation. He was a sexual predator who engineered sole custody of Daughter to have unfettered access to his victim. It is extraordinary for the courts to suggest that Mother and Daughter had no standing to complain to the NZPB about Dr. Haye's lack of professionalism merely because she was Father's expert when the Family Court's adoption of Dr. Haye's recommendation resulted in Daughter enduring years of additional sexual abuse.

When Daughter began engaging in self-harm, acting out violently, and running away from Father's home, she was admitted to Christchurch Hospital.[51] Mother asked the staff to evaluate Daughter for sexual abuse, but Father provided the hospital a copy of Dr. Haye's evaluation finding that Mother's claims were unsubstantiated.[52] As a result, the hospital disregarded Mother's concerns.[53] Rather than recognizing that the ongoing harm to Daughter from Dr. Haye's dangerous and incompetent assessment gave her a right to complain to the NZPB regarding Dr. Haye's conduct, the High Court distorted the factual record to reach the opposite conclusion. The Justice found that, because the hospital psychologists also disbelieved Mother, Dr. Haye could not be faulted for doing so, ignoring that it was Dr. Haye's prior unfounded discrediting of Mother's concerns that led the second set of psychologists to do so.[54]

Ultimately, the High Court concluded that the NZPB was "out of bounds" in finding that Dr. Haye committed professional misconduct.[55] The Justice found that, because section 29A of the New Zealand Guardianship Act 1985 (the predecessor of section 133 of the New Zealand Care of Children Act 2004 (CoCA)) authorized the Family Court to request a report from a psychologist whom they "considered qualified," the NZPB finding that a court psychologist had committed professional misconduct was "interfering" with and "questioning" the Court's exercise of its powers to request reports.[56] This is a tortured and indefensible claim. The Family Court appoints a psychologist before they prepare their report. The concerns regarding Dr. Haye's reports arose after she completed and provided them. It was not metaphysically possible for the Family Court to have predetermined that her report was reliable at the

51. *Haye*, 1 NZLR 591 (HC) at 605.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* at 606.
56. *Id.*

time of appointment. Even worse, if the Family Court did so, such predetermination would be a breach of natural justice. A parent or child whose interests and wellbeing are harmed by an unreliable psychological report has a right to an open-minded tribunal if they seek to challenge expert testimony on the ground that the expert is either unqualified to render the opinion or followed an unreliable methodology in reaching it. If the High Court was correct, and the Family Court's decision to appoint a psychologist was a predetermination that any opinion that subsequently came out of that expert's mouth was reliable *per se*, this would be a concerning abdication of the Family Court's obligation to be impartial and fair in the administration of justice.

Not only was the High Court's reasoning at times preposterous, but the result that it reached in both cases was simply wrong. The psychologists whose conduct was under review engaged in breaches of professionalism that not only involved their professional ethics, but also the reliability of the evidence that they offered (evidence that the Family Court ultimately relied, in at least one case to the terrible detriment of a child that it failed to protect from ongoing sexual abuse). A forensic psychologist who has a methodologically insufficient basis for reaching conclusions, fails to provide supporting clinical data for assessment procedures, fails to adopt an appropriate investigation methodology, fails to base conclusions on adequate evidence, fails to acknowledge the limitations of opinions or the data that support them, uses techniques that lack as-applied validity, overstates data-collection measures to inflate their validity, fails to indicate the evidence bases for conclusions by reference to objective measures by which their conclusions can be judged, and uses a standardless assessment procedure that opens the door to biased decision making, is demonstrating a lack of qualifications to render an expert opinion. Professional ethics aside, the Family Court should care about these shocking methodological failures and refuse to admit or consider expert evidence demonstrating these flaws. A forensic psychologist who disregards substantial evidence of abuse and recommends custody to a family-violence perpetrator, particularly when she does so because she lacks basic competency in issues relating to child abuse and neglect and has not sought appropriate training and supervision in a subject matter that forms the core of the best-interests assessment in most cases, is dangerous and should never again be allowed to mislead the Court regarding a child's welfare and best interests. The High Court Justices who reviewed the administrative proceedings between the psychologists and NZPB failed to consider that the Family Court's prior allowance of and reliance upon this junk science indicated its lack of competency to screen expert evidence.

The Family Court's semi-inquisitorial nature makes outside regulation of the conduct of its psychologists more necessary. As I previously noted in "Sub Silentio Alienation," the symbiotic relationship between the Family Court and "their" psychologists has blinded its Judges to

psychologists' methodological failures.[57] In insisting that "their" psychologists must be exempt from the ordinary professional scrutiny to which all other psychologists' practice is subject, the Family Court's discussion of them is almost proprietary. It is as if the courts are affronted that a member of their little family would have to answer to an outside authority.

III. Failure to Regulate Forensic Psychologists

While psychologists who practice in the criminal-justice system tend to be relatively proficient at self-regulation because they are often trained and employed institutionally (for example, in Aotearoa New Zealand, by Forensic Mental Health Services or the Department of Corrections), psychologists who practice in the New Zealand Family Court have no standards or regulation as forensic practitioners. They work in private practice and are responsible for securing their own training and supervision; most are solo practitioners.

The only guideline governing psychologists who provide expert evidence in the New Zealand Family Court is a Practice Note for Specialist Report Writers promulgated by the Principal Family Court Judge.[58] While the Practice Note is not legally binding, it indicates the practice of the Court. The Family Court maintains a list of report writers, which is composed by Family Court personnel (a case-flow manager, a judge, and two "experienced report writers"). To be eligible to write court reports, psychologists are only required to have five years' clinical experience, including three years "in child and family work."[59] There is no requirement that they have training, experience, or credentials in forensic psychology or specialised expertise in family violence or child abuse. Psychologists must demonstrate evidence of competency in a list of knowledge and skills, but *none* of the required skills involve the forensic application of psychology to legal determinations. The word "forensic" does not appear in the sixteen-page Practice Note.

Under the Practice Note, the Family Court "should deal with most complaints involving psychologists as part of its jurisdiction to regulate its own processes and exercise the powers and functions conferred upon the Court by statute."[60] The Practice Note indicates, specifically, that the Court will "deal with" matters relating to allegations of bias or discrimination by a report writer, the "methodology used," or any "matter relating to the content of the report."[61] The Principal Judge does not identify which statutory powers he believes confer upon the Family Court the

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57. Leonetti, *supra* note 2.

58. New Zealand Family Court Practice Note, Specialist Report Writers, available at: https://www.lawsociety.org.nz/assets/FLS/FLS-Resources/Practice-Notes/Specialist-Report-Writers-Practice-Note-9-July-2018.pdf (last visited September 6, 2022).

59. *Id.* at ¶ 13.1(c).

60. *Id.* at ¶ 16.3.

61. *Id.* at ¶ 16.4.

jurisdiction to deal with complaints involving psychologists who testify in the Court, but presumably this is a reference to CoCA Section 133. If so, it is an extreme reading of Section 133, which is a funding mechanism to allow the Court to contract with psychologists when it needs expert evidence. It is a particularly incredible claim given the New Zealand Parliament's explicit grant of that statutory authority to the NZPB in the HPCAA. Even in cases involving breaches of ethics or professional competence, the Practice Note dictates that the Family Court must "formally refer" such complaints to the NZPB and that the Court does not need to refer complaints to the Board unless it appears to the Judge there are issues "best dealt with by the Board."[62] This is an incredible reservation of decision-making discretion for the Court. Psychologists are regulated by the NZPB because the NZPB has the institutional competency to assess their professional conduct. It is baffling that the Principal Judge, who lacks any specialised training, education, or credentials in psychology, believes that judges are better placed to assess the professional conduct, competency, and ethics of psychologists.

The Practice Note also dictates that only the child is the "consumer of the health service provided" by a court psychologist's evaluation and the "parents and other parties are not deemed to be health consumers in this context."[63] The Practice Note gives no indication of the Principal Judge's legal authority for such a declaration. The Practice Note also dictates that complaints about court-appointed psychologists will be dealt with by the presiding judge when proceedings are in progress and the Administrative Judge after proceedings have concluded.[64]

The Practice Note dictates that when the presiding judge deals with a complaint about a psychologist, they can do so through "cross-examination, submission, or evidence called on behalf of the complainant."[65] This proscription is bizarre. Cross-examination during an evidentiary hearing is an inappropriate mechanism for determining whether a psychologist has breached ethical and professional obligations by failing to act without bias or discrimination, have a sufficient scientific basis for opinions, or avoid harm. The Practice Note treats ethical violations by psychologists as if they are issues of credibility or admissibility, rather than of professional misconduct.

According to the Practice Note, complaints made about psychologists' ethics or competency more than six months after the conclusion of proceedings "will be automatically rejected by the Family Court."[66] This artificially imposed limitations period is indefensible. The purpose of ethical and professional restrictions on psychologists is to protect the public from harm. If a psychologist is engaged in unethical practice, it is

62. *Id.* at ¶¶ 16.3, 16.8.
63. *Id.* at ¶ 16.3.
64. *Id.* at ¶ 16.6.
65. *Id.* at ¶ 16.7.
66. *Id.* at ¶ 16.9.

in the public interest that their conduct be regulated and that discipline be imposed in appropriate cases, as long as that psychologist continues to practice.

This lack of meaningful professional regulation by a psychology board with the competency to assess the quality of forensic practice is concerning. "Experience" cannot substitute for expertise, which is sorely lacking in this community of practitioners. Forensic psychology as a subspecialty has a history of insularity, poor quality of professional practice, and failure to acknowledge and respect the rights of individuals who are subject to court evaluations. The circular nature of the selection and regulation of court report writers has created a situation in which the fox is watching the methodology of the hen house.

Despite claiming it as their own, the courts in Aotearoa, New Zealand have simultaneously disavowed any "jurisdiction" to regulate the methodology of psychological report writers in the Family Court. For example, in *K v. K*,[67] the High Court found that the Family Court lacked the jurisdiction to determine "how the expert elects to prepare a report."[68] This is despite the fact that less than a decade earlier, in *Staite* and *Haye*, the High Court found that the Family Court's jurisdiction to appoint psychologists under CoCA overrode the NZPB's ability to regulate members of its professional ranks.[69] This simultaneous insistence that the Family Court is the primary regulator of the professional conduct of Court psychologists and refusal to regulate their methodology has created an "anything goes" vacuum in which no one is regulating poor forensic practice.

Instead, the courts in Aotearoa New Zealand largely rely on HCR Schedule 4, which sets forth the obligations of expert witnesses generally in the courts. These obligations are not specific to psychologists and do not include considerations of methodology. They cannot substitute for regulation of the subspecialty of forensic psychology by the NZPB. On the contrary, the courts in Aotearoa New Zealand regularly express a concern that, if they regulate forensic psychologists too strictly, psychologists will not agree to provide court reports. Scarcity cannot justify looking the other way on methodological failures.

IV. Need to Regulate the Folk Psychology of the PA Industry

A. *Unprofessional Nature of "Expert" PA Evidence*

As discussed in more detail in "Endangered by Junk Science," PA was originally an American construct, and it has been exploited for profit in the United States for decades.[70] The phrase "parental alienation" was

67. *K v. K* [2005] NZFLR 28 (HC).
68. *Id.* at ¶ 72.
69. *Haye*, 1 NZLR. (HC); *Staite*,18 FRNZ 18 (HC).
70. Leonetti, *supra* note 1.

first coined by American psychiatrist Richard Gardner.[71] Gardner had a for-profit corporation, Creative Therapeutics.[72] He derived approximately ninety-nine percent of his income from paid forensic consulting and testimony.[73] He testified in hundreds of cases in the United States.[74] He self-published forty-two books and sold videotapes and "other aids" through Creative Therapeutics.[75] Since Gardner's death, a new phalanx of paid consultants have stepped up to capitalize on the lucrative nature of PA evidence in the United States.

The case of *J.F. v. D.F.*[76] is illustrative of both the unreliable nature of "expert" PA evidence and the financial conflicts of interest possessed by many of its proponents in the United States. Mother was Children's primary caretaker when they were young.[77] After separation, the parties had joint custody by agreement.[78] Two years later, when Children were fifteen, thirteen, and seven, Father applied for sole custody, alleging that Mother's conduct "alienated the children from him."[79] Father claimed that Children's request to live with Mother instead of him was evidence that Mother had "poisoned the children against spending time with him."[80]

The nature of Father's PA "evidence" demonstrates the malleable, subjective nature of the PA construct. As the New York Supreme Court explained:

> He claims that his daughters are "cooler" to him than when they were younger, that they are often sullen when they come to his home, and that they do not immediately warm up to him when they arrive for visitation; although they eventually overcome their cooler disposition and then warmly embrace him after time with him. Like many teenagers, they are not always in *accord* with the father's direction. ***He claims that the once close relationship between the nanny and the daughters has been altered since she became his girlfriend.***[81]

The nature of Mother's responsive evidence demonstrates the superior plausibility of other causes of estrangement that is a feature of so many PA cases:

> She cites his calling the police on allegedly six different occasions to serve an order of protection and accuse her of theft (including one time when the children were with her); delivering the order of protection to parents of the children's friends and a church minister; preventing the children from visiting the mother's California

71. People v. Fortin, 706 N.Y.S.2d 611, 612 (N.Y. Sup. Ct. 2000).
72. *Id.* at 612.
73. *Id.*
74. *Id.* at 613.
75. *Id.* at 612.
76. J.F. v. D.F., 61 Misc.3d 1226(A) (N.Y. Sup. Ct. 2018).
77. *See id.* at 29.
78. *See id.* at 1.
79. *Id.*
80. *Id.* at 13.
81. *Id.* at 14.

> relatives when they were with him; confiscating one of the daughter's phones to prevent her from calling her mother; blocking the mother's emails to him; suggesting that the mother may suffer from munchausen by proxy; recording conversations with the children and having his girlfriend record conversations as well.[82]

Father called a veritable VIP lineup of American PA promoters as experts. He called Amy Baker, whose "work" is relied upon by psychologists in the New Zealand Family Court. Baker is a self-described "expert, author, and coach in parental alienation."[83] Baker sells books and offers "coaching" through her website.[84] She offers coaching rather than therapy because she is not a licensed clinical psychologist.[85] Dr. Baker contended that Mother was "limiting contact, by over scheduling activities."[86] She "suggested that the mother was solely motivated to limit the children's time with their father."[87] She claimed that Mother "was limiting the father's telephone contact with his daughters."[88] She described what she called the "metaphorical removal" of Father from Daughter's life by "removing pictures or mementoes of the family's married life" from her residence.[89] She testified that there was evidence that Mother portrayed Father as "dangerous" to Children, because she gave the oldest daughter a cell phone to use when staying with Father.[90] She testified that Mother confiding "facts of the court process or other facts of the mother and father's personal or financial relationship with the children was evidence of alienation."[91] She testified that Mother wanting Father to have television-viewing rules that were consistent with hers "undermines his authority."[92]

Father also called social worker Linda Gottlieb, author of a non-peer-reviewed book about PA. Gottlieb is not a psychologist, although she runs a for-profit PA "reunification" programme in Florida called "Turning Points."[93] Gottlieb testified that she was such an expert on PA that she could "know what the children were gonna say before they said it."[94] She testified that she made credibility findings regarding the

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82. *Id.*

83. Amy J.L. Baker, https://www.amyjlbaker.com [https://perma.cc/J2KZ-6YG6] (last visited December 14, 2022).

84. *See id.*

85. *See id.*

86. *J.F.*, 61 Misc.3d 1226(A) at 16.

87. *Id.*

88. *Id.*

89. *Id.* at 17.

90. *Id.* at 18.

91. *Id.* at 21.

92. *Id.* at 22.

93. Vicky Nguyen, et al., *No Oversight for Programs Advertising They Reconnect Children with "Alienated" Parents*, NBC Bay Area (Nov. 2, 2018 3:43 PM), http://www.nbcbayarea.com/news/local/no-oversight-for-programs-advertising-they-reconnect-children-with-alienated-parents/64105 [https://perma.cc/768N-RR8P](last visited September 7, 2022).

94. *J.F.*, 61 Misc.3d 1226(A) at 24.

parents' testimony and assessed the parents' behaviors to determine "normal parenting."[95] She testified that a strong bond between parent and child might not be healthy, but could be an "indication of psychological enmeshment."[96] She testified that saying "I miss you" to a child during contact with the other parent was evidence of PA.[97] Father also called Robert Evans, one of the co-owners of the proprietary American "reprogramming" camp Family Bridges, discussed in more detail below. Evans offered "a forensic opinion with a reasonable degree of clinical certainty for parental alienation."[98] In support of that opinion, he suggested that Children's friends were not permitted to go to Father's house.[99] Evans subsequently conceded that there was no evidence to support that claim.[100] Evans found that Mother engaged in "character assassination" of Father because she had friends in the courtroom at the start of the proceeding even though there was no evidence that Children knew that Mother brought support people.[101] In sum, Father's experts argued that, "based on the acknowledged conduct by the mother, and the daughters' changed interactions with their father, alienation must exist."[102]

Mother called a rebuttal expert, Dr. Peter Favaro, who took issue with the methodology employed by Father's PA experts. Regarding Children's "defiant" and "uncooperative" behavior with Father, Dr. Favaro explained that a teenager being disrespectful and defiant with a parent was not necessarily a sign of interference by the other parent but could be a normal developmental phase.[103] Dr. Favaro expressed concern that Father's experts were demonstrating confirmation bias by having a predetermined idea that Children were alienated and then utilizing only information that supported their prejudgment and eliminating any of the data that refuted it.[104]

The trial court found that there was "sufficient parental alienation to deem a sufficient change of circumstances" to warrant modifying the custody arrangements.[105] The court's findings included that "the mother was engaged in conduct that painted the father as 'unloving'," even though Mother never spoke those words.[106] Instead, the court's finding was based on the inference that, because she let Children choose

95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.* at *27.
99. *See id.* at *26.
100. *See id.*
101. *Id.*
102. *Id.* at *28.
103. *Id.* at *28.
104. *See id.* at *27.
105. *Id.* at *1.
106. *Id.* at *2.

with whom to live and advocated for the change in custody that Children desired, her actions were designed to make "the dad look like he was an ogre.'"[107]

On review, the New York Supreme Court found that there was not "an iota of evidence that anyone of three daughters [were] alienated from their father."[108] The Court recognized that the PA concept "sidled its way into New York's family law largely because of aggressive parent reactions to changes in their relationships with their children after a divorce."[109] The Court explained:

> The landscape of post-divorce family relationships is pitted with emotional intra-family land mines. Children, whose lives can be turned topsy-turvy by the separation of their parents, have uncertain and unpredictable reactions to the separation and their view of the causes of such separation. Combine these understandable and easily foreseen changes in the children's relationship with their parents, with the increasing independence and self-determination of children as they grow into teenagers, and it becomes difficult for any parent, professional, or ultimately the court, to determine the relative causes of a teenager's reaction to their parents.[110]

The Court found that Children's comments were "evidence that they would prefer to reside with their mother during school weeks; they are not evidence that the daughters have 'rejected' their father."[111] The Court noted that "[e]xcessive litigation based on a flimsy theory" of PA could cause as much estrangement as the conduct of the allegedly alienating parent.[112] It found that "the parental alienation theory is a new tool in the 'para-psychology-in-the-courtroom complex,' as part of a strategy to upend negotiated parenting agreements by the more aggressive and more moneyed spouse."[113]

The Court explicitly rejected much of Dr. Baker's testimony as lacking an evidentiary foundation. Regarding her claim that Mother was scheduling Children's activities to interfere with Father's contact, the Court found:

> In contrast, the proof shows that the daughters all enjoyed their activities and the parents, prior to their separation, had encouraged numerous activities. The mother may have violated the agreement by scheduling an activity without the father's express consent or approval, but her motivation was the same after the divorce as the parents had employed during the marriage; *ie*, to keep their daughters active. Furthermore, there is also no evidence that the father lost any time with his children as a result of their crowded activity

107. *Id.*
108. *Id.* at *29.
109. *Id.* at *3.
110. *Id.*
111. *Id.* at *13.
112. *Id.* at *6.
113. *Id.*

> schedules. There is no evidence that he even discussed the scheduling with his daughters or suggested to them that they not participate.[114]

Regarding Dr. Baker's claims about Mother "interfering" with Father's communication with Children, the Court noted:

> They had access to phones when they were with their mother. In addition, making this bald statement that the mother interfered with communication between the father and his daughters, ignores the fact that the children spent half their time each week with their father. The father never testified that his daughters complained about a lack of access to him. Even crediting all of his testimony and the expert's comments, the interference by the mother on texts and telephone calls was occasional and does not represent any systemic or prolonged interference with the father's communication with his daughters, whom he had overnight half of each week.[115]

The Court noted that Dr. Baker "described the 'withholding of love' by the mother of the daughters as part of an alienation strategy, but there is not a shred of evidence of that here."[116] The Court explained that Dr. Baker "described, through what can only be described as psychological circumlocution, that if the mother signed up the daughters for activities and then tells the daughters that their father does not approve the activities, that is evidence that the mother wants the daughters to think that their father does not love or care for them."[117] The Court found:

> In considering this suggestion, the court notes that there is no evidence that the mother ever told the children that the father did not support their activities or denied them access to activities. There is ample evidence that the mother and father quarreled over the activities and the father, having negotiated for limitations in the separation agreement, insisted on enforcing the limitation.[118]

Regarding Dr. Baker's evidence that Mother giving Daughter a cell phone was intended to suggest that Father was dangerous, the Court "decline[d] to infer that giving a teenaged daughter a cell phone" meant that Mother "was planting a suspicion in her daughter's mind that her father was a 'danger' to her."[119] The Court noted: "Dr. Baker testified that the mother keeping secrets with her daughters would be evidence of alienation, except there is no evidence of any such secrets here."[120] Regarding Dr. Baker's amorphous evidence about Mother involving Children in adult issues, the Court explained:

> [T]he children asked a raft of legal questions that needed answers and, at times, made unsolicited comments to their mother about spending time with their father. The fact that the mother responded

114. *Id.* at *16.
115. *Id.*
116. *Id.* at *17.
117. *Id.*
118. *Id.*
119. *Id.* at *18.
120. *Id.* at *21.

> does not constitute alienating conduct. An attorney mother, confronted by curious children about legal topics and their implications in their lives, faces Hobson's Choice. Saying nothing suggests indifference to the daughters' inquiry, while responding decisively - and honestly, but in emotional manner as might befit a former spouse - sounds rude and alienating, and responding with bromides such as "your father needs you and needs your love and affection," as one expert suggested, is unrealistic and, pollyanna-ish. However, even if this court credits the testimony that the mother heard the children make comments about their father and their desire to spend less time with them, there is simply insufficient evidence of a regular and consistent course of these comments to draw the conclusion that the mother was encouraging the daughters' discontent with their father.[121]

Regarding Mother's objections to Father's television rules, the Court noted:

> If this conduct is evidence of alienation, and evidence that the father's authority has been undermined, it will be news to his daughters, who acknowledge that their father had his own rules in his house and, like a many a teenager before them, they have, at times, reluctantly and with objection, followed them. Even so, the father cannot point to any rule or requirement of his household that his daughter have failed to follow.[122]

The Court also rejected Dr. Baker's claim that Children resisted contact with Father by not returning his calls, noting: "A teenager not returning a phone call from a parent may be evidence of age-appropriate indifference or sloth but is not evidence of parental alienation."[123] Dr. Baker suggested that Children were "delusional" or beginning to "believe these delusional thoughts" about Father, but the Court could not find "any evidence that the children—from oldest to youngest—have any hint of 'delusion' in their relationship with either parent."[124] The Court found that Dr. Baker's evidence lacked credibility, explaining:

> At one point, [Dr. Baker] said: "I believe that the children's feelings and love for their father have been undermined and destroyed. I don't see any evidence . . . I have to be able to reason backwards." The first sentence is an unfounded prediction made without ever talking to the children. The second sentence is exactly the opposite of what this court does: the court examines evidence and "reasons forward." These statements undercut the Court's confidence in this expert's opinion.[125]

The Court was even less impressed with Gottlieb's testimony, describing it repeatedly as counterintuitive, hyperbolic, and internally

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121. *Id.* at *22.
122. *Id.*
123. *Id.* at *22 n.50.
124. *Id.* at 24 n.54.
125. *Id.* at *24 n.52.

inconsistent.[126] The Court described her as "detach[ed] from the reality of struggling parents involved in a difficult and tension-filled divorce."[127] The Court explained: "The mere failure of the mother in this case to engage in ideal conduct does not mean her conduct is alienating."[128] The Court found:

> Ms. Gottlieb's characterization that the children's undisputed consistent access to their father was nonetheless evidence of being "somewhat alienated" strongly suggests that this expert had no actual proof that the children are alienated from their father. For this court, the expert's comment, at times, reached almost the apex of foolishness: she testified that a mother who tells her children that she misses them when they are gone is guilty of alienating conduct and manipulation. If so, every mother in the world needs reprogramming.[129]

The Court continued:

> This suggestion that this expert's rendition of what a parent should say in these instances would be "normative" and that the inference that anything less hospitable is evidence of alienation further undercuts the entire testimony of this witness. In this Court's 10-year experience on the bench, a normative parent - having struggled through a difficult and expensive divorce, with the knowledge that the former spouse was living with the couple's former nanny, and facing curious intelligent, perceptive teenage children - would never react with the halo-inspired comments articulated by this expert as "normative." The comments described above, if made by a spurned spouse to her nearly-teenaged daughter, are worthy of mythical ex-spousal sainthood, not evidence of normal parenthood. These suggested comments by this expert – alone – strongly suggest that this expert, perhaps well-versed in the clinical textbooks of "normative parenting," has no idea what occurs in the real world of post-divorce parenting in high-conflict cases. To suggest that any deviation from the expert's instructions – instructing mythical children on how they should behave and what they should do – constitutes alienation shows a detachment from reality that leads this court to conclude that these comments – and much of this expert's analysis – while perhaps advancing an ideal to which parents should aspire, is unworthy of credit.[130]

Regarding Gottlieb's testimony that saying "I miss you" to a child was evidence of PA, the Court noted: "Never has the phase 'I will miss you' – a tender loving expression between any parent and a child – been accorded such negative psychological weight and this expert's lending it that weight in this case seems singularly misplaced."[131] The Court noted that Gottlieb only conceded after repeated questioning that it

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126. *See id.* at *24-*26.
127. *Id.* at *25.
128. *Id.* at *25 n.58.
129. *Id.* at *24.
130. *Id.* at *25.
131. *Id.* at *24 n.56.

was "remotely possible" that giving a teenager a cell phone "may not be evidence of alienation."[132] The Court also noted that, when Gottlieb was asked whether a child might want to spend more time with one parent without being alienated, she "evaded" answering, finally testifying that she had not "seen it."[133] The Court concluded that her "failure to give straightforward answers to the attorney for the children's questions renders her testimony incredible and – and counterintuitive or not – inconsistent with any rational view of the family circumstances in this case."[134]

The Court was also unimpressed with Evans's evidence. Regarding Evans' claim that Mother's support people were a form of "character assassination." The Court noted that "equating a divorced mother bringing friends to a court hearing as a form of 'character assassination' is an unwarranted exaggeration, at the least."[135] The Court found that Evans' testimony that Mother, "on multiple occasions," told "everyone" about Father's mental-health issues was "an obvious exaggeration" because there was no evidence that Mother told anyone other than Children's therapist, and there was no evidence that it was communicated to Children.[136] The Court rejected Evans' interpretation of Mother's failure to inform Father about Children's flu shots as communicating to them that Father did not care about them because there was no evidence that Children knew that Mother failed to inform Father or that they believed that Father did not care.[137]

The evidence of Father's experts in *J.F. v. D.F.* demonstrates the amorphous and unregulated nature of "expert" evidence relating to "alienating behaviours." Dr. Baker conceded that there was a difference between PA, which she deemed the "pathological or unjustified rejection of a parent," and "realistic estrangement," which she described as "a reality-based reason to reject a parent," but she offered no objective standards for how she would distinguish the two.[138] She offered no objective standards by which an evaluator would differentiate overscheduling from a normal busy schedule, "interfering" with phone contact from attaching normal limits to children's phone access, or which "facts" relating to any aspect of the court proceedings or the parents' relationship were inappropriate. Her testimony regarding removing pre-separation photos or giving Daughter a cell phone was even more bizarre, suggesting that the innocuous conduct of a divorced woman who removes wedding photos or gives a teenager a cell phone is somehow "alienating" her children from their father. The Supreme Court reached a similar conclusion about much of her evidence, noting: "Parenthetically, the expert's claim that

132. *Id.* at *24 n.55.
133. *Id.*
134. *Id.*
135. *Id.* at *26.
136. *Id.*
137. *See id.*
138. *Id.* at *16 n.34.

over-scheduling can be interpreted as an alienating strategy is a demonstration of the need for a more exacting definition of parental alienation. Signing up a child for an activity that the child enjoys and may have previously participated in hardly seems 'outrageous or egregious.'"[139] The Court noted: "What strikes this court is that all of this 'conduct' could easily occur in a stable and healthy marriage: what spouse hasn't, on occasion, engaged in these minor slights or shown a lack of consideration for their married partner?"

Dr. Baker also opined that Children were "alienated" in circumstances in which her own theory suggested that they were not, violating her own (subjective and untestable) standards. For example, she explained that "alienated" children manifested a "lack of ambivalence," liking one parent and hating the other, even though Children showed no sign of hating Father.[140] She explained that "alienated" children demonstrated no remorse and treated the rejected parent terribly, when Children did not do that to Father.[141] She also explained that "alienated" children mimicked the alienating parent's language, when there was no evidence that Children mimicked Mother.[142] These discrepancies demonstrate the lack of validity of the PA construct; it is flexible enough to fit any situation, and there are no benchmarks by which a PA theory can be disproven.

Evans' interpretation of Mother's support persons as "character assassination" or failure to consult Father about flu shots as intended to convey to Children that Father did not care about them were extreme interpretations of everyday occurrences. When asked whether Children's reaction to Father could be due to Father's behavior toward them, Evans acknowledged that it was "possible" but admitted that he never reviewed any evidence of Father's behavior toward Daughters.[143] When asked whether Children could prefer to live with Mother without necessarily being alienated from Father, Evans responded: "In most cases I would say that's a possibility. I don't know if that's accurate in this case."[144] He testified that it was impossible to know whether Children's expressed views were "genuine."[145] Evans also admitted that the "anxiety, anger, sadness, oppositional behavior, and loyalty conflict" that Children experienced could occur in the absence of PA.[146] This testimony exemplifies the as-applied validity concerns addressed in "Endangered by Junk Science": the absence of objective, testable standards for distinguishing "alienation" from other causes of parent/child estrangement. Evans was unable to identify any testable standards regarding when estrangement

139. *Id.* at *18.
140. *Id.* at *23 n.51.
141. *Id.*
142. *Id.*
143. *Id.* at *26.
144. *Id.*
145. *Id.* at *27.
146. *Id.* at *26.

was caused by Mother's "alienating behaviors" as opposed to Father's poor parenting, how to distinguish realistic estrangement from pathological alienation, or how to distinguish "symptoms" of PA from normal childhood feelings and behaviors. Perhaps more concerningly, he did not appear to see why this was a problem when it came to his ability to offer an "expert" opinion regarding PA in the case.

The Court preferred the evidence of Dr. Favaro, who "painted the complex picture of teenaged and pre-teenaged children reacting to their parents. These would-be adults are often hostile or inappropriate with parents, but such behaviors have nothing to do with alienation."[147] The Court noted:

> The mother's intention, in many of the alleged alienating strategies, has an underlying legitimacy, such as the scheduling of activities for highly-active and industrious daughters or providing a cell phone to keep in touch with the older daughters. There is no evidence that the mother solely intended that these activities alienate the daughters from their father. There is also no causal connection between the mother's conduct and the daughter's rejection of their father.[148]

The Court explained that there was "no evidence to support any causal connection between the mother's conduct and the children's changed relationship with their father."[149] The Court concluded:

> The father's experts stated that the mother's conduct resulted in a form of "moderate alienation," which they seemed to suggest was a lesser included offense of "severe alienation." Under the latter, a child completely refuses to visit with the father, but under the former, the child just has a chilly reaction to contact with the targeted parent and a changed, less-loving relationship. "Moderate alienation," according to father's experts, was predicted to be the tip of an iceberg, leading to more pronounced rejection by the child in the future if the alienating conduct continues. This court declines to apply a "moderate alienation" standard in this case. There is no support for a finding of "moderate alienation" or "partial rejection" of a parent in New York cases. In addition, this court cannot fine tune the concept to apply it with any accuracy. If the child visits with a parent, but has a cool or sullen attitude when in the parent's presence, how can this court determine what portion of that attitude is caused by conduct of the favored parent?[150]

Father's "experts" demonstrate the increasingly for-profit nature of the PA industry. Two (Gottlieb, Evans) run expensive "reunification" programs that "cure" the PA that they identify. The third (Baker) runs a for-profit consultancy firm. There was no evidence that any of the experts disclosed their financial conflicts of interest in the case.

147. *Id.* at *28.
148. *Id.* at *30.
149. *Id.*
150. *Id.*

This is the type of professional conduct that should be regulated by psychology boards. While it is reassuring that the New York Supreme Court was able to see at least some of the ambiguous and unreliable nature of Father's expert evidence, this is the same PA evidence that is routinely relied upon by the New Zealand Family Court. At points, the Supreme Court seemed to reject Father's witnesses' subjective and malleable conclusions only to prefer and substitute different subjective and malleable conclusions, further evidence that courts are not competent to partake in this pseudo-psychological analysis, even when they try to anchor it in evidence. Even in rejecting their evidence, the Court lacked the institutional competency meaningfully to regulate it or prevent it from causing damage in the next case.

One concerning aspect of *J.F. v. D.F.* in Aotearoa New Zealand is that the Family Court relies on Dr. Baker's PA "research" and Evans's Family Bridges "reunification program," apparently unaware that their evidence has been rejected by American family courts as lacking an evidence base. For example, in *Bush v. Johnson*,[151] the New Zealand High Court cited with approval what the Justice characterized as Dr. Baker's "studies" showing that "adults who were allowed to disown a parent find that they regretted that decision and reported long term problems with guilt and depression that they attributed to having been allowed to reject one of their parents."[152] Dr. Baker is not an academic researcher, and her "studies" are not published in peer-reviewed psychology journals. She is a paid consultant and expert witness, and her books are published by popular rather than academic presses.[153] As her testimony in *J.F. v. D.F.* demonstrates, she lacks forensic credentials or reliable methodology underlying her ideological (and profitable) beliefs in PA. Even the language with which the High Court described her "studies" demonstrated their lack of research methodology. A methodologically sound study of the statistical association between "disowning" or "rejecting" a parent and "guilt and depression" would describe the variables measured in detail (what constitutes the stimulus of disowning/rejection and how are the response variables of guilt/depression measured), explain how it controlled for confounding variables (e.g., alternate causes of rejection), and document its ecological validity (how the environment in which the study was conducted was sufficiently similar to the context in which it is being applied to allow its results to be generalized). Instead, Dr. Baker's "research" findings are described in the language of pop psychology and vague generalizations.

Dr. Baker's claims are also factually untrue. As discussed in greater detail below, young adults who, as children, were labelled "alienated" and forced into "deprogramming" therapy to force them to have relationships with abusive parents have formed survivor groups and report harrowing

151. [2019] N.Z.H.C. 186.
152. *Id.* at ¶ 57.
153. *Id.* at ¶ 57 n 49.

and disturbing stories of their experiences in these programs.[154] This refutes Dr. Baker's claim that children "always" (the term itself a non-scientific marker) regret not being forced to reunite with rejected parents.

Montoya v. Davis[155] also exemplifies the malleable and subjective nature of evidence relating to PA. Parents lived in New York.[156] When Child was three, Father relocated to North Carolina.[157] On agreement of the parties, Mother was awarded custody of Child and Father was awarded contact.[158] Three years later, the Family Court ordered that Father's contact be supervised by Child's therapist.[159] Over the next few years, Father had a total of three therapeutic visits with Child.[160] When Child was nine, Father applied for unsupervised contact.[161] Father incessantly sent Mother text messages accusing her of interfering with his relationship with Child.[162] Mother filed a family offense petition against Father alleging that his text messages were criminal harassment.[163] Father applied for custody of Child.[164]

Father's application was supported by the court-appointed evaluator who testified that Mother engaged in PA to such a degree that the only viable resolution was to award Father custody and order that Mother have no contact with Child for at least the first six months of the new custody arrangement.[165]

The Family Court granted Father custody of Child, suspended Mother's contact for at least six months, conditioned Mother's future contact with Child upon her participation in counseling and required that future contact occur in a therapeutic environment.[166]

Both Mother and the lawyer for Child appealed.[167] The Appellate Division of the New York Supreme Court quashed the Family Court order, finding that no sound and substantial basis existed to support it.[168] The Court found that the evaluator's opinions and recommendations were "afflicted by a pervasive and manifest bias against the mother, which

154. Lisa Roose-Church, *Taken from Mom, Teen Flees Dad and Waits for 18th Birthday*, Livingston Daily (Sept. 4, 2017, 7:00 AM), http://www.livingstondaily.com/story/news/local/community/livingston-county/2017/09/04/parent-alienation-bill/589157001 [*https://perma.cc/E75Q-84RG]*.

155. *Montoya v. Davis*, 156 A.D.3d 132 (N.Y. App. Div. 2017).

156. *Id.* at 133.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 134.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 135.

166. *Id.* at 134.

167. *Id.*

168. *Id.* at 135.

should have alerted Family Court to their questionable reliability."[169] The Court found:

> [T]he forensic evaluator failed to remain objective, abdicated her role as a neutral evaluator and, ultimately, became an overly zealous advocate for the father. Throughout her testimony, the forensic evaluator consistently denigrated the mother and her husband and offered broad-sweeping characterizations of the parties, which appeared to be mostly informed by the father's version of events and point of view.[170]

The Court also noted that "the forensic evaluator discounted the possibility that the child may have his own feelings, independent of any interfering conduct by the mother and her husband, about the father's inconsistent presence in his life."[171] The Court also indicated that it was "concerned about the forensic evaluator having been deemed an expert in 'parental alienation', which is not a diagnosis included in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders."[172]

B. *Impacts of Professional Negligence on Family Violence Victims*

Proponents of PA theory, including its originator Gardner, concede that the construct should never be applied in cases in which the rejected parent has inflicted family violence. Nonetheless, court evaluators regularly violate this foundational requirement of their own pseudo-scientific construct by applying it when children reject parents who abused them.[173]

One reason why court personnel in Aotearoa New Zealand are so susceptible to these junk scientific constructs is their lack of expertise in the psychology of family dynamics and family violence. The New Zealand Psychological Society notes: "New Zealand's response to domestic violence is severely hampered by a continuing lack of detailed understanding of domestic violence by the police, judges, lawyers and others."[174]

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169. *Id.*

170. *Id.* at 136.

171. *Id.*

172. *Id.* at 135 n.5.

173. *See, e.g.*, NEVILLE ROBERTSON ET AL., LIVING AT THE CUTTING EDGE: WOMEN'S EXPERIENCES OF PROTECTION ORDERS VOL. 2: WHAT'S TO BE DONE? A CRITICAL ANALYSIS OF STATUTORY AND PRACTICE APPROACHES TO DOMESTIC VIOLENCE (2007); M. Clemente & D. Padilla-Racero, *When Courts Accept What Science Rejects: Custody Issues Concerning the Alleged "Parental Alienation Syndrome,"* 13 J. CHILD CUSTODY 126 (2016); Joan S. Meier, *U.S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations: What Do the Data Show?*, 42 J. SOC. WELFARE & FAM. L. 92 (2020); M. S. Milchman et al., *Ideology and Rhetoric Replace Science and Reason in Some Parental Alienation Literature and Advocacy: A Critique*, 58 FAM. CT. REV. 340 (2020); J. Silberg & S. Dallam, *Abusers Gaining Custody in Family Courts: A Case Series of Overturned Decisions*, 16 J. CHILD CUSTODY 140 (2019); Lenore Walker et al., *A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court*, 1 J. CHILD CUSTODY, no. 2, 2004, at 47; Lenore Walker et al., *Response to Johnston and Kelly Critique of PAS Article*, 1 J. CHILD CUSTODY, no. 4, 2004, at 91.

174. New Zealand Psychological Society, *Submission on Behalf of the New Zealand Psychological Society on the Review of Family Violence Law* 10 (September

This lack of specialized expertise creates a knowledge vacuum that demands to be filled, leaving court personnel primed to fill in the lack of expert knowledge with expert nonsense.

In 2021, a group of more than seventy academics and DV experts sent an open letter to Prime Minister Jacinda Ardern about the now notorious "Mrs. P" case, in which a DV victim who sought protection in the Family Court was instead "bullied" by the Judge, who disbelieved her "stack of evidence" about her former partner's abuse and referred her for criminal prosecution for what the Court of Appeal would eventually find not to have been a crime. The letter requested:

> Until the Family Court can be trusted to act on the basis of up-to-date knowledge about intimate partner violence and sexual violence – rather than minimising, trivialising, and ultimately ignoring it, while turning the abused party into the villain – we request that input is sought from external experts in the field. This is essential and it is urgent if our courts are to care for the women (and their children) who do what the primary prevention of violence messages tell them to do – speak out and refuse to accept violence and abuse.

V. International Comparison: Effectiveness of Regulation

A. *American Regulation*

There have begun to be signs that the pseudo-science of PA is finally being regulated in the United States, both by psychology boards and legislatures.

1. Psychology Boards: Sanctioning Unethical Psychologists

In the United States, over the past few years, state psychology boards have finally begun to regulate incompetent and unprofessional psychology testimony in family courts. For example, in *In Re: Head*,[175] the Oregon Board of Psychology (OBP) initiated a disciplinary action against Jacqueline Head, a licensed psychologist, for unprofessional conduct.[176] The disciplinary action arose out of Dr. Head's conduct in proceedings in the family court. In 2010, Mother and Father separated.[177] They had two young children.[178] Their separation was highly contentious and they could not agree about custody.[179] In 2019, the parties agreed to joint custody and "reunification therapy" between Father and Children.[180]

18, 2015), available at: https://www.psychology.org.nz/journal-archive/Family-Violence-Law-Review-Submission.pdf [https://perma.cc/X7XJ-A4Q9].

175. Jacqueline J. Head, Case No. 2020–035 (Or. Bd. of Psych. July 8, 2022), https://obop.us.thentiacloud.net/webs/obop/register/#/profile/jacqueline%20head/0/0/10/6074cfe7b952d62dd40514ab [https://perma.cc/NA2F-3Y34] (stipulated order).

176. *Id.*

177. *Id.* at 2.

178. *Id.*

179. *Id.*

180. *Id.*

Dr. Head was retained to provide the reunification therapy and write reports to the family court on its progress.[181] In 2020, Dr. Head sent a letter to Father's lawyer indicating that Children suffered from PA.[182] In reliance on Dr. Head's representations regarding "alienation", the family court made findings that Children were "alienated".[183] Dr. Head recommended that Father and Children attend a PA reunification workshop and that Children be placed in Father's custody for six months after the workshop to remedy their "alienation".[184] The family court rejected Dr. Head's recommendation regarding the PA workshop and discharged her as the reunification therapist.[185]

The OPB found that Dr. Head's conduct violated four ethical standards for psychologists: the duty to avoid harm, cooperation with other professionals, having an adequate basis for scientific and professional judgments, and having an adequate basis for assessment.[186] The Board found that Dr. Head violated the duty to avoid harm because she failed to establish that attending the reunification workshop would not be harmful to Children based on their unique therapeutic histories and needs.[187] The Board found that Dr. Head violated the duty to cooperate with other professionals when she failed to consult with Children's existing therapist to gain her professional perspective.[188] The Board found that Dr. Head violated the duty to have an adequate basis for her scientific and professional judgments by referring to "parental alienation" as if it were a diagnosis, "a representation which is not established scientific or professional knowledge within the field of psychology" because the Fifth Edition of the *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association (*DSM-5*) did not recognize PA.[189] The Board found that Dr. Head violated her duty to have an adequate basis for her assessment of Children when she made evaluations and recommendations to the court when she had insufficient information to substantiate her representation that Children suffered from PA when it was not listed in the *DSM-5* "and it is therefore not possible to diagnose individuals with that condition."[190] The Board concluded that Dr. Head's failures constituted unprofessional conduct because her recommendation that the family attend the PA workshop "constituted a danger to the children's emotional health or safety because it would have resulted in them being forced to attend a four-day workshop held at a distance location where they would experience pressure to retract,

181. *Id.*
182. *Id.* at 3.
183. *Id.*
184. *Id.*
185. *Id.* at 3–4.
186. *Id.* at 4–6.
187. *Id.* at 4.
188. *Id.*
189. *Id.*
190. *Id.* at 4–5.

give up, or overcome their emotional experiences of distance, anger or hurt regarding [Father], which could result in emotional harm to them."[191]

2. Legislatures: Reining in Reprogramming Camps

The workshop to which the OPB was referring was the notorious, controversial, and highly profitable Family Bridges "reunification" program, developed by discredited California psychologist Randy Rand. In 2009, the California Board of Psychology (CBP) took disciplinary action against Dr. Rand for "extreme departure from the standard of practice" in two different court proceedings after he testified that a child was severely alienated and should attend his program without ever having met them.[192] The CBP placed Rand on probation and prohibited him from practicing psychology. In 2019, the CPB issued a citation to Rand for violating the conditions of his probation and permanently suspended him from practicing psychology.[193] American reprogramming and reunification programs like Family Bridges have largely escaped regulation or oversight because they are deemed "educational" rather than therapeutic.[194] Reprogramming camps are part of a larger for-profit industry in the United States focused on "troubled teens", which includes "escort services."[195] At the urging of "admissions counselors" (salespeople) at these programs, parents hire private companies forcibly to remove their children from home and transport them to these for-profit residential programs. Family Bridges' practices include police and private "transport agents" forcibly transporting children to them, keeping children out of school, repeatedly telling children that their experiences of abuse did not occur, requiring children to admit that their "alienating" parent brainwashed them before they can leave the program, encouraging children to reject a relationship with their "alienating" parent, requiring that children have no contact with their "alienating" parent for at least ninety days of "aftercare" after "deprogramming", and threatening children that, if they attempt to contact their "alienating" parent, that parent will be arrested and jailed. A four-day Family Bridges program costs $40,000. This cost includes the hotels that the program uses because it cannot get a license for a treatment facility, since it is an "educational program" rather than a

191. *Id.* at 5.

192. Randy Rand, Case No. 1F 2004 158933 (Cal. Bd. of Psych. May 29, 2009), https://search.dca.ca.gov/details/6001/PSY/12137/b7399ba7a92fa0255639bb6c945e07cc [https://perma.cc/D8W3-HEU7] (decision after non-adopt).

193. Randy Rand, Citation No. 600 2019 000149 (Cal. Bd. of Psych. Mar. 5, 2019), https://search.dca.ca.gov/details/6001/PSY/12137/b7399ba7a92fa0255639bb6c945e07cc [https://perma.cc/6GZJ-C66T] (order of abatement).

194. *See* The Center for Investigative Reporting, *Bitter Custody*, Reveal (March 8, 2019), available at: https://revealnews.org/podcast/bitter-custody [https://perma.cc/X4YR-S5WB] (last visited September 7, 2022); Nguyen et al., *supra* note 93.

195. *See, e.g.*, United Secure Youth Transport Agency, https://ustransportservice.com [https://perma.cc/9FMD-WGYT] (last visited September 6, 2022).

form of therapeutic treatment and its director is legally prohibited from practicing psychology.[196]

Family Bridges was recently the subject of an intensive investigation by the Center for Investigative Reporting into the "cottage industry of so-called family reunification camps that are making big profits from broken families".[197] The investigation noted that the allure of PA is that "it offers judges a solution to a complicated problem. When they can't decide who's telling the truth about child abuse, a psychologist comes in and offers them a blueprint. Judges sometimes take the word of the psychologist over other evidence, like the testimony of children."[198] It explained that Gardner's "remedy" for PAS was to "limit the time children spend with the parents they want to live with" and "give primary custody to the alienated parent".[199] It also explained that, if the child objected to the custody reversal, "it would just confirm the PAS diagnosis".[200] It documented how family court judges often attended "seminars" where psychologists "encouraged" them "to consider parental alienation as a valid argument in court".[201]

Both federal and state legislatures in the US have also begun to address and revise their laws around parental reunification programs. In March 2022, the United States Congress reauthorized the Violence Against Women Act and added a new title XV, called the Keeping Children Safe from Family Violence Act ("Kayden's Law")[202]

In August 2022, in a unanimous, bipartisan vote, the California State Assembly passed SB 616 ("Piqui's Law"), which implements Kayden's Law by mandating that judges in California receive training on DV and child abuse to prioritize child safety in custody proceedings.[203] Piqui's Law was named after five-year-old Aramazd "Piqui" Andressian, Jr., who was murdered by his father in 2017 during a court-ordered unsupervised visit after his mother, Ana Estevez, offered evidence of Andressian's violence and begged the court not to order unsupervised contact.[204] It would have amended California Family Code section 3020 and California Government Code sections 68553–68555 to further clarify and define

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196. Pei-Sze Cheng, *I-Team: N.J. Brother, Sister Rip "Alienating" Divorce Program That Tore Them From Father for Years*, NBC New York (Dec. 26, 2018, 6:28 PM), http://www.nbcnewyork.com/news/local/divorce-camp-new-jersey-investigation/1585403 [https://perma.cc/P7LF-7FDX].; Nguyen et al., *supra* note 93; Roose-Church, *supra* note 154.

197. Center for Investigative Reporting, *supra* note 194.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. Susan Rubio and Kathleen Russell, *Murders of Children Forced Congress and Biden to Act. Will California Do the Same?*, Sacramento Bee (Aug. 17, 2022), http://www.sacbee.com/opinion/op-ed/article264467606.html [https://perma.cc/8C8L-RNSG].

203. *Id.*

204. *Id.*

California's ban on the use of parental reunification programs in the California Family Court. Unfortunately, however, the California Judicial Council mounted a successful opposition to the training package.[205] This resistance to legislative reform is a feature of dysfunctional family court systems globally.

B. *Continued Lack of Regulation in Aotearoa New Zealand*

In addition to the turf war between the NZPB and the New Zealand Family Court, which has largely stymied any regulation of junk PA testimony in Aotearoa New Zealand, the courts and Parliament have also failed to rein in coercive "reunification" and "deprogramming" therapies.

1. The Importation and Acceptance of American "Deprogramming" Camps

Unfortunately, the Family Bridges model has gone international. The American developers of this for-profit industry will happily fly to Aotearoa New Zealand to "deprogram" children (for the right price), and court psychologists in Aotearoa New Zealand enthusiastically recommend this unregulated reunification proposal even though there is no methodologically valid evidence that it is effective. Both the American psychologists who profit from this "educational" program and the local psychologists who recommend it, falsely assure the Family Court that it has an evidence base and a successful track record. For example, in *K.P. v. A.Z.*,[206] senior court psychologist Kathy Orr assured the court that the "most effective 'deprogramming' treatment" for PA was Family Bridges and claimed that it was successful "even with severely alienated children".[207] In support of these claims, Ms. Orr cited an article by Richard Warshak, the co-owner of Family Bridges, which claimed, based on twelve children who had gone through his program, that many "showed considerable, but not universal, success". In the tradition of the PA "literature", the article did not involve a controlled, methodologically sound research study, but rather involved amorphous, untested claims advanced by an author with a financial conflict of interest.[208] It was published in the *Family Court Review*, a student-run law review published by the Association of Family and Conciliation Courts.[209] It is not a peer reviewed psychology publication. The "data" on which the article was based were surveys given to children at the end of the Family Bridges

205. *See* Viji Sundaram, *California Judges' Group Helped Block Bill to Address Family Violence, Calling Training Mandate 'Advocacy,'* S.F. Pub. Press (Sept. 14, 2022), https://www.sfpublicpress.org/california-judges-group-helped-block-bill-to-address-family-violence-calling-training-mandate-advocacy [https://perma.cc/VCA8-VSBY].

206. *K.P. v. A.Z* [2020] NZHC 1340 (HC).

207. *Id.* at ¶ 55.

208. *See* Richard A. Warshak, *Family Bridges: Using Insights From Social Science to Reconnect Parents and Alienated Children*, 48 Fam. Ct. Rev. 48 (2010).

209. *See id.*

program, while they were still under court order to participate.[210] The article would be more aptly described as marketing materials than a psychology publication.

Ms. Orr ultimately concluded that she felt that Child would be among the cases for which the program would not work, but she gave no indication of the basis for her opinion, particularly given her prior extolling of its virtues.[211] The High Court accepted her testimony on the basis that Ms. Orr "personally had considerable experience and expertise in the area of family dysfunction and alienation".[212] Personal experience is not the equivalent of expertise and does not qualify an expert to offer evidence relating to reunification therapy. Ms. Orr's extolling of a for-profit program, developed by a psychologist who has been stripped of his license, which has been discredited in the country from which it originated is the type of professional conduct that begs for regulation from the NZPB.

Unfortunately, courts in Aotearoa New Zealand appear to be particularly enamored with Warshak, overstating his credentials and standing in the field of psychology. For example, in *Palmer v. Holm*,[213] the High Court, while upholding the Family Court's refusal to order Child into the Family Bridges "camp", described Warshak as an "eminent psychologist" and a "professor of psychology at the University of Texas Southwest Medical Center" (UTSMC).[214] It is unclear what the basis was for the High Court's belief that Warshak is "eminent", although presumably that representation came from some combination of a court psychologist and Warshak's impressive marketing regime. Warshak was never a professor of psychology anywhere. He was briefly an adjunct clinical professor of psychiatry at UTSMC. He was never a member of the full-time, tenure-track faculty. He is no longer affiliated with any academic institution. Instead, he runs a for-profit consultancy in the United States.[215] Warshak's books have not been published by academic presses or subject to peer review.[216] The High Court referred to Warshak's "involvement" with the Family Bridges program in discussing his proposal that Child be required to attend his four-day deprogramming camp and his representations of the program's "successes", without acknowledging the conflict of interest posed by his co-ownership of the program.[217]

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210. *See id.*

211. *K.P.*, [2020] NZHC 1340 at ¶ 155.

212. *Id.* at ¶ 58.

213. *Palmer v. Holm* [2014] NZHC 2268.

214. *Id.* at ¶ 40.

215. *See Dr. Richard Warshak*, Dr. Richard A. Warshak, http://www.warshak.com/author/index.html [https://perma.cc/WX94-WBFK]. (last visited September 7, 2022).

216. *See id.*

217. *Palmer*, [2014] NZHC 2268 at ¶¶ 51–52.

2. Homegrown Interventions

When the COVID-19 pandemic effectively closed the borders in 2020, American psychologists could no longer travel to Aotearoa New Zealand to "deprogram" Kiwi kids. Domestic psychologists have apparently stepped into this breach. In a recent training for lawyers for the child, sponsored by the New Zealand Law Society in June 2022, senior court psychologist April Trenberth gave a presentation about her (for-profit) "family therapy intervention" for children who "resist" or "refuse" contact with one parent due to the actions of their other parent, whom she terms the "alienator".[218] The "resist and refuse dynamic" is the New Zealand Family Court's current terminology for the debunked American construct of PAS.[219] She insisted that the only remedy for PA was reunification "therapy" provided by "those specifically trained with working with these resist-refuse dynamics (currently in short supply in New Zealand)".[220] The reason that there are few psychologists in Aotearoa New Zealand "specifically trained" in "treating" PA is because, as the OPB explained in *Head*, the mainstream fields of psychiatry and psychology do not recognize PA as an evidence-based phenomenon. Trenberth claims that her reunification intervention "invites questions" like: "What developmentally regressive influences do we need to address, or protect the child from?"[221] In other words, the intervention assumes that a child's fear of contact with a parent is "developmentally regressive" and the result of "influence" by the child's other parent rather than a realistic and protective response to the rejected parent's violence or poor parenting. This is a core tenet of the pseudo-science of PA.[222] The goals of the intervention include "[r]esolving a child's distress/trauma in relation to family members".[223] According to this approach, the "resolution" of trauma does not involve a trauma-informed approach to therapy and does not include addressing the cause of the child's trauma resulting from the rejected parent's abuse. The "resolution" entails convincing the child no longer to feel distress or request protection from the violent parent, the opposite of what evidence-based, trauma-informed therapy recommends.

The *DSM-5* defines trauma as an emotional response to a traumatic event or pattern of traumatic experiences, which results in initial and some-times long-term psychological stress impacts. One of the most common sources of trauma in children is abuse, which can have a profound impact on their long-term development.[224] Addressing trauma in

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218. April Trenberth, *A Brief Overview: Family Therapy Interventions for Court-Involved Families*, NZLS CLE Ltd, Advanced Law. for Child 2022, at 31, http://www.lawyerseducation.co.nz/shop/Intensives2022/22ALFC.html (last visited September 7, 2022).

219. Leonetti, *supra* note 2.

220. Trenberth, *supra* note 218, at 32.

221. *Id. at* 33.

222. Leonetti, *supra* note 2.

223. Trenberth, *supra* note 218, at 33.

224. Christine Lynn Norton et al., *Family Enrichment Adventure Therapy: A*

children and young persons is particularly important given the impact it can have on their future functioning.[225] Trauma is therefore a psychiatric disorder that needs to be treated by mental-health professionals with expertise in the care and treatment of the traumatized.

The United States Department of Justice (DoJ) recently released the *Report of the Attorney General's National Task Force on Children Exposed to Violence*. The Report calls for the implementation of trauma-informed care (TIC) and practices for children exposed to violence, including the development and dissemination of standards in professional associations for conducting comprehensive specialized assessments of children exposed to violence and coordinated and adaptive approaches to improve the quality of trauma-specific treatments and services across settings. Trauma-informed practices are the most effective treatment for children recovering from trauma.[226]

The National Center for Trauma-Informed Care explains:

> Trauma-informed care (TIC) is an approach to engaging people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives. It seeks to shift the paradigm from one that asks, "What is wrong with you?" to one that asks, "What has happened to you?"[227]

TIC seeks to do no harm to clients by avoiding treatment practices that inadvertently retraumatize or fail to address root causes of trauma-related behavior.[228] TIC looks at symptoms and behaviors with an understanding of trauma responses and developmental impacts and seeks to address the fundamental needs of the person who has experienced trauma so that they can heal.[229] Psycho-education about trauma is an essential component of TIC, including linking past abuse to current coping and reframing current symptoms as attempts to cope with past abuses.[230] Support for the development of the patient's self-advocacy skills, without regarding intense advocacy as pathological, is an essential part of TIC.[231] The goals of TIC include the promotion of the patient's long-term safety.[232]

The coercive intervention proposed by Trenberth employs the opposite of TIC. It is designed to get children to suppress trauma symptoms,

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Mixed Methods Study Examining the Impact of Trauma-Informed Adventure Therapy on Children and Families Affected by Abuse, 12 J. Child & Adolescent Trauma 1, 85 (2019).

225. *Id.* at 86.

226. *Id.*

227. Substance Abuse & Mental Health Servs. Admin., *SAMHSA's National Center for Trauma-Informed Care* (April 2014), https://www.traumainformedcare.chcs.org/resource/samhsas-national-center-for-trauma-informed-care [https://perma.cc/Q2R3–559C]

228. Norton, *supra* note 224, at 86.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

"get over" root causes of their fear and distress, and cease advocating for their safety. Trenberth recommends that the Court order her intervention as a condition of an interim custody order, that the order include "expectations for care arrangements to progress" and "consequences for non-compliance," and that the Court "review" the "progress" of the coercive intervention "to determine whether there is a need to vary the original order".[233] In other words, the "therapist" should "intervene" with the child after the Court has ordered the child into the custody arrangements that the child is resisting, and the Court should back up its order that the child be forced into the unwanted custody of a feared parent with draconian sanctions, which in Aotearoa New Zealand regularly include "care reversals" (placing the child in the sole custody of the feared parent) and arrest warrants for the child's forcible delivery to the feared parent by Police.[234]

The "Terms of Engagement" for Trenberth's intervention include that (1) "the parties will not engage in new or ongoing litigation whilst engaged in therapy, avoiding parallel processes being at play that tend to undermine therapy"; (2) the parties' lawyers "must be willing to step back and let their client engage in the process (without unnecessary interference)" and not take matters "back to the court to further their client's position"; and (3) abiding by the reunification practitioner's "recommendations for the termination of other therapist(s) who may be currently involved with the family members".[235] These Terms of Engagement are unethical. The first two requirements (that the parents and their lawyers forego all "litigation") would preclude a parent seeking a protection order, an emergency custody order, filing a report of concern with Child, Youth, and Family Services, or making a police complaint, even if the violent parent committed additional acts of family violence. This is contrary to the policy of the Government of Aotearoa New Zealand regarding responses to family violence and could constitute an unreasonable infringement on the rights to due process, natural justice, and health and safety of both the victim parent and child. In December 2021, the New Zealand Government announced *Te Aorerakura*, its new national strategy to respond to family violence and sexual violence.[236] The strategy calls for victims to be supported to heal and overcome the trauma of violence and for trauma-informed responses to violence.[237] It calls for victims to be "heard, valued, and know that their experiences are taken seriously."[238] It calls for children who have experienced violence to be listened to and

233. Trenberth, *supra* note 218, at 33–34.

234. Leonetti, *supra* note 1.

235. Trenberth, *supra* note 218, at 34.

236. *See Te Aorerakura: The National Strategy to Eliminate Family Violence and Sexual Violence*, Bd. For Elimination Fam. Violence (Dec.2021), https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf.

237. *See id.* at 8, 14.

238. *Id.* at 28.

believed.[239] It explains how not listening to children and not valuing their views increases the harm to children from family violence.[240] It calls for victims to access "the right kind of strengthening, healing or response services."[241] It calls for healing for victims that is "based on an understanding of violence and trauma."[242] It calls for trauma to be "recognised whenever it occurs."[243] It demands that: "Every person who needs to can access timely trauma-informed responses to violence, which use [spiritual power]-enhancing and strength-based approaches. People can access holistic supports that focus on what matters to them, acknowledging the trauma caused by family violence and sexual violence, and the harms caused by systemic discrimination."[244] It specifically calls for developing and implementing trauma-informed family violence capability for specialists who work with victims.[245] The strategy acknowledges:

> Women impacted by violence and their children want to feel safe and protected when they reach out for help from the Justice system (the Police, the courts and lawyers). They want to be believed and they want the professionals they encounter to take the violence and the risks they face seriously. Government will continue work to improve the Justice responses to ensure experiences for women and their children are improved.[246]

It is truly incredible that, as the Government begins its rollout of the Action Steps behind *Te Aorerakura*, Family Court psychologists are creating and implementing "therapy" for victimized children that emphasizes minimizing and disbelieving children's reports of abuse and refuses to recognize the trauma caused by their exposures to violence, focusing instead on insisting that their trauma responses are pathological but the violence to which they have been exposed is not.

The latter requirement of the Terms of Engagement (severing all prior therapeutic relationships if the reunification program demands it) violates the Code of Ethics for Psychologists in Aotearoa New Zealand (the Code),[247] which requires psychologists to "coordinate services" when they become aware that a client is involved with another service provider, including by communicating with the other provider.[248] The requirement that participants sever existing therapeutic relationships not only contradicts this ethical requirement but appears calculated to circumvent it, particularly given that the Code would require another

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239. *See id.* at 18.
240. *See id.* at 11.
241. *Id.* at 28.
242. *Id.* at 34.
243. *Id.* at 28.
244. *Id.* at 29.
245. *See id.* at 49.
246. *Id.* at 58.
247. N.Z. Psych. Bd. *Code of Ethics for Psychologists Working in Aotearoa New Zealand* (2012),http://www.psychology.org.nz/journal-archive/code-of-ethics.pdf [https://perma.cc/3APY-HN9Q].
248. *Id.* at Practice Implication 2.1.13.

therapist to report the incompetent or unethical behavior of the "reunification therapist",[249] which is what happened in *Head*.

Trenberth's materials assert: "The therapist also needs to be free to disclose all information (other than personal and sensitive information), documentation, and correspondence generated by the process with the lawyer for each parent, lawyer for the child and/or child protective agency (if involved) and with the Court."[250] This is also a violation of the Code of Ethics, which dictates: "Psychologists do not disclose personal information obtained from an individual, family, whānau or community group or colleague without the informed consent of those who provided the information, except in circumstances provided for in 1.6.10."[251] The exceptions in Practice Implication 1.6.10 include only limited disclosures in situations of diminished capacity, information relating to children, urgent need, legal compulsion, and public safety, and then only generally in circumstances in which the vulnerable person is at risk of harm.[252]

Trenberth also insists: "Any reports provided by the therapist shall not be shown to the children in any capacity."[253] This also violates the Code of Ethics, which requires that psychologists "recognize that clients should actively participate in decisions that affect their welfare" and encourage children and young persons "to participate actively in decisions".[254] The Code also requires that psychologists "strive to avoid deception in their work" and that deception "should only occur in practice with clients when it can be justified on the basis of safety".[255] The Code admonishes: "Psychologists should recognize that deception, of itself, can be harmful to vulnerable people, including children/young persons."[256]

Furthermore, the entire coercive structure of the intervention violates the Value of Informed Consent and the Value of Promotion of Well-Being (the requirement to do no harm), given that the intervention is based on a court ordering parents and children to participate in therapy against their will and that its goal is changing the way that the child feels about a parent who, in many cases, has inflicted abuse on the child or other parent.[257] The Code requires psychologists to recognize individuals' right to freedom from intentionally inflicted pain.[258] The Code also prohibits psychologists from using "aversive strategies except as a last resort and after demonstrable efforts to identify other less intrusive alternatives have been made".[259]

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249. *Id.* at Practice Implication 4.4.3.
250. Trenberth, *supra* note 218, at 34.
251. N.Z. Psych. Bd., *supra* note 247, at Practice Implication 1.6.9.
252. *Id.* at Practice Implications 1.6.10.
253. Trenberth, *supra* note 218, at 34.
254. N.Z. Psych. Bd., *supra* note 247, at Value 2.3.
255. *Id.* at Practice Implication 3.1.5.
256. *Id.* at Comment to Practice Implication 3.1.5.
257. *Id.* at Values 1.7; 2.1.
258. *Id.* at Practice Implication 1.1.2.
259. *Id.* at Practice Implication 2.4.5.

The Code also requires informed consent to therapy, a vital ethical requirement. The Comment relating to informed consent in the Code explains: "Some individuals or groups have less power than others, permanently or temporarily, placing them in a vulnerable position and increasing the responsibility of psychologists to protect and promote their rights."[260] The Code requires that psychologists "take all reasonable steps to ensure that consent is not given under conditions of coercion or undue pressure from them."[261]

The reunification intervention violates other aspects of the ethical and professional obligations of psychologists. Because the entire intervention is based on the pseudo-science of PA, it violates the ethical regulations requiring psychologists to have an evidence base for their assessments and professional judgments. The Code requires psychologists who conduct assessments to "select appropriate procedures and instruments" and be able "to justify their use and interpretation".[262] The Comment interpreting this requirement explains: "This involves, but is not limited to, selection of procedures and instruments with established scientific status".[263] The Value of Competence requires that psychologists "utilize and rely on scientifically and professionally derived knowledge, and are able to justify their professional decisions and activities in the light of current psychological knowledge and standards of practice".[264] The Value of Honesty requires: "Psychologists ensure that claims or conclusions can be supported by a standard of evidence acceptable to the profession."[265] These provisions are comparable to the provisions that Head was found to have violated in *In Re: Head*.

It is well established that the PA construct is based in negative gender stereotypes, and its use to condone and entrench men's use of gender-based violence against women and children violates gender-equality norms.[266] The Code requires psychologists to address and challenge unjust social norms and behaviors that disempower people.[267] It requires that: "Psychologists exercise care when reporting the results of any work, so that results are not likely to be misrepresented or misused in the development of social policy, attitudes and practices". It explains that particular care be taken when reporting the results of work regarding vulnerable groups.[268] It requires that: "Psychologists recognize that from time-to-time structures or policies of society may be inconsistent with the principles of respect for the dignity of peoples, responsible caring and

260. *Id.* at Comment to Practice Implication 1.7.1.
261. *Id.* at Practice Implication 1.7.4.
262. *Id.* at Practice Implication 2.1.3.
263. *Id.* at Comment to Practice Implication 2.1.3.
264. *Id.* at Practice Implication 2.2.4.
265. *Id.* at Practice Implication 3.1.3.
266. Leonetti, *supra* note 2.
267. N.Z. Psych. Bd., *supra* note 247, at Principle 4.
268. *Id.* at Practice Implication 4.1.4.

integrity in relationships. Where these inconsistencies are identified, psychologists advocate for change in these structures and policies."[269]

In sum, this coercive intervention program contains many of the features that caused the OPB in *Head* to determine that Head violated her ethical obligations by opining that Children were "alienated" and recommending a coercive intervention program without consulting with their existing therapist. These coercive interventions are a form of thought reform or coercive persuasion (colloquially known as "brainwashing"), a system of psychological and social influence aimed at coopting a subject's autonomy. It includes "therapy" performed on unsuspecting people using deception. It is dramatically different from educational and psychological models that motivate and encourage curiosity, questioning, critical thinking, authenticity, creativity, and dissent. Trenberth's coercive intervention has the characteristics of thought reform: attempting to change the target's sense of self by isolating them, keeping them unaware and uninformed, and pressuring them to reinterpret their experiences, alter their behaviors, attitude, and world view, and accept a new version of reality and causation.[270] The DSM-5 recognizes identity changes caused by thought reform as a form of dissociative disorder.[271] A psychologist who employed these thought-reform methods would be more likely to cause psychiatric disorder in a "patient" than to treat one, particularly since the condition being "treated" is not recognized by mainstream psychologists and psychiatrists.

VI. Legislative Reform

It is time for the Government of Aoteaora New Zealand to stand behind its new family violence strategy and step in and do something to regulate this unprofessional, reckless, and unreliable pseudo-psychology in the New Zealand Family Court. This Article proposes the three following reforms for the practice of forensic psychology.

A. *Regulating Forensic Psychology*

First, Aotearoa New Zealand should recognize and regulate forensic psychology as a sub-specialty. In prescribing the required qualifications for psychologists, the NZPB is meant to consider what qualifications are necessary to protect the public.[272] Nonetheless, the NZPB presently only recognizes and prescribes required qualifications for four substantive areas of practice: clinical psychology, counselling psychology, educational

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269. *Id.* at Practice Implication 4.2.4.

270. *See* Margaret T. Singer & Janja Lalich, Cults in Our Midst: the Continuing Fight Against Their Hidden Menace (2003); Margaret T. Singer & Richard Ofshe, *Thought Reform Programs and the Production of Psychiatric Casualties*, 20 Psychiatric Annals 173, 188 (1990).

271. Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 261–62(5th ed. 2013).

272. Health Practitioners Complete Assurance Act 2003, s 13(a) (N.Z.).

psychology, and neuropsychology.[273] Parliament should require specialty certification for forensic psychologists who offer expert evidence in court proceedings by amending the HPCAA.

Universities also must develop professional post-graduate programs in forensic psychology. Professional education in general psychology and professional experience in clinical psychology are inadequate to confer sufficient expertise to apply psychological principles in legal proceedings. The theoretical, ethical, legal, moral, and professional foundations of forensic psychology are different than those of other psychology specialities, particularly clinical specialties. Providing psychological expertise to judicial systems, performing assessments in anticipation of litigation, forming psycho-legal opinions, writing court reports, and offering expert evidence require a different set of skills than clinical practice. Forensic psychologists must possess and demonstrate knowledge of the scientific foundation for academic research and expert evidence. They must consider the impact of their personal beliefs and experiences on their ability to practice in a competent and impartial manner and take remedial steps to prevent those biases from affecting their expert opinions. They must guard against the misuse of their services in the justice system. They must differentiate clearly between their observations, inferences, and conclusions. The absence of recognition and regulation of forensic psychology as a scope of practice is a serious oversight.

Increasingly, it is the norm internationally for forensic psychologists to be regulated as a subspecialty, and other jurisdictions recognize and set separate requirements for the practice of forensic psychology. For example, the American Board of Professional Psychologists (ABPP) requires specialist board certification for forensic psychologists through the American Board of Forensic Psychology (ABFP).[274] The American Psychological Association promulgates *Specialty Guidelines for Forensic Psychologists*.[275] The Guidelines include specialised responsibilities that exist only in forensic psychology, including integrity (resisting partisan pressures to provide services in ways that might tend to be misleading or inaccurate) and impartiality and fairness (recognising the adversarial nature of the legal system and weighing all data, opinions, and rival hypotheses impartially and avoiding partisan presentation of unrepresentative, incomplete, or inaccurate evidence that might mislead finders of fact).[276] The Guidelines require forensic psychologists to use assessment techniques whose validity and reliability have been established for use

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273. *See* N.Z. Psych. Bd., *Scopes of Practice*, http://psychologistsboard.org.nz/looking-to-register/scopes-of-practice [https://perma.cc/3APY-HN9Q].

274. *See* Am. Bd. Pro. Psych., Forensic *Psychology*, http://abpp.org/Applicant-Information/Specialty-Boards/Forensic-Psychology.aspx [https://perma.cc/5U32-WSE7];Am. Bd. Pro. Psych., *ABFP*, http://abfp.org [https://perma.cc/M6AF-4JTY].

275. Am. Psych. Ass'n, *Specialty Guidelines for Forensic Psychology* (January 2013), https://www.apa.org/pubs/journals/features/forensic-psychology.pdf [https://perma.cc/K92P-5KB8].

276. *See id.* at Guideline 1.01, 1,02, & 11.01.

with members of the population assessed.[277] Equivalent guidelines would be appropriate for adoption in Aotearoa New Zealand.

B. *Requiring Family Violence Expertise*

Second, psychologists who offer evidence in Family Court must be required to possess and demonstrate expertise in family violence and especially expert understanding of coercive control. A recent DoJ study notes:

> High rates of domestic violence exist in families referred for child custody evaluations. These evaluations can produce potentially harmful outcomes, including the custody of children being awarded to a violent parent, unsupervised or poorly supervised visitation between violent parents and their children, and mediation sessions that increase danger to domestic violence victims. Past research shows that domestic violence is frequently undetected in custody cases or ignored as a significant factor in custody-visitation determinations. Previous research also indicates that violence—and its harmful effects on victims and children—often continues or increases after separation.[278]

The study found that DV knowledge was lacking amongst court personnel. It explains: "Judges, child custody evaluators, and others involved in determining custody and visitation arrangements may simply be unaware of the factors that indicate actual or potential harm."[279] Specifically, it found that court psychologists overestimated the prevalence of false allegations of DV and child abuse, often recommended joint custody between DV perpetrators and victims, and often recommended that perpetrators have unsupervised contact with children.[280] It found:

> Among custody evaluators, the belief that allegations of domestic violence (DV) by mothers are false was strongly related to four other beliefs: (1) DV survivors alienate children from the other parent; (2) DV is not an important factor in making custody decisions; (3) children are hurt when survivors are reluctant to co-parent, and (4) DV survivors falsely allege child abuse. Similar results were found among judges.[281]

It explains: "Evaluators and judges may need more training on the continued safety risks to children from abusive fathers, the likelihood of post-separation violence, and concerns about the use of mediation, parent alienation syndrome, and false allegations."[282] It notes:

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277. *See id.* at Guideline 10.02.

278. Daniel G. Saunders, et al, Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations 4 (2011).

279. *Id.* at 19.

280. *Id.* at 6–8.

281. *Id.* at 8.

282. *Id.* at 23.

> Evaluators' theoretical orientation appears to play a role in shaping their evaluations. An analysis of custody records of DV cases in one city showed that evaluators who viewed "power and control," as opposed to family system dynamics or psychoanalytic factors, as the basis for DV, were more likely to recommend parenting plans with higher levels of safety.[283]

It concludes: "More DV training for judges, evaluators and private attorneys on these topics would probably be helpful. Respondents who reported more knowledge of these topics were less inclined to believe that allegations of DV are false or that victims alienate the children."[284] It notes:

> Among evaluators, the belief that allegations of domestic violence are usually false was part of a constellation of beliefs, including beliefs that false allegations of child abuse and parental alienation by DV survivors are common. DV educators need to provide accurate information on: the rates and nature of false allegations and alienation; the ways in which survivors are reluctant to co-parent out of fear of future harm; the mental health consequences of DV; and the importance of understanding coercive-controlling forms of violence.[285]

In Aotearoa New Zealand, Parliament should require court report writers to have and demonstrate expertise in family violence, in addition to forensic specialization. It should require experts who provide reports under CoCA section 133 to inquire about and screen for family violence in all cases and to utilize standardized instruments and protocols for risk screening and risk assessment. The DoJ study found: "A more consistent use of instruments and standard protocols for DV screening is likely to increase the rate of DV detection."[286]

C. *Prohibiting "Reunification" Therapy or "Deprogramming" Interventions*

Third, Parliament should outlaw "reunification" therapies for children labelled "alienated." "Deprogramming" camps and other forms of "reunification" interventions are harmful, coercive, and lack a scientific basis. They are akin to the gay-conversion "therapies" that Parliament banned this year.[287] As discussed above, deprogramming "therapies" use coercion to change children's attitudes and behavior and cause them to believe that their alignment with one parent or fear of their other parent is pathological.

Parliament should recognize the harm that can be caused to children by these "deprogramming" interventions and their infringement on children's rights to freedom of thought and expression. They should make

283. *Id.* at 24.
284. *Id.* at 13.
285. *Id.* at 14.
286. *Id.* at 15.
287. Conversion Practices Prohibition Legislation Act 2022 (N.Z.).

it unlawful to perform a "reunification practice" on any individual without their consent or on any individual who lacks, either wholly or partly, the capacity to understand the nature and foresee the consequences of decisions relating to their health or welfare regardless of consent. They should also make it unlawful for any health practitioner to refer anyone to these programs or arrange for anyone to undergo reunification deprogramming, since the programs themselves are often administered by people who evade regulation by holding themselves out as "educators" rather than psychologists or counsellors. Parliament should also establish a complaints mechanism so that children subject to these reunification programs can make a complaint to the Office of the Children's Commissioner (or comparable oversight agency) or the Office of the Health and Disability Commissioner.

VII. Conclusion

The failures identified in this Article are prevalent in family courts internationally. Judges and lawyers in adversarial justice systems, who lack training in or understanding of scientific methodologies, are not competent to regulate "expert" psychologists who offer testimony in the Family Court. Because of the insular, self-selecting, and self-regulating nature of the list of court report writers, the psychologists in the New Zealand Family Court fail to regulate themselves. The financial incentives of the for-profit consultants in the American PA industry have only increased the harm that the lack of regulation inflicts. As I documented in "Sub Silentio Alienation", methodological errors and gender bias have been replicated across this community, further entrenching the lack of as-applied validity.[288] Parliament must step in and create a system to regulate the forensic subspecialty of psychology, particularly in in the Family Court.

288. Leonetti, *supra* note 2.