

13th May 2019

Court of Appeal Report: Schmidt and Hopfengärtner (CA 398/2018).

Clara Lorisa Schmidt

(Dob 3.7.2007, aged 11)

Half Sister.

Charlotte - Lotte Hopfengärtner (8).

Parents.

Axel Schmidt

Lisa (Li) Hopfengärtner.

Step Father.

Simon Hopfengärtner.

- 1.1 I have been asked to provide a Specialist Psychological Report- Hague Proceedings with respect to this matter. I am a Psychologist (Clinical Scope of Practice)¹, holding the degree Doctor of Philosophy (PhD). I have expertise in the area of the assessment of children, young people and their families and adult assessments of parenting skills and styles. I have expertise in the area of the impact of family conflict and relationship dissolution on children and young people. I have expertise in the area of the assessment and treatment of trauma and abuse in both children and adults. I have expertise in the area of the assessment of attachment.
- 1.2 I have a Post Graduate Certificate in Child Custody Evaluations from William James College (Boston). I am a certified trainer for AFCC (Australia) in its certificated programme of Family Court Training and Education.
- 1.3 In 2018 I was made a Distinguished Scholar of Waikato University.
- 1.4 I am a Fellow of the New Zealand Psychological Society.
- 1.5 I have worked specifically in the area of requests for re-location and Hague matters and am a published author in the area².



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² Calvert S. (2018) What happens to children in high conflict parenting disputes: How should we hear their 'voice'. *The Judges Newsletter on International Child Protection*. The Hague Conference on International Law. 16-20.

- 1.6 This Report is written with the Principles of the Care of Children Act in mind (see Endnotes).
- 1.7 I am familiar with Schedule Four, High Court Code of Conduct for Expert Witnesses (Rule 330A). I am aware of my obligations in this regard and agree to abide by those rules. I confirm that the opinion evidence I have given in this report is within my area of expertise and professional experience.

Brief:

- 1.8 In this Report I am asked to provide an opinion in respect to the following Direction
- : Having regard to the child's objection to return:
- (a) What is the basis of that objection?
 - (b) Does it appear as if the objection is reality based and/or affected by undue influence and/or able to be addressed by explanation or intervention?
 - (c) Does the child have sufficient maturity and understanding to recognise the implication of the objection?
 - (d) Having regard to the child's age, cognitive ability, maturity and options available, how might the child respond if the Court makes an Order for a return despite the objection.
 - (e) What, if any, would be the psychological impact on the child of an order for a return to Germany.
 - (f) Is the child psychologically settled or integrated with respect to being in her environment in New Zealand (focusing only on the emotional constituent denoting security and stability and not the physical/factual elements of being settled).

Methodology.

- 1.9 This report and its methodology are constrained by the parameters of the Hague process. However, given the passage of time (since the initial Hague proceedings-2017 and since Clara came to New Zealand 2015) information is included in this report, and data has been assessed in terms of that, which relates to events subsequent to the initial proceedings and certainly subsequent to Clara's arrival in New Zealand. That is because those events have shaped Clara's views, as would be expected. Fully one third of Clara's life has been lived in New Zealand now.
- 1.10 No reliable data is available to determine how Clara viewed her removal from Germany in 2014. There is data available to the Court to consider the views Clara held prior to her removal from Germany as understood by professionals involved with her at that time. In addition, of course, her parents each have a view of her views.
- 1.11 I have met with Clara. I have done so twice. The first occasion was associated with my appointment by the Family Court to prepare a Sec

- 133 Report in respect to Clara³. The second was specifically to traverse issues associated with this report.
- 1.12 Following my first meeting with Clara in 2018 I was extremely concerned about her psychological presentation and as a result formed the view that it would be unethical to continue gathering data until Clara was properly and professionally supported in therapy. I formed the view that Clara was exhibiting symptoms consistent with a diagnosis of Post-Traumatic Stress Disorder and I had formed a view about the duration of that (potentially) and some of the causative factors (potentially).
- 1.13 However in order not to compromise my neutral role as the Court's Expert I simply sought, repeatedly, that Clara be provided with independent support through professional counselling before I proceeded with further assessments of her. No information about my reasons for making that request was provided to either parent or even to Mr Blair.
- 1.14 There was a long delay in obtaining proper professional help for Clara.
- 1.15 The Court of Appeal is referred to the Interim Report prepared for the Tauranga Family Court (3rd January 2018) which outlined my view that Clara needed independent support before she could re-engage properly in an assessment. In that report I say
- (i) *I spoke to Clara about her feelings. I am satisfied that her feelings (and the views she expressed) are genuine. I do not consider that they are a result of direct influence nor did I find evidence (in respect to the specific matters) that she showed signs of alienation.*
 - (ii) *I consider that there are events which have occurred to Clara or which form the environment in which she finds herself which have and continue to cause her anxiety and which now form an aspect of clinically significant Post Traumatic Stress Disorder.⁴*
 - (iii) *As a result I spoke to Mr Blair indicating that I consider it unethical to continue to see Clara without her having independent access to counselling to provide her with support during this (likely) lengthy legal process about her future.*
- 1.16 In both interviews Clara was seen in a formal setting in my office in Auckland. For this specific assessment Clara was brought to my office by the Oranga Tamariki social worker who is assigned as agent in this matter. Clara was also accompanied by her Counsel, Mr Blair. Neither the social worker nor Mr Blair were present for the interview. Mr Blair was not present in the building when I interviewed Clara.
- 1.17 I have provided an opportunity for each parent to speak to me (by phone) specifically about their views in respect to the matters before the Court of Appeal. Both parents were sent a copy of the Brief provided and asked to confine their comments (which were to be brief) to their views

³ This was prior to the Court of Appeal Judgement and was intended to address Care and Contact arrangements for Clara under COCA following the decision of the Tauranga Family Court in September 2017. The data collection for that report had only just begun when, for reasons outlined in 1.12-1.15, I stopped work on the report.

⁴ See Appendix Three.

- about those issues. They were both told that these phone calls would be brief.
- 1.18 Dr Schmidt sought to speak to me about matters other than those contained in the Brief and to have professionals of his choice present when he spoke to me and that request was sent to the Court for its view.
 - 1.19 The Court of Appeal Judge, Justice Brown, responded (23.4.19)
 1. You are not obliged to discuss your Interim Report with Dr Schmidt;
 2. You are not obliged to conduct any interview with Dr Schmidt when his legal or other professional advisors are present, being persons who are not merely a neutral support person.
 - 1.20 I have reviewed (as part of my general preparation for the substantive report) all of the materials forwarded to me by the Court and by the parties. Dr Schmidt has forwarded a significant amount of material to me, including video material. I have reviewed that material other than that which I do not consider I should have been sent⁵. The materials I have had access to are listed in Appendix One⁶.
 - 1.21 I note that I have not specifically relied on either the data or the opinions formed by Ms. Lightfoot in the preparation of this report although her report was read by me previously and reviewed for this report⁷. This is, itself, unusual since a report writer would normally consider existing data collected by another psychologist to be important triangulating information as I have in respect to the data provided in reports by German psychologists. I have however reported data gathered by Ms. Lightfoot which provides information directly about Clara's views or which is relevant to this report and the opinions I have formed. In part this is because she interviewed Clara at the time of the original Hague hearing.
 - 1.22 There are methodological complexities associated with this case. This is because this report, prepared for the Court of Appeal, is effectively only about Clara and her perceptions prior to the subsequent Family Court process. However clearly that is not how Clara views the situation, that is, normatively, her current perceptions and beliefs are influenced and informed by subsequent events. In addition her memory for some events, such as the event which occurred in 2013, are likely to have been normatively altered by the passage of time as is any memories she has of Germany itself.
 - 1.23 Clara has been screened using the TSCC⁸ both times I met with her. There are methodological issues associated with considering her responses in a situation such as this but I had been concerned about her

⁵ That being, specifically, the materials from Dr Schmidt to the Psychologists Registration Board and their materials sent to him (these being normally confidential). None the less Dr Schmidt has referred to those material in other documents (including those before the Court of Appeal) and in his first interview with me so that I am aware of the general content and Dr Schmidt's views.

⁶ I have previously asked Mr Blair to provide me with his copy of all documents filed in the Family Court proceedings so that, in the preparation of the substantive COCA report, I could be sure I had been sent all relevant documents and could review them. It is possible that I had not been sent all the documents. Given the very specific nature of this report and the focus on Clara and her wishes I consider that the extensive documentation I have relied on previously is sufficient for me to consider.

⁷ This is because Dr Schmidt has made a complaint about Ms. Lightfoot's work in respect to that report. No determination of the complaint has been made by the New Zealand Psychologists Board.

⁸ Trauma Symptom Checklist-Children. Briere.1995 Psychological Assessment Resources. California.
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presentation and wanted to gather specific data about possible PTSD and to hear what Clara said about her responses.

- 1.24 It is also my concern that the complexities associated with Hague proceedings are an issue here as is an understanding by the parties and Clara herself that 'evidence' is a matter for the Court and not for the Court's expert report writer⁹.
- 1.25 In particular the narrow scope of any report provided under what is often referred to as Part One Hague (return or remain) as opposed to the more normal and extensive scope of a Sec 133 under COCA in New Zealand (Part Two Hague) means that only pertinent evidence in regard to that has been collected.

Disclosure of this Report to the Child.

- 1.26 This report should be discussed with Clara by her counsel, Mr Blair.

Section Two: Brief Background to the matter.

- 2.1 Clara is the only child of Lisa Hopfengärtner and Axel Schmidt.
- 2.2 Axel Schmidt and Lisa Hopfengärtner began a relationship in 2006-7. There are disputed accounts of the nature and duration of that relationship but Clara was born in 2007. The couple separated in 2009 although the situation between 2009-10 is disputed.
- 2.3 Ms. Hopfengärtner alleges that the separation was occasioned by an incident of Family Violence (Dr Schmidt towards her).
- 2.4 Ms. Hopfengärtner and her husband, Simon currently live in Whenuakite, Coromandel. Their relationship began in 2011.
- 2.5 Clara has a half-sister, Lotte. Ms. Hopfengärtner and Mr. Hopfengärtner married in 2013.
- 2.6 Dr Schmidt has remained living in Germany.
- 2.7 Clara is currently a child subject to legal proceedings in two countries, Germany and New Zealand. There are a number of legal proceedings current (as I understand it from both Dr Schmidt and Ms. Hopfengärtner) in Germany.
- 2.8 Clara has been involved in various forms of Family Court processes from the age of 2, initially in Germany and subsequently in New Zealand. As a result she has been subject to forms of assessment associated with such processes.
- 2.9 Clara is a child whose entire life has been (likely) impacted by the conflict between her parents. The genesis of that conflict and the contributions of each parent are a part of the fundamental dispute between her parents which will need to be addressed in subsequent proceedings either in Germany or in New Zealand.
- 2.10 In 2011 Ms. Hopfengärtner sought to access psychological intervention for Clara who was described as being distressed by her situation. Clara would then have been under the age of five.

⁹ That is it is ultimately a matter for the Court to hear and test all the evidence before it, including that of the report writer and to make determinations in respect to that and the ultimate questions before it.
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- 2.11 There was an incident in 2013 which took place outside of Clara's school. Subsequently in her (Part One) Sec 133 Report Ms. Lightfoot formed the view that Clara suffered from Post-Traumatic Stress Disorder as a result of that incident. That incident is the subject of significant dispute between the parents and rulings in German Courts (which Dr Schmidt relies on) both about what happened and about the impact on Clara. It is alleged that in that incident Dr Schmidt was struck on the foot by a car being driven by Mr Hopfengärtner.
- 2.12 Expert opinions are available from the various legal proceedings in Germany which indicate that Clara's situation should be characterised as a 'high conflict' Family Court matter. As such, regardless of ultimate findings by various Family Courts as to the causative factors and potential responsibility for them (by either adult party) there is likely to have been a significant negative impact on Clara's perceptions of her situation and on her psychological wellbeing prior to the removal from Germany.
- 2.13 In addition one expert, Dr Spangler, noted the possibility of 'risk' to Clara's psychological welfare associated with his recommendation of a return to her father's primary care.
- 2.14 In 2014 Clara left Germany with her mother, half-sister and step father.
- 2.15 This was prior to a decision of a German Court transferring custody to Dr Schmidt. Ms. Hopfengärtner appealed that decision. However the German Court subsequently upheld the original sole custody decision in Dr Schmidt's favor.
- 2.16 Clara has lived in New Zealand since 2015.
- 2.17 Ms. Hopfengärtner obtained a German passport for Clara.
- 2.18 In 2016 Dr Schmidt was advised that Clara had had a German passport issued in her name through the German Embassy in New Zealand.
- 2.19 In 2016 a European arrest warrant was issued against Ms. Hopfengärtner. Subsequently a German Court ruled that Clara was to be released into her father's custody.
- 2.20 In February 2017 Dr Schmidt was granted a Non Removal Order in New Zealand and he subsequently applied to have Clara returned to his care in Germany.
- 2.21 In June 2017 Mr Blair, Clara's lawyer, indicated his view that Clara needed independent help and support given the situation she found herself in. This was at the beginning of the Hague Part One process. Mr Blair was unsuccessful in having Dr Schmidt and Ms. Hopfengärtner agree to this¹⁰.
- 2.22 Ms. S Lightfoot, Clinical Psychologist, provided a Sec 133 Report in June 2017 which was focused on the issues associated with Clara's views about a possible return to her father's care in Germany, her maturity and the issue of 'influence (alienation)'. Ms. Lightfoot noted the relationship between Clara's psychological distress and her (Clara's) perception of the event which occurred in 2013.

¹⁰ In my opinion her position as described by Mr Blair was consistent with those of other similar children with resist/refuse dynamics. I consider that had the Court been in a position to organise appropriate counselling for Clara at this time it is likely that some form of contact with her father could have resumed. Mr Blair noted that the parents seemed unable to agree on such arrangements and this remains the situation. In order that my concerns for Clara could be attended to the Family Court had to engage Oranga Tamariki as its agent to facilitate counselling.

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- 2.23 Dr Schmidt has been critical of Ms. Lightfoot's clinical assessment and has made a complaint to the New Zealand Psychologists Board. No determination of that Complaint has been made or reported by the Board.
- 2.24 There have been other ancillary issues (such as immigration issues) which are likely to have had an impact on Clara and her psychological wellbeing.
- 2.25 On the 28th September 2017 (following the Decision of Judge Coyle, 1st September 2017) Dr Schmidt organised for people he 'knew' or engaged to help him uplift Clara from her school classroom during a school day.
- 2.26 Dr Schmidt had sought to inform the New Zealand Police that he intended to do this and has said that the Police told him he was entitled to do so.
- 2.27 The New Zealand Police were involved when it was apparent that Dr Schmidt was not entitled to uplift Clara. The Police were contacted by one of those involved with the 'uplift' and Clara was eventually returned to her mother's care after being found in Auckland with her father.
- 2.28 Dr Schmidt was (and is) of the view that Clara was not upset by the uplift at her school and had consistently asserted that she would not be upset by contact with him. He has said he is the only person who can give evidence as to Clara's response to his uplifting her in the manner that he did¹¹.
- 2.29 Clara has now lived in New Zealand for four years, that is a more than a third of her life. Given her age her most significant memories and her views will have been shaped by the last four years.
- 2.30 In addition her situation has become the subject of media publicity and given the nature of New Zealand society it is likely that Clara (if not already aware of this) will become aware of this¹².
- 2.31 Any substantive report (whether prepared in New Zealand or Germany) will need to address, at length, the issues which arise from these events and their impact on Clara.

Section Three: Clara's presentation.

- 3.1. Clara is a middle years child (Latency age) who is moving into early adolescence. As such normally her orientation would be turning towards peers and developing independence. This is not entirely the case with Clara.
- 3.2. Clara is an intelligent and intellectually able child whose academic performance is well within age expectations and who shows academic abilities which could develop if her circumstances were different. This has been a consistent observation over time.

¹¹ Actually, of course, Clara's own evidence is equally critical.

¹² New Zealand Herald. 27.2.19

Collateral- Previous Data.

- 3.3. I note those areas where initial observations (made by Mr Blair, Ms. Lightfoot, video material provided to me and documents provided by Mr and Mrs Preece¹³ prior to the event of September 2017) are at odds with Clara's current presentation. This is because this data is important in forming the views I have in this matter.
- 3.4. Ms. Lightfoot gathered information which suggested (in 2017) that Clara *"Clara is well settled in her current situation, is happy and is making very good developmental and educational progress"*.
- 3.5. Clara considered, at that time, that her home is in New Zealand and that she was, in her mind, 'settled' here.
- 3.6. To Mr Blair, Clara reported in 2017 that she was opposed to being returned to Germany, a country she associated with parental conflict and unhappiness and further (at that time) reported a reluctance to have any contact with her father. She repeated similar views to Ms. Lightfoot.
- 3.7. Reports from 2017 and subsequently have indicated that Clara has always demonstrated a degree of anxiety about her situation which has been evident in more than one setting. Her anxiety was considered to be related to her understanding of the conflict between her parents and the potential for her to be returned to Germany.
- 3.8. Clara reported to Ms. Lightfoot that being returned to Germany would *"be bad, butterflies in my tummy, it's not a good feeling"*. This description is consistent with how children of her age at the time might describe anxiety.
- 3.9. This was in contrast to other descriptions Clara had provided, to both Ms. Lightfoot and others, positive accounts of times she remembered being with her father in Germany. Equally, in the past, Clara has not been opposed to contact with her father although she could be described as being reluctant or anxious. She consistently referred to Dr Schmidt as her 'Dad'.
- 3.10. Clara spoke spontaneously to Ms. Lightfoot, about an incident which she was witness to in Germany. That incident is the subject to conflicting accounts by her parents and step father but has been the subject of a 'finding' by a German Court. In that incident Mr Hopfengärtner 'ran over' Dr Schmidt's foot. That incident appears to have formed some of Clara's developing negative views of her father which is supported by a contemporaneous account of her saying to a Youth Welfare office in Germany that she did not have the 'courage' to see her father after this incident¹⁴. It also may have had a psychological impact on her increasing anxiety.
- 3.11. Subsequently Clara told Ms. Lightfoot that she *"basically forgot about (the car incident) and then it's (the anxiety) started again"*.
- 3.12. For that reason her (now) views of the incident were traversed during my first interview with Clara.

¹³ Mr and Mrs Preece are friends of Dr Schmidt's. They may or may not have been involved in the uplift of Clara from the school. They have provided 'evidence' which is not currently (as far as I am aware) before the Court but which was sent to me and which, at the time I assumed was in proper affidavit form (and may be but has not been forwarded to me). I did review the documents because they provided data about Clara's presentation prior to September 2017.

¹⁴ Dr Schmidt's Affidavit, 21.4.17.

- 3.13. Clara also spoke (to Ms. Lightfoot in 2017) of the close nature of her relationship with her mother and her fear that, if returned to Germany, she would not be able to maintain her relationship with her. Reports provided by specialists who assessed Clara in Germany noted a primary attachment to her mother¹⁵.
- 3.14. Clara has a strong relationship with her younger half-sister, Lotte.
- 3.15. Clara reported, in 2017, to both Mr Blair and Ms. Lightfoot that the incident in 2013 had impacted on her perception of her father. She reported feeling scared and upset. To Ms. Lightfoot Clara reported that her memory was of her father *"banging on the window with his hand and that was the first time I was scared, that gave me such a big fright...I was so petrified I didn't think of anything"*. Ms. Lightfoot reported that her observations of Clara's physical, behavioural and emotional presentation when giving her account was consistent with traumatic recall.
- 3.16. Subsequently Clara, normatively, had a period where symptoms consistent with Post Traumatic Stress Disorder reduced significantly.
- 3.17. Clara was seen in late 2018 (for the substantive Sec 133 Report, New Zealand Family Court). During that interview, much of which is not reported because it is not relevant to the Court of Appeal proceedings, Clara was interviewed about her fear of her father and what might have contributed to that.
- 3.18. Clara was first asked to tell me about the incident in Germany (which had been the focus of Ms. Lightfoot's concern). Clara said that she had been upset when it happened and she (now) thought that it was the first time she really understood the 'anger' between her parents¹⁶. Clara acknowledged to me that prior to this she had enjoyed visits with her father although she thought that she would have 'always' wanted to live more with her mother.
- 3.19. Clara was able to access some appropriate and positive memories of time spent with her father even although (as she said) this was a long time ago. For example she remembered enjoying going swimming with her father.
- 3.20. I asked Clara to walk me through what she now remembered of the (first) incident. Clara then said *"it is a bit strange....because for a time I sort of forgot it, it was not in my mind....and then it came back"*. I asked Clara exactly what she remembered and she said *"he was banging on the window with his hand....bang bang and what I remember was his face....how he looked....he was looking at me and he was very angry"*. Clara was extremely agitated and distressed, showing signs of psychomotor agitation, starting to display emotional constriction and then she began to cry.
- 3.21. Clara's comment is important. She was not addressing perception of the event or what she had been told about the actual event, but her perception about the memory she has of her father looking at her.

¹⁵ Dr Spangler, Pg. 73, 2016.

¹⁶ That is Clara's recall was related to her cognitive understanding of the nature of her situation, entrenched inter-parental conflict. Harold(2018) and others have noted that exposure to such a level of conflict could create trauma in a child in and of itself.

- 3.22. Although Clara was very upset I was mindful of the need to gather robust data for the Court and I asked her if we could go back over exactly what she recalled¹⁷. Clara agreed but said *"it was a long time ago....I do remember being in the car and feeling scared...I think I understood everyone was angry...but I was sitting in the car and my father was just banging...that was what was making me scared...he was banging on the window....I remember seeing his face and feeling scared....I saw a very angry face"*. Clara did not know what happened after that. Clara's recall (in my opinion) was associated with a cognitive, behavioural and emotional presentation consistent with a traumatic experience.
- 3.23. Clara reported that this was not now what worried her most however. She then, in my opinion, suffered a significant period of cognitive and emotional distress (crying, rocking, being somewhat dissociative and showing psycho-motor agitation). I allowed Clara to calm herself and we agreed to see if I would be able to continue to ask her questions.
- 3.24. Clara then spoke about the events which occurred in September 2017. Throughout the time she spoke she was extremely distressed, anxious and displayed frank hypervigilance.
- 3.25. Clara said *"it was those men.....they came and took me....I was shaking so much....I was so scared....I think someone was crying"¹⁸.....they just took me...I thought I was going to die¹⁹"*. I allowed Clara to recover herself and asked her to 'tell me everything she could remember from the beginning.
- 3.26. Clara said *"it was the last time....when he took me from school"*. Clara started to cry but gathered herself and went on *"I was doing my work....in my class...I was working on a project I think...and Dad came to the door...and two other people....I had never seen them before...I had this feeling....I was frozen....I felt I could not breathe...it was such a big shock...I could not move (but I think I did)....I was really scared....my Dad just took me...took me off the chair...he picked me up²⁰ ...I think I was saying 'No, No, put me down'....but I don't know if I had any sound²¹....he took me out through the door and put me in a car and we went to Tairua....I was so scared....I did not know what was going to happen to me....but I remember watching where we were....I was wanting to jump out, to get away.....I was just so scared"*.
- 3.27. Again Clara was extremely agitated and distressed. Her presentation was, in my opinion, consistent with Post Traumatic Stress Disorder in children following a traumatic event. I checked to see if her mother was back (she and her husband and daughter had been asked to leave the building

¹⁷ This technique for interviewing children about things that may have happened to them is based on the NICHD protocol used in the video recording of children's evidence throughout much of the world. It allows for as much free recall as possible (the most robust data) before children are taken back to aspects of their account and asked for more detailed accounts.

¹⁸ Clara believes this was another child in the classroom and spoke about the impact of this event on others.

¹⁹ A diagnosis of PTSD involves a person forming a genuine belief that they will be seriously harmed or might die. It was at this point that I began to consider the use of the TSCC with Clara.

²⁰ Clara then lifted her arms up as if to demonstrate this memory.

²¹ See 3.65. Clara reported this experience in my first interview in 2018 but then spontaneously described it in free narrative in 2019.,

- during the period of the interview) and she was not. I text Ms. Hopfengärtner and asked her to return.
- 3.28. I then screened Clara using the TSCC.
 - 3.29. Clara told me that she had more to tell me (it is likely that some of the questions from the TSCC cued her memory for event) and said *“we drove to Auckland....I was always shaking on my inside...I was crying all the way and I was so tired...first we went to this hotel...I thought he was going to take me (out of New Zealand) and I was just very quiet so he would not get angry and then he took me to these friends and I told the woman he had taken me from school...and then the Police came”*.
 - 3.30. I asked Clara if her father had said anything to her and she thought for a while and said *“I think he said that everything would be good and that we could call Mummy but if I told her where we were we would have to move”*. Clara thought but was unclear if this was a memory or a thought that her father said he had been planning to come to New Zealand to get her for a year. Clara said her father would not tell her what was going to happen which made her even more frightened.
 - 3.31. Clara said her father took her for a walk in Tairua (she thought) and she was worried about what was going to happen so she talked to him about the plants. She did not know why she had done that *“I don’t remember some things....why I did some things anymore because I have tried so hard to forget them.....it was such a terrible moment... I am so scared of Dad...but I don’t know why I am so scared...well I feel scared when I think of being made to go back to Germany...my Dad is ruining my life....I am always scared now”*. That is Clara reported that her overall perception of herself and her life had changed from being one where she ‘got on with her life’ to one where she was ‘always scared’.
 - 3.32. Clara was unsure if her father would have been aware of her distress²² and said *“I did not want to upset him if he got angry I would be even more upset”*. Clara was continuing to shake and cry.
 - 3.33. Having gathered some data I determined that it would be abusive to continue to ask Clara clarifying questions when I consider she lacked appropriate professional support to manage her distressed state. I then referred this issue to the Court.
 - 3.34. Clara continued to show significant distress and when her mother returned I terminated the interview.

Clara’s current presentation:

- 3.35. Clara was seen and assessed in a neutral setting. She had an age normative appropriate understanding of why she was seeing me *“The Judges can’t agree about my situation”*.
- 3.36. Clara told me that until the resumption of legal proceedings *“This year has been really fun...I have felt more normal...as a family it is more normal...I have a new teacher at school, Mr Ewing, he is a very organised teacher and that suits me best...at school he makes learning a lot of fun...so we learnt about marine resources by going snorkeling....we are*

²² See Appendix Four for Dr Schmidt’s view of Clara at this time.
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going on a ski camp....no I have never been skiing". Clara has again shown a capacity to recover from deep distress and to re-engage in her life (see 3.31).

- 3.37. Clara then showed a drop in her affect and she said *"until now...now I am very worried, very, very worried"*. Clara said she did not feel that people understood her worry.
- 3.38. I began by asking Clara about her views of the issues before the Court. She said *"I don't want to go to Germany....New Zealand is my home....I don't want to go, not even for a visit....because Axel is there"*. Clara began to show distress so I re-orientated her to my questions and she recovered and said *"I am at home here now, settled, I have friends, my bunnies²³"*. Clara then told me that she takes her bunny to her counselling appointments because it is a comfort when she feels sad and worried *"and worse, sometimes what I feel is worse...then I can stroke Bliss and I feel better"*.
- 3.39. I asked Clara what happened at counselling and she said *"I talk about things...I talk about my anxiety...my 'butterflies'...my sore stomach...there I can be safe to think about things but the rest of the time all my mind is put into staying here....I can block my fear when I really try"*.
- 3.40. I asked Clara why she felt this 'fear' and she said *"I am scared of him...Axel....he has done a few things I am scared of....well one thing was a big thing"*. I asked her what that was and Clara said *"coming into my school and taking me....taking me from school with those other people"*. Clara then began to cry and was agitated.
- 3.41. I again moved Clara's focus away from that event to her current life and views. Clara reminded me that she has always lived with her mother and that she wishes to continue to do so. She said that, in the past she had been able to consider seeing her father (as she had done as a younger child) and noted that she had been aware that this would possibly happen as a result of speaking to Ms. Lightfoot. She also noted that I had asked her about that (when I saw her previously) and she knew she needed to prepare herself for that to happen²⁴.
- 3.42. Clara recalled she and I discussing this previously and said that she had been able to think she could cope with that. However she now felt that her father had done something terrible to her and had not thought about how she might feel about what he had done.
- 3.43. Again Clara said she did not understand why nobody seemed to want to listen to her views and feelings.
- 3.44. I asked Clara if she still felt she would be open to seeing her father and she again began to cry and said *"No, I cannot do that anymore...he does not understand how scared I am... because of what he did...he does not understand my feelings that he could do that"*. I asked Clara if she was talking about something that happened in Germany or something that happened here and she said it was something that happened here in New Zealand.

²³ Her bunny is called Bliss. Lottie's is called Spots but Clara now cares for him.

²⁴ Clara went on to comment that I had asked her about the abduction from school and that she thought (correctly) that she had told me how that had changed her opinion about this.

- 3.45. I reviewed with Clara our last meeting and checked that she felt she could discuss the event she was referring to in depth with me and that she would be able to then talk to Fredrick, her counsellor, about her feelings. Clara said *"I am older now....I have Bliss and yes I will talk to Fredrick"*. She sat silently for a time and then took a deep breath and nodded at me.
- 3.46. I asked her to start from the very beginning and tell me from the very beginning what she remembered of that day. I told her I would not interrupt her while she talked but that afterwards I would ask her questions²⁵.
- 3.47. Clara began *"it was sunny....I remember it was sunny, me and my best friend we were at the high table working on a project, we made a poster or doing something...I was making a joke...and the door opened and I saw who came...I was in shock"*. Clara then showed very significant psycho-motor agitation and distress and she moved physically back into her chair. From this point on she was often in tears and trembling.
- 3.48. Clara went on *"you just freeze up...you cannot think...he had two other people with him, I did not know them....a lady and a man...and the man went and talked to Mrs Gibson (the teacher)....Axel was looking around the room...he saw me...he came and he pick me up...I was crying, yelling at him to put me down...but inside I was terrified...so scared...but outside I was trying very hard to be calm...to be thinking"*.
- 3.49. Clara again needed to recover herself momentarily.
- 3.50. She went on *"We left the classroom and I was pushed into this car and we went to Tairua...and I was thinking that Lottie had a school trip to Tairua to the Library....and we stopped at a Motel where Axel was staying..."*. Clara was crying too much to continue.
- 3.51. Clara recovered again and said *"I remembered that Lottie and her class were going to the Library so I asked Axel if we could go for a walk to get some books for me...and we did go for a walk....but the man...he was on his phone...he seemed....not angry...worried...I think he told them they needed to go"*. Clara could not recall what the conversation between her father and the man involved, only that the man seemed very worried.
- 3.52. I note the standard response using the protocol is to neutrally return the child to the flow of their narrative, this I did.
- 3.53. Clara became agitated and said *"I didn't understand this but they asked me if I wanted to go to Auckland or Wellington...I wanted to go home...but I said Auckland because Wellington was a long way away"*.
- 3.54. Clara was wringing her hands at this point. Subsequently she began to breathe rapidly and was again highly physically agitated.
- 3.55. Clara went on *"just before Auckland we stopped at a café and another man came to be with Dad...we had something to drink...it was dramatic,*

²⁵ This process mirrors the NICHD format for forensic interviewing Lamb, M.E., Orbach, Y., Hershkowitz, I, Esplin, P.W and Horowitz, D..(2007)*Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol* Child Abuse Neglect; 31(11-12): 1201–1231. doi: 10.1016/j.chiabu.2007.03.021. La Rooy, D., Brubacher, S. P., Aromäki-Stratos, A., Cyr, M., Hershkowitz, I., Korkman, J., Myklebust, T., Naka, M., Peixoto, C. E., Roberts K. P., Stewart H., & Lamb M. E. (2015). The NICHD Protocol: A review of an internationally-used evidence-based tool for training child forensic interviewers. *Journal of Criminological Research, Policy and Practice*. 2, 76 – 89
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pretty dramatic in my mind....that this was happening to me...I was terrified”.

- 3.56. Clara said her father then took her to Butterfly Creek, Clara reported she felt confused by this. She said *“I didn’t know what was happening...I was trying not to make him angry to me...it wasn’t great...and then the two guys picked us up and we went to this hotel...and then Axel’s plans changed and we went to some friends of his somewhere...actually the lady was nice, they were German...she talked to me and we had dinner, Axel was talking and talking to the man....I remember the lady put a movie on for me ...I think because I was upset...I told her all about how I felt but she said she could not do anything”.*
- 3.57. Clara said *“then the Police came....I was still so scared...what was happening to me...but they took me to the Police Station and were nice to me and they took me to my Mum’s friend....oh that’s right (laughs)...it was funny, the gate was closed and no one heard us so the Policeman jumped over the gate...to let us in, it was funny”.*
- 3.58. Clara said *“I could not sleep....sometimes now I remember how that felt...to be so terrified”.* Clara said sometimes she has ‘bad dreams’ because she is worried about what might happen to her again.
- 3.59. I consider that Clara ends her account with a comment about remembering the traumatic nature of this event to be important. This is because her actual narrative ended more positively with a humorous account of being taken to her mother’s friends’ house.
- 3.60. The above constituted Clara’s ‘free narrative’.
- 3.61. I asked Clara to start back at the beginning and whether, other than that it was sunny did she remember anything else prior to her memory of working on her project. She said *“Mrs Gibson was at the front working on something...my friend, Pippa McEwan...we were doing our project...it all happened so fast....that’s strange...it is fast and it is so slow...like I cannot explain it...and it is like a video camera you can see everything that happened...it is playing in my mind....I had nightmares but they were about something real...and sometimes there is no sound...that is strange”.*
- 3.62. Clara explained she and Pippa were working on a project and making a poster, she thought about Greece. She said *“I can see, in my mind, we were cutting out paper and things to make the poster and I am happy and laughing and then I am in shock and frozen...just immediately...I am scared ...I do not know what is going to happen”.*
- 3.63. Clara then said *“oh I remember...the lady is on the phone and it is the man talking to Mrs Gibson....afterwards I was told that Mrs Gibson was very pale...everything is very silent....that was very frightening...and my Dad picked me up and said ‘everything is going to be alright’ and I knew it was not”.*
- 3.64. I asked Clara what her classmates thought and said about this event. She repeated that they had talked about Mrs Gibson being ‘very pale’ and the Police coming. She said *“the boys asked me if I had been taped up in the car...to my seat....Pippa told me she was very scared that something very bad would happen to me...it is still talked about....the boys they say they should have karate chopped him or tackled him”.*

- 3.65. Clara said that while she can ‘feel’ being picked up from her stool she cannot ‘see’ that happening and she does not have any memories of getting to the car and that she next remembers the car driving and she thought she was pressed against the window. She said *“my Dad is talking all the time but I cannot hear...I am crying...but maybe there are no tears?....it is like a fog”*. Clara clutched at her soft toy (she had brought this to comfort herself during the interview) and began to cry.
- 3.66. I asked Clara what she thought was happening and she said *“I thought he was taking me to Germany...taking me away...I was terrified”*.
- 3.67. Clara told me that she had thought about going to the toilet and climbing out of a window. Asked what she would then have done she said *“I would have run, just run...I would have done anything...because I thought he was going to take me to Germany²⁶”*. Clara did not have or ever formulate a coherent plan for escaping and said *“now I think I could think of things but I was just so scared and Dad...he was always there and those other people...he was like a guard dog on me”*.
- 3.68. I asked Clara about the ‘walk with nature’ that Axel has described. Clara is sure that relates to her asking to walk to the Library in Tairua where she hoped to find her sister and a teacher (she also thought that Lotte’s friend’s Mum might be there). She said *“I know I was really thinking hard how to ... well not let him be angry...I was talking to him showing him things....so he would be pleased with me and not hurt me”*. I asked Clara about how her Dad talked to her and she said *“I don’t really remember him talking...it is like he is talking but it is in the background....I can’t hear him properly”*. Clara thought she had been working in her mind *“to get away”*.
- 3.69. I asked Clara what her Dad was like with her and she said *“he was being overly nice...but I was suspicious....he kept saying it would be alright...but he would not tell me what was happening....what was going to happen....that’s right he said we would spend the holidays together...but I didn’t want to do that...not then...if he has asked? I would have said he should ask Mum or we could have just had a holiday time together in Coromandel²⁷”*.
- 3.70. Clara had been crying and showing increasing distress and we had been speaking for some 45 minutes at that time. I consider she had also displayed periods of frank dissociation when her distress became too great for her to manage her emotional states.
- 3.71. I asked Clara if she was able to talk more about her Dad and she asked me *“will he be angry at me....for what I say....that would make me scared...I do not want to live with him...would you want to live with a person who made you scared...who made other people scared?”*.
- 3.72. Clara said she had not felt like this (to the same intensity and distress) when she had spoken to Ms. Lightfoot and certainly not (from her memory) when she saw her father when younger. She said *“I think we did have some nice times but I have always been closer to my Mum...I*

²⁶ I consider this constituted the greatest risk to Clara, that her desperation not to be taken to Germany might have led her to take an action which would have been dangerous to her.

²⁷ I draw attention to this spontaneous comment, that Clara would have been receptive to ‘holiday’ contact with her father in New Zealand.

think my Dad does not agree with that...in the past I would have gone to see him²⁸ but not now....yes if he had written me a letter, if he had understood what this has been like, yes....but now I am too terrified²⁹".

- 3.73. At this point Clara was so distressed and had begun to show regressed (decompensatory) behaviour and I decided to end the interview.



- 3.74. Clara is described as a child who is 'self-contained'. While she has friends she is often observed to be wary both in terms of her general environment and in terms of her ability to fully engage socially with her peers. This is indicative of hypervigilance.
- 3.75. In 2019 Clara was more confident and socially orientated to her peers (talking about sleep overs) than when seen in 2018 but repeatedly she showed distress which she found it impossible to manage.
- 3.76. Clara's schooling has been and is being negatively impacted by her circumstances. There are aspects of education (significant to modern learning) which she is currently unable to engage with (because they require engagement with the Internet). Clara told me she is unable to use a standard educational tool for fear her father will seek to engage her on it. Clara's school has found creative ways around this and Clara said she liked how she managed aspects of her learning but it is still detrimental to as child of this age for them to be unable to learn in an age normative manner. Clara herself said *"I just have to make the best of it"*.
- 3.77. The accuracy of Clara's account is supported by independent information gathered at the time (see for example 4.12) but it also provides, when viewed alongside that independent data evidence for her having experienced frank trauma at the time of uplift from her school. In particular I note the comments made by Clara Para 3.26 that she thinks she is saying something but she does not know if she actually is and the account provided by Ms. Gibson that Clara was indeed saying something. This along with other descriptions Clara provides and the indications from the TSCC indicate that Clara is suffering from Post-Traumatic Stress Disorder partially and initially caused by experiences of trauma associated with the intense conflict between her parents, the initial traumatic experience in Germany but now fully associated with the event which occurred in September 2017.
- 3.78. In my professional opinion Clara was probably traumatised by the event which occurred in Germany in 2013 and that her association to that was her memory of seeing her father's 'angry' face looking at her. Developmentally it would be normal for a child of the age that Clara was to assume that the person with the angry face looking at her was angry with her. I have indicated that there is some contemporaneous independent data which would support my view.
- 3.79. None the less it is Clara's own evidence (as well as my assessment of her) that the passage of time and positive (as Clara views them) changes in her

²⁸ Clara noted that she had already told me that.

²⁹ Clara in a normal human way, is saying that if her father could acknowledge her and her feelings then her feelings might change.

life meant that her anxiety and distress had diminished and that she was no longer experiencing significant trauma (either as a result of the event in 2013 or even from the conflict between her parents) prior to the event in 2017 which occurred after the Court hearing. In respect to that the information gathered by Ms. Lightfoot is of help to the Court since it was gathered immediately prior to the event occurring in September 2017.

- 3.80. Clara's current Post Traumatic Stress Disorder is primarily and directly associated to the experience of being uplifted by Dr Schmidt and his associates from her school, effectively an abduction. However the literature on how trauma impacts on individuals indicates that prior experiences of trauma may cause further trauma to be experienced more intensely. It is likely that that is the case for Clara.

Section Four: Independent Collateral Data about the event of 28th September 2017.

- 4.1. I have reviewed the (in my opinion) independent data available about the event which I consider has traumatised Clara and which now forms a very significant component of her views about a potential return to Germany and her father's care.
- 4.2. I have reviewed data collected at the time of this event. This is the Police Case Summary Report (29.10.17), the Incident Report of Whenuakite School and the report of the classroom teacher. I consider this to be independent collateral data.
- 4.3. The Police Report indicates that the Police became involved when Dr Schmidt went to the Whitianga Police station to inform them that he understood that Simon and Lisa Hopfengärtner were about to flee New Zealand by boat with his daughter. This was his first engagement with the Police. Dr Schmidt was accompanied by people the Police termed a 'Recovery Team'.
- 4.4. The Police Report notes that, following the decision of the Tauranga Family Court in respect to the Hague proceedings, Dr Schmidt had entered New Zealand on 12th September 2017 and been subject to an Interpol alert.
- 4.5. The Police Report says that, subsequently the Police understood that Dr Schmidt had engaged what it termed an 'Australian Recovery Team' led by Colin Chapman. That is he had engaged people who specialised in the 'recovery' of children believed to have been abducted by a parent to another country³⁰. That team consisted of either two or three people.
- 4.6. The Whitianga Police were told that the 'Recovery Team' was going to uplift Dr Schmidt's daughter from her school the following day and their authority for doing so appeared to have relied on the Judgement of the German Court. The Police were not told that there had been a recent decision in the Family Court in New Zealand that Clara remain in New Zealand.

³⁰ Such 'professionals' have had considerable press in the Australian media as a result of a number of high profile cases. Professionals who work in the Family Court (throughout the world) do not, generally, support the involvement of such 'teams' in uplifting children.

- 4.7. The Police Report says that the uplift occurred the next day “*with Police sanction*”. Subsequently, although the Police were called to the school, Dr Schmidt and the ‘Recovery team’ with Clara were able to leave the area.
- 4.8. The Police believed that Dr Schmidt did so lawfully, there being no Parenting Order then in place. There was a Non Removal Order but neither Dr Schmidt nor Ms. Hopfengärtner had, at that time, received the substantive Judgement and Order and it is unclear whether Dr Schmidt ‘knew’ it was in place.
- 4.9. The Police Report notes that while the Police considered that Dr Schmidt acted lawfully (given 4.8) *‘the nature of entry into the school grounds, and the initial snatching of Clara from the classroom could be seen as something that would be done in third world countries without legal processes to take a child back’*.
- 4.10. Subsequently the report notes that the Police were contacted by another person whose home Dr Schmidt had taken Clara to. This informant said Axel was planning to take Clara to Germany but that Clara was very upset³¹.
- 4.11. The Police were subsequently able to serve Dr Schmidt with a Warrant to Uplift Clara and the Orders. The Police then uplifted Clara who was returned to her mother’s care.
- 4.12. After a Warrant was issued (along with a Parenting Order) which sought to serve Dr Schmidt and to return Clara to her mother’s care an alert was placed into the national Police system.
- 4.13. The Report of Whenuakite School says that Dr Schmidt and his associates entered the school at 10am on the 28th September 2017. The school reported that four people (Axel and three associates one of whom was said to be known to Clara) were involved. One of the ‘private investigators’ went to the office and is reported as behaving in a forceful manner to office staff. This person said that they had legal documents (presumably to allow them to remove Clara). The documents provided to the school included a Police File number which is not the File Number attached to the substantive Police Report.
- 4.14. The school sought to both inform all those who would appear to have an formal interest in the situation and Simon and Lisa Hopfengärtner. The Police were informed and came to the school.
- 4.15. The school expressed its concern that, given that the Police knew Dr Schmidt was intending to uplift Clara from school, the school had not been informed noting *‘due to the trauma it had caused to everyone concerned’*. The Police did attempt to reassure both staff and pupils because there was concern for Clara and her safety but provided inaccurate information saying that they ‘knew’ where Clara was and that she was safe(they did not know where she was).
- 4.16. The Police asked the investigator still at the school to go to the Tairua Police Station. He did not do so.
- 4.17. Clara’s then classroom teacher, Margaret Gibson, also provided a statement (initially prepared for the school) about her experience of the

³¹ Further independent information about Clara’s presentation at the time of the uplift/abduction. Note this is not Dr Schmidt’s perception.

- ‘uplift’. She says that the event started at 10.14 during a Maths class. Three people, one woman and two men entered her classroom. One of those men stood and blocked Ms. Gibson from protecting Clara. A man she later knew to be Dr Schmidt said that he was looking for Clara.
- 4.18. Ms. Gibson was told that the actions of Dr Schmidt and his associates was legal. When asked by her to go to the office to speak to the Principal they refused.
 - 4.19. Ms. Gibson said that when Dr Schmidt approached Clara he said *“Clara I want you to come with me”* and that she had screamed ‘No’. He then grabbed her by the waist and lifted her up saying *“I have her”*. Ms. Gibson attempted to move to Clara but was physically prevented from doing so by one of the associates.
 - 4.20. Ms. Gibson reported that as Clara was carried from the room she was speaking in German shouting *“Nein Nein”*.
 - 4.21. Ms. Gibson and other teachers then observed Clara being put in a car and driven off.

Section Five: The views of the Parents

Dr Axel Schmidt.

- 5.1. I interviewed Dr Schmidt by Facetime on the 9th May 2019. He confirmed his consent (previously given in respect to the COCA Sec 133 Report) and understood that he was being provided with an opportunity to speak to me about his views of Clara’s objection to a return to Germany.
- 5.2. It is Dr Schmidt’s view that Clara is unable to form an appropriate view of her situation because she does not have access to *“the other side, the other reality...she is truly biased”*.
- 5.3. Dr Schmidt continues to believe that Clara has been influenced by the event in Germany involving Dr Schmidt and Mr Hopfengärtner. He also believes that Clara has been told that he has threatened to ‘murder’ her mother³².
- 5.4. Dr Schmidt believes that Clara has ‘searched’ for him (on the Internet) since coming to New Zealand. He believed this indicates that she misses her father³³.
- 5.5. Dr Schmidt believes that if Clara was forced to return to Germany Ms. Hopfengärtner would return there as well. Dr Schmidt was asked about any current legal proceedings in Germany that might adversely impact on Ms. Hopfengärtner if she did return to Germany. He did not answer that question but indicated that if Clara was returned to his care (he currently has a primary custody order in Germany) he would, provided Ms. Hopfengärtner returned to Germany, institute a week about shared care regime.
- 5.6. Dr Schmidt spoke about Clara’s inability to form a genuine view of her situation (and of him) because she has been subject to the influence of her mother and Clara’s own lack of contact with him.

³² Clara has never mentioned this to me. She did not mention it to Ms. Lightfoot.

³³ Clare, previously clearly indicated she did miss her father.

- 5.7. Dr Schmidt acknowledged that Clara is entitled to a 'view' of her situation which he respected but said *"but because they (children) have no bench mark for the future decisions are made(by adults) ...Clara has no benchmark, it is about the loss of her relationship with her father and her relationship with her family in Germany"*.
- 5.8. Dr Schmidt also expressed a concern that Clara was being denied access to the social capital³⁴ of himself and his family. He felt that she was being denied access to her 'German' identity'.
- 5.9. Dr Schmidt went over information about his relationship with Clara which existed prior to her moving to New Zealand. He considered the evidence available in reports from Germany indicated that he had an excellent relationship with Clara³⁵.
- 5.10. Dr Schmidt did support Clara having access to independent counselling and felt that, given that is occurring, she should be able to have contact with him so that her view of a 'return' to Germany was an informed one³⁶.
- 5.11. Dr Schmidt said he had not come to New Zealand or applied (to that point) to see her because it was his understanding that he would not be allowed to see Clara. He was also concerned that even if he was allowed to see Clara it would be for a very limited time.
- 5.12. Dr Schmidt said he would want to tell Clara that she would, if returned to Germany that she would see her mother for every second week (if Ms. Hopfengärtner lived in Germany)and he would not look to maintain a sole custody order. He considered that returning Clara to Germany on the basis of his having sole custody *"would make no sense"*.
- 5.13. However Dr Schmidt also said he wanted Clara returned to Germany *"Because in Germany I can determine what happens"*.
- 5.14. Dr Schmidt wanted a situation in which Clara would see himself and her mother cooperating and resolving their difficulties. He said *"it is for her to see human beings able to cooperate and both care for Clara and forgive each other"*.

Lisa Hopfengärtner.

- 5.15. I interviewed Lisa Hopfengärtner by phone and she also sent me a brief email adding to some of her points. She also confirmed her consent to participation.
- 5.16. Ms. Hopfengärtner felt that Clara may feel as strongly as she does about a return to Germany because she associates Germany with the ongoing conflict between her parents as well as because it is now not a place she really has clear memories of.

³⁴ Social capital can be thought of as the links, shared values and understandings in society that enable individuals and groups to trust each other and so work together for advantage and development (OECD, 2001). It can be thought of as the psychological, emotional and social contributions that provided to children by parents, siblings, extended family, peers and also by organisations and groups (Coleman 1990).It confers on individuals a capacity that is greater than that of the individual. Research has focused on the way in which families increase social capital (as do communities) or decrease it (as when there is a parental separation, especially one which is conflicted). Research has identified social capital (and the loss of it) as a factor in childhood behaviour problems. (Amato and Sobolewski,2004; Parcel and Menaghan, 1993; Parcel, Dufur and Zito, 2010).

³⁵ This is not necessarily how I, as an expert, would read some of the information contained in the reports from Germany.

³⁶ He has now applied to see Clara when he is in New Zealand for the Court of Appeal hearing.
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- 5.17. Ms. Hopfengärtner noted Clara had been in various Family Court processes since she was aged 3 and she had already been questioned by a number of adult professionals as a result. She felt that Court processes made Clara feel uneasy and unsettled. She said *"I think that is what is keeping her from having a good feeling about Germany"*.
- 5.18. Ms. Hopfengärtner noted that the incident in 2013 had created a change in Clara's mind, although there were times when this had 'faded' for her. Ms. Hopfengärtner said *"after that she did refuse to see him...she had not done that previously...and he, her Dad started to say she had been influenced"*. Ms. Hopfengärtner noted that information about Clara's views at that time was on record in some of the German Court documents.
- 5.19. Ms. Hopfengärtner wondered if Clara might also be concerned given that the current German Court orders provide for Clara to be solely in the care of her father should she live in Germany, that she would not, in reality, have contact with her mother.
- 5.20. I noted to Ms. Hopfengärtner that Dr Schmidt has said he would provide contact for her with Clara (should she also return to Germany) and she said she did not trust that would be the case and that there are current legal proceedings in Germany which effectively, as she thinks about it, preclude her returning to Germany.
- 5.21. Ms. Hopfengärtner noted that if she were to return she would have to initiate new legal proceedings to see Clara and she considered that would then lead to further years of Court processes. She said *"I do not believe Clara's father will facilitate contact on a voluntary basis and will rely on me being a kidnapper as a his 'risk' factor(to oppose contact)"*. She said *"social circles have been destroyed (in Germany), The pressure we were under through constant harassment and lawsuits was hard on our wellbeing as individuals and as a family"*.
- 5.22. Ms. Hopfengärtner said her own family did not wish to have anything to do with Dr Schmidt, alleging that he had sued family members and harassed them. She noted she did maintain contact with some of his family members.
- 5.23. Ms. Hopfengärtner said it had been *"a harsh break to move away, it was the break of a connection to our home base...but our travels were a break for us and it changed the dynamic...it has been the choice of the children to settle in New Zealand, Clara says she does not want to move again...she calls herself a NZ Kiwi"*. Ms. Hopfengärtner felt it was Clara who held the strongest feelings in the family about being able to live a settled life in New Zealand.
- 5.24. Ms. Hopfengärtner reported that Clara does have a group of friends, she also had adult friends who function as replacement family in some way, she is doing hockey and ballet and is doing well at school. Ms. Hopfengärtner noted the importance to the family of the close knit small community they live in. She said *"Clara's sense of connection to New Zealand has grown and grown, that is not due to me, yes she knows I am afraid to go back to Germany and afraid of her father...but her views are more than that"*.

- 5.25. Ms. Hopfengärtner told me she felt Clara *“connects with the lifestyle in New Zealand....the outdoor life, with her friends, she has soaked up the life here, it integrates with her being....the nature...and this country has been so supportive to her, she is in her element singing...I think she just has this deep connection to what it means to live in rural New Zealand...she can just be herself”*.
- 5.26. Ms. Hopfengärtner felt that Clara’s views were age appropriate and her own. That Clara did have a good understanding of her situation (helped now by being in counselling) but that she did not necessarily have a ‘big picture’ view, her view was focused on what she felt applied to her.
- 5.27. Ms. Hopfengärtner described Clara as having a *“scientific way of thinking...she is aware and capable”*.
- 5.28. When asked what she thought it would be like for Clara to be forced to return to Germany she said *“I can’t imagine what that would be like for her, it would be absolutely traumatic, I think she would revolt, she would try to go against the decision....she says to me ‘I have told all these people what I want, why would they not listen to me...they say this is about me’...she says ‘it is so important to me that people listen to me’”*.
- 5.29. Ms. Hopfengärtner felt Clara *“would lose herself, loose being Clara...if she was made to return...I think she would lose all trust in anything”*.

Section Six: School Data.

- 6.1. I spoke to Michael Ewing, Clara’s teacher³⁷, who has taught her this year.
- 6.2. Mr Ewing described Clara as a capable and potentially above average student. He felt she was extremely cognitively able. She is making appropriate progress in her learning³⁸.
- 6.3. None the less there are clearly some concerns for the impact of current (and previous) events on Clara.
- 6.4. Mr Ewing describes Clara as a child who puts a lot of effort into her learning and her school engagement. She is viewed as *“keen to please but anxious....always anxious...she tries very hard and she produces some excellent work”*.
- 6.5. I asked Mr Ewing what he thought seemed to be related to Clara’s anxiety and he said *“there is definitely some anxiety about Dad, of course she cannot use some learning methods...she has to use pen and paper methods at times when other children use the Internet...I think that does impede her in this world...the issues are always with her, even here at school”*.
- 6.6. Mr Ewing said that the events of 2017 continued to impact in a low level way. He said that he had not been involved but he is aware that both children and adults still refer to it. He indicated that the event still resonates in the local community.
- 6.7. Mr Ewing considered that Clara was socially able and got on well with other children.

³⁷ The school clearly had some reluctance to become engaged in legal processes involving Clara. This was respected.

³⁸ The school has just conducted a normal assessment of learning for this class.

Section Seven: Summary Opinions

7.1. Having regard to the child's objection to return:

(a) What is the basis of that objection?

- 7.1.1. Clara's objections to her being returned to Germany was, originally, set out in Ms. Lightfoot's report. In that report Clara's objections are summarised as (i) She would be taken away from her mother who is very important to her³⁹; (ii) She would be taken away from her family in New Zealand; (iii) She would be taken away from her friends and other relationships; (iv) She would be taken away from her home; (v) She is 'Kiwi' now and enjoys living in this country in comparison to Germany; (vi) She would be returned to an overall context of her father's care in a country which she associates both with adult conflict and being unhappy.
- 7.1.2. In her interview with me Clara said she did not want to return to Germany because (i) She has always lived with her mother and wishes to continue to do so; (ii) New Zealand is home for her; (iii) She did not want to return to Germany, even for a holiday, because her father resides there and because of her previous memory of her experience of high conflict between her parents when living there; (iv) Clara views herself as settled, with friends and a home in New Zealand; (v) That all her mind is put to staying in New Zealand; (vi) That thinking about her situation makes her feel fearful; (vii) That she is scared of her father because of 'one big thing' that is his removal of her from her school in 2017.

7.2 Does it appear as if the objection is reality based and/or affected by undue influence and/or able to be addressed by explanation or intervention?

- 7.2.1. In reality Clara will have been 'influenced' by her mother and step father's views of her father. She noted this to Ms. Lightfoot in reporting the impact of the ongoing legal processes on her mother's demeanor.
- 7.2.2. Mantell (2006) defines influence on a child in circumstances such as this as involving (i) direct interactions; (ii) identification and (iii) transmission of family stories. These factors apply in this case.
- 7.2.3. None the less Boland (2019) notes that modern children (digital natives) have an 'expectation' of being involved in decision making and are commonly described as '*inquisitive, questioning, challenging*'. That is they are encouraged to think independently and to assess and consider 'influences' on them.
- 7.2.4. Relevant to this matter is that research indicates that children often have valuable insights into experiences and preferences which may not always be focused on by either parents or Court processes⁴⁰. In this case Clara had consistently indicated a willingness (not without anxiety) to

³⁹ She has always lived with her mother and her mother is consistently identified as Clara's primary attachment.

⁴⁰ Carson, R. Dunstan, E., Dunstan, J, & Roopani, D. (2018)

engage with her father until the point that she was uplifted from school. It is Clara's evidence that that event changed her perception of what she felt and thought⁴¹.

- 7.2.5. In general terms the reasons Clara has given for wishing to remain in New Zealand have been consistent over time and are developmentally normal.
- 7.2.6. In addition to her more general formation of 'views and wishes' Clara did have a significant psychological response to the incident in 2013. Her response was noted in Germany itself and Clara has subsequently spoken about this incident and the impact it had on her. In my opinion that incident was causative of a childhood trauma response in Clara which impacted on her previously positive view of her father. Clara did not receive treatment for that trauma⁴². However the data indicates that, over time, Clara's trauma response (to this event) diminished significantly.
- 7.2.7. Dr Schmidt has focused on the adult issues associated with the event which took place in 2013 whereas, in my opinion, Clara's distress (and trauma based response) has been associated directly with her perception (as a young child) of her father's anger which she (in a developmentally normal manner in the circumstances) assumed was about or directed at her. That is Clara's response to that event was not specifically or majorly influenced by others.
- 7.2.8. At the time of the initial Family Court hearing in New Zealand, although likely 'influenced' by her mother and by her own experiences, Clara's evidence is that she was prepared to engage with her father and even (it transpires) to think about going to Germany to see him.
- 7.2.9. However, in my opinion, currently (and for the last 18 months) Clara's views are most significantly impacted by her direct experiences of the events of September 2017. That is her uplift/abduction, by her father and persons unknown to her, in front of her classmates at school. I have provided to the Court data about that event as perceived by Clara and independent collateral data provided contemporaneously. I have indicated that it is my professional opinion that the uplift/abduction caused Clara to develop (or re-develop) Post Traumatic Stress Disorder because she did believe she might die and she was terrified. There have been alterations in her cognition and in her emotional and social responses as a result of this experience and they persist into the present.
- 7.2.10. The experience of more than one traumatic event is also known to have cumulative consequences for human beings. In my opinion Clara had, generally, recovered from the initial trauma associated with her experience of the 2013 event but that the more recent event has not

⁴¹ That is it might be considered that that event led to Clara becoming more 'realistically estranged' from her father. Realistic estrangement (Drozd, L.M. and Olesen, N.W. (2004); Drozd, L.M., Saini, M. A. and Deutsch, R.M. (2018); Fidler, B.J., Bala, N and Saini, M.A. (2013); Saini, M., Johnston, J.R., Fidler, B.J. and Bala, N. (2016)) occurs when a child forms an adverse view of a parent as a result of an event or events or behaviours which have had an adverse impact on the child. That is it is a child focused and created psychological state.

⁴² As defined in, for example, the ACC regulations covering other forms of trauma and their impact, this would be considered a mental injury.

only been traumatic in its own right but has reactivated trauma from the earlier event.

- 7.2.11. Clara's evident trauma that led to my suspending work on the Sec 133 Report for the Tauranga Family Court until Clara was properly resourced and supported (independently) in therapy. The Courts attention is drawn to the difficulty Lawyer for Child and the Court had in having the parents reach agreement about this, a long standing issue. That is the continuing lack of a child focused approach to Clara's welfare by both parents.
- 7.2.12. Clara is now in therapy but it is likely that her deep anxiety about the possibility of being returned to Germany and to her father's care is impacting on the therapist's ability to work on the core basis of Clara's trauma. Only when Clara feels safe and secure will that therapy be able to begin.

7.3 Does the child have sufficient maturity and understanding to recognise the implication of the objection?

- 7.3.1. Clara is a child who is, according to independent sources, is developmentally within age norms. She is viewed as cognitively competent and is of an age where she has an understanding of social rules (for example the need to tell the truth, the role of 'the Law' and of Courts). She is of an age where it is considered that a child can begin to make important decisions about their life and/or express views and wishes which are internally consistent.
- 7.3.2. During my interviews with her Clara was able to be challenged about her views (and about her recall) and showed an age normative capacity to modify her views or to provide new information. Clara was able to show a capacity to consider how she would respond if required to do things she did not want to (see her father for example) and to acknowledge and recognise she might need to do that.
- 7.3.3. Clara is of an age where she is able to think about and consider why adults do not attend to her views and wishes. This not only applies to her father but also systems such as the Court. Clara shows an age normal approach to this, she has an understanding that adults manage and control children's lives but at the same time she believes (as a matter of justice- she is at an age when concepts of justice and moral reasoning are developing and are important to a child) she also has rights and her voice should be heard.
- 7.3.4. Research consistently indicates (including literature based on research undertaken in both New Zealand and Australia) that children and young people do wish to have their views heard and acknowledged and that they wish to be involved in a meaningful way with decisions made about them (including by Courts). At the same time children and young people do not want their views to be determinative, that is they do not wish the burden of decision making to fall on them⁴³.

⁴³ Mantell (2006); Goldson (2009); Parkinson, 2005); Schofield (2005); Smith et al(2003); U.K. Children's Act Guidelines, 1989.

7.3.5. Australian research⁴⁴ indicates that children and young people often feel that their 'voice' is overlooked or misconstrued. They also feel that after Court Orders are made they are 'abandoned' and 'overlooked'. This is consistent with Clara's perception of her situation⁴⁵.

7.4. Having regard to the child's age, cognitive ability, maturity and options available, how might the child respond if the Court makes an Order for a return despite the objection.

- 7.4.1. In my opinion it is likely that Clara will be adversely psychologically impacted if an Order is made for her to return to Germany despite her objection. In my opinion such an outcome will create further trauma for her given that the return will be to her father's sole care in a situation where she will have no meaningful supports. Clara is a traumatised child currently and her need (in terms of her welfare and wellbeing) is for stability and consistency within her 'secure attachments' so that she can make effective use of the therapy now being provided for her (finally).
- 7.4.2. Clara's account of how she managed the situation with her father following the uplift/abduction in 2017 indicates that Clara would behave in a way consistent with the literature on trauma. That is she would adaptively try to please and placate her father to avoid creating a situation in which she might feel in even greater danger. Such adaptive behaviour can lead to adverse mental health outcomes.
- 7.4.3. At the same time Clara also indicated 'thinking' about how she in a more agentive manner might 'escape'. In situations such as this it is the possibility of such action that can place a vulnerable child at significant risk.
- 7.4.4. Clara has no perception that her father has an understanding of how she feels or what her thoughts are about her circumstances. This is not solely based on her lack of contact with him (which is a factor) but also on her actual experience of him in 2017. The Court's attention is drawn to the very different perceptions of that event held by Dr Schmidt (see Appendix Four) and Clara. This is likely to make it more difficult for Clara to re-develop an appropriate relationship with her father. An appropriate relationship is more likely to develop in a situation where Clara feels safe and yet enabled to re-engage with her father.
- 7.4.5. If Clara is required to return to Germany she will do so alone and in a situation where even professional supports which might be available to her will have been sourced through processes she does not trust (i.e. associated with her father). This will likely add to her sense of fear and further embed her existing trauma.

⁴⁴ YPFLAF. (2018).

⁴⁵ It is this which is likely to lead to one of the most pervasive negative outcomes of cases such as this, the lack of trust in all adults and adult systems to truly attend to the voice of the child.

7.5 What, if any, would be the psychological impact on the child of an order for a return to Germany.

- 7.5.1. A very real danger in this case (now) if the literature and clinical experience is correct is that Clara will grow into an adult who distrusts all adult relationships and who has a significant risk of major mental illness. It is possible that Clara will not develop as she has the potential to, cognitively or behaviorally⁴⁶.
- 7.5.2. Children whose lives are lived in the context of entrenched parental conflict which is played out in Family Court jurisdictions are known to have a greater level of adverse long term outcomes⁴⁷.
- 7.5.3. As indicated Clara is a highly vulnerable child because she has been in the midst of intractable parental conflict for most of her life (see 2.2;2.7;2.9;2.10;2.11). There is a substantial literature which demonstrates the negative impacts of this on children. In addition Harold and Sellers have recently published an authoritative review on this topic⁴⁸.
- 7.5.4. If Clara is returned to Germany (and her father's care) she will likely lose her primary attachment relationship and her two other significant relationships, one of which is a sibling relationship. Sibling relationships are often the longest continuous relationships humans experience and they are known to be, in many cases, a sustaining aspect of human wellbeing.
- 7.5.5. The most analogous data available in respect to long term outcomes for children in a situation such as might occur (and indeed has already occurred) for Clara is that which relates to children alienated from a parent or abducted by a parent. The severing of relationships by either process is known to have long term adverse outcomes for children (See Footnote 46).
- 7.5.6. If the Court were to make an Order returning Clara to Germany it would be, for her, in my opinion replicating the likely damaging process created when her mother removed her in 2014. However, in my opinion, the psychological harm would be, now, even greater because the 'return' is to a feared and unknown parent and place without support.
- 7.5.7. In addition (and the ultimate view of her view on this will be a matter for the Court) Clara reports significant psychological distress associated with two events which have occurred as a result of the inter-parental conflict. Those events are the event on 2013 in Germany and the event in 2017 in New Zealand.
- 7.5.8. I have screened Clara for both childhood anxiety and Post Traumatic Stress Disorder as a result of my clinical view of her presentation during my first interview with her. I did so because I was concerned at the

⁴⁶ See Amato, P.(2000); Bala. N.M. (2018); Baker, A.J.L. (2006); Baker, A J.L. and Chambers, J. (2011); Baker, A.J.L. and Ben-Ami, N. (2011); Blake, L. (2017); Freeman, M. (2014); Saini, M. (2018).

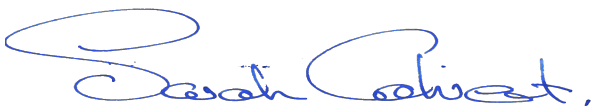
⁴⁷ High Conflict is defined as Legal Conflict- continuous litigation, numerous modifications and contempt motions: Interpersonal conflict- verbal disputes, negative comments and physical violence: Attitudinal conflict anger and hostility between parents. (Goodman et al 2004). Other references include Birnbaum, R and Bala, N. (2010) Davidson, R.D., O'Hara, K.L. and Beck, C.J. (2014) Deutsch, R.M. and Kline-Pruett, M. (2009) Smyth, B. and Moloney, L. (2017).

⁴⁸ Harold, G.T. and Sellers, R. (2018). Annual Research Review: Interparental conflict and youth psycho-pathology: an evidence review and practice focused update. *The Journal of Child Psychology and Psychiatry*. 59. 374-402
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direct evidence of Post-Traumatic Stress Disorder symptoms which developed when seeking to ask her normal assessment questions in a situation such as this. That is, in my professional expert opinion, I considered (having seen and assessed Clara) that she had developed (for whatever reason, both those she identified and those others may consider relevant) a clinical condition which made her a particularly vulnerable child.

7.6. Is the child psychologically settled or integrated with respect to being in her environment in New Zealand (focusing only on the emotional constituent denoting security and stability and not the physical/factual elements of being settled).

7.6.1. Clara reports herself to be (consistent with all the data available, including some provided by Dr Schmidt) settled and integrated into her environment in New Zealand.



Sarah J. Calvert.PhD.
Clinical Psychologist

A full Curriculum Vitae which details my qualifications, experience and publications is available.

This Report has been prepared for the Family Court in accordance with a Brief provided to me under Section 133 of the Care of Children Act 2004. The contents of the Report should not be disclosed in any other forum without reference to the Family Court, its agent - Lawyer for the Child or myself. **The Court may wish to direct that this Report is to be made available to appropriate professionals (who have a role with the family or the child) with the following provision, the person/s should be a registered health professional or a member of an appropriate professional body with a Code of Ethics.**

Endnotes: 5: Principles relevant to child's welfare and best interests:

The principles relating to a child's welfare and best interests are that—

- (a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi:
- (b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
- (c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:
- (d) a child should have continuity in his or her care, development, and upbringing:
- (e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:
- (f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

Care of Children Act. 2004.

Appendix One: Materials Supplied by the Court.

1. Minute of Judge Cook (Directions Conference). 17.12.18
2. Memorandum for Telephone Conference. 17.12.18. Dr Axel Schmidt. 17.12.18.
3. Memorandum for Telephone Conference. Dr Axel Schmidt.13.12.18
4. Memorandum Hearing. Lisa Hopfengärtner.12.12.18
5. Notice of Change of Address for Service Lisa Hopfengärtner. 10.12.18
6. Memorandum for Telephone Conference. Dr Axel Schmidt.9.12.18
7. Memorandum for Telephone Conference. Dr Axel Schmidt.20.11.18
8. Report of Lawyer for Child. 16.11.18.
9. Memorandum of Judge Coyle .9.11.18
- 10.Memorandum of Judge Coyle.29.10.18
- 11.Memorandum of Judge Coyle.20.8.18
- 12.Memorandum of Judge Coyle. 12.7.18
- 13.Memorandum of Judge Coyle.29.6.18
- 14.Reasons Judgment: Davison. J. 11.6.18
- 15.Results Judgment: Davison J. 18.5.18.
- 16.Letter of Appointment.19.2.18
- 17.List of Documents (to 19.2.18). 19.2.18
- 18.Contact Information. 19.2.18
- 19.Brief. 19.2.18
- 20.Minute of Judge Coyle.2.2.18
- 21.Memorandum of Judge Coyle.30.1.18
- 22.Minute of Judge Coyle.29.11.17
- 23.Memorandum for Directions Conference. 29.1.18
- 24.Report of Lawyer for Child.26.1.18
- 25.Memorandum for Telephone Conference. Dr Axel Schmidt.26.1.18.
- 26.Memorandum for Directions Conference.25.1.18
- 27.Memorandum for Directions Conference. 25.1.18
- 28.Memorandum of Counsel for the Applicant (Telephone Conference- 14.11.17). Undated
- 29.Report of Lawyer for Child.26.10.17
- 30.Memorandum of Judge Coyle. 20.10.17
- 31.Chambers Minute of Judge Coyle. 18.10.17
- 32.Memorandum of Counsel for Respondent. 31.8.17
- 33.Reserved Judgment of Judge Coyle.18.8.17
- 34.Memorandum of Judge Coyle.16.8.17.
- 35.Chronology of Events,16.8.17
- 36.Memorandum of Lawyer for Child. 16.8.17
- 37.Memorandum of Counsel for the Respondent.16.8.17
- 38.Memorandum of Counsel for the Applicant. 16.8.17
- 39.Chambers Minute of Judge Coyle.15.8.17
- 40.Memorandum of Counsel for the Respondent.11.8.17
- 41.Memorandum of Submissions of Counsel for the Respondent.9.8.17
- 42.Memorandum of Counsel for the Respondent.9.8.17
- 43.Affidavit of Michael Lowe. 9.8.17
- 44.Report of Lawyer for Child. 8.8.17
- 45.Affidavit of Bruce Currie.8.8.17

46. Memorandum of Opening Submissions for the Applicant. 8.8.17
47. Memorandum of Counsel for the Applicant. 8.8.17
48. Affidavit of John McBride. 7.8.17
49. Affidavit of Axel Schmidt in Reply to the Affidavit of Lisa Hopfengärtner and the Sec 133 Report (Including Appendices). 28.7.17
50. Memorandum of Judge Coyle. 24.7.17
51. Memorandum of Counsel for the Applicant, 13.7.17
52. Minute of Judge Coyle. 30.6.17
53. Memorandum of Counsel for the Applicant for Pre-hearing Conference. 27.6.17
54. Memorandum of Judge Coyle. 23.6.17
55. Memorandum of Counsel for the Applicant. 23.6.17
56. Sec 133 Report. Ms. Lightfoot. 19.6.17
57. Report of Lawyer for Child. 19.6.17
58. Memorandum of Judge Coyle. 14.6.17
59. Memorandum of Counsel for the Applicant Seeking an Urgent Order. 9.6.17
60. Affidavit of Camielle Poata. 11.5.17
61. Affidavit of Camielle Poata. 11.5.17
62. Memorandum of Judge Coyle. 5.5.17
63. Joint Memorandum of Counsel for the Presiding Judge. 5.5.17
64. Minute of Judge Coyle. 1.5.17
65. Translation of Affidavit of Axel Schmidt in Reply to Affidavit of Lisa Hopfengärtner (31.3.17). 27.4.17
66. Affidavit of Axel Schmidt in Reply to Affidavit of Lisa Hopfengärtner (31.3.17). German. 27.4.17
67. Reporting Memorandum of Lawyer for Child. 24.4.17
68. Translators Affirmation. 21.4.17
69. Memorandum of Counsel for Central Authority. 21.4.17
70. Memorandum of Counsel for Respondent. 21.4.17
71. Affidavit of Camielle Poata containing the following
72. Arrest Warrant (English) 25.4.16
73. Arrest Warrant (German). 25.4.16
74. New Zealand Immigration Good Character-Residence
75. Expert Psychological Report in Regard to Parental Custody. Dr Gottfried Spangled. 4.2.16 (German)
76. Affidavit of Camielle Poata. 21.4.17
77. Affidavit of Kevin Clark. 3.4.17
78. Affidavit of Michel Lowe (Undated)
79. Affidavit of Lisa Hopfengärtner. 31.3.17
80. Affidavit of Simon Hopfengärtner. 31.3.17
81. Affidavit of Elizabeth George 31.3.17
82. Minute of Judge Coyle. 10.3.17
83. Notice of Defence. 7.3.17
84. Memorandum of Counsel for the Respondent. 7.3.17
85. Order Transferring Proceedings to another Court. 1.3.17
86. Memorandum of Judge Coyle. 1.3.17
87. Application for Return of Child to Germany. 23.2.17

- 88. Affidavit of Camielle Poata in Support of Application for Return of Child to Germany. 22.2.17
- 89. Letter: Embassy of the Federal Republic of Germany(Wellington). 13.2.17
- 90. Nuernberg Higher Regional Court Decision (German) 31.5.16.
- 91. Nuernberg Higher Regional Court Decision (English) 31.5.16.

Notes of Evidence: 30.6.17.

Materials Supplied by Mr Schmidt. (other than those specifically related to the Complaint against Ms. Lightfoot⁴⁹)

- a. Memorandum for Telephone Conference- Dr Axel Schmidt. 20.11.18.
- b. Letter to Counsel for Child.14.11.18
- c. Visa Grant Notice- Dr Schmidt. 31.10.18
- d. Judgment of the Court- Extension of Time (Asher, J.)25.10.18
- e. AAI Discussion and Points. 25.10.18
- f. Application for Leave to Appeal to the (NZ) Supreme Court,. 5.10.18
- g. Minute of Judge Asher. 3.10.18
- h. Educational Competencies (Parenting) Dr Axel Schmidt. 2.10.18
- i. Educational Competencies(Clara Schmidt). Sept 2018.
- j. [38 files](#) from axel.schmidt@batten-company.com via kiteworks.28.9.18
- k. New Zealand Psychologists Board Evaluation of the Expert Report of Sue Lightfoot- document prepared by Mr Schmidt. 5.9.18
- l. Notice of Reasons Leave to Appeal to the Supreme Court. 4.9.18
- m. CV Axel Schmidt. 22.8.18
- n. Document (Untranslated) Support of parents at Separation- Axel Schmidt. 22.8.18.
- o. Literature Review(Axel Schmidt) 59 pages.22.8.18
- p. Detailed Commentary to the Judgement of the Tauranga High Court. 2.8.18
- q. Application for Leave to Appeal to the Supreme Court of New Zealand.2.8.18
- r. Memorandum of Axel Schmidt.2.7.18
- s. Notice of Discontinuance of Proceedings. 30.5.18
- t. Affidavit of Emma Preece. 1.3.18
- u. Affidavit of Nick Preece 1.3.18
- v. Affidavit of Millicent Preece. 1.3.18.
- w. Memorandum for Directions Conference. 26.1.18
- x. List of Expert Reports for German Courts: Axel Schmidt.
- y. Publication List of Axel Schmidt.
- z. Memorandum of Counsel for Appellant (High Court Appeal).7.11.17
- aa. Assets Document- Clara Schmidt. 18.10.17
- bb. Descriptions of (and photos of) Clara and her father.28.9.17
- cc. Letter C.M.Earl. 28.9.17
- dd. Memorandum of Appellant. 13.9.17.
- ee. Statement of Axel Schmidt.7.9.17

⁴⁹ Dr Schmidt has repeatedly sent me copies of this documentation (as he has to others). Unless the court requires me to read this I have not considered I should have access to it. None the less it is discussed in many of Dr Schmidt's subsequent affidavits and applications and thus I am aware of his view of the Board's process and views.
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- ff. Compliance Letter: New Zealand Immigration.31.7.17
- gg. Advisory Opinion of Axel Schmidt in Reply to the Sec 133 Report of Sue Lightfoot.3.7.17
- hh. Sec 133 Report: Sue Lightfoot. 15.6.17
- ii. Statement Professor B von Heintschel-Heingg (with annexures).16.5.17
- jj. Arrest Warrant. 25.5.16 and Translation. 30.5.16
- kk. Expert Psychological Report Dr Spangler (part Translated).4.2.16
- ll. Expert Psychological Report Dr Marianne Schwabe-Höllein (part translated): 31.1.13.

Emails which I consider are part of the general data collection, that is they are comments Dr Schmidt makes in response to interviews.

Materials provided by Ms. Hopfengärtner. (other than those already listed or as indicated not appropriate for me to have)

- i. Email Mr Blair to Counsel.14.11.18.
- ii. Letter to Ms. Hopfengärtner's Counsel. 8.11.18.from Dr Axel Schmidt. 8.11.18
- iii. Emails re Funding Counselling.

Appendix Two: Interview Schedule (Data Collection*).

Date	Party	Time
11.4.19	Michael Ewing	30min
23.4.19	Clara Schmidt	1hr
26.4.19	Li Hopfengärtner	30min
9.5.19	Dr Axel Schmidt	30min

* There may have been emails and some phone contacts which are 'organisational or procedural' rather than aspects of data collection. These are not listed. Those prior interviews from which I have accessed Data are noted.

Appendix Three: DSM-5 Diagnostic Criteria- Post Traumatic Stress Disorder. Children over the age of six.

- A. Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:
 - 1. Directly experiencing the traumatic event(s).
 - 2. Witnessing, in person, the event(s) as it occurred to others.
 - 3. Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
- B. Presence of one (or more) of the following intrusion symptoms associated with the traumatic event(s), beginning after the traumatic event(s) occurred:
 - 1. Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s).-Note: In children older than six years, repetitive play may occur in which themes or aspects of the traumatic event(s) are expressed.
 - 2. Recurrent distressing dreams in which the content and/or affect of the dream are related to the traumatic event(s). Note: In children, there may be frightening dreams without recognizable content.

- 3. Dissociative reactions (eg, flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. (Such reactions may occur on a continuum, with the most extreme expression being a complete loss of awareness of present surroundings.) Note: In children, trauma-specific re-enactment may occur in play.
- 4. Intense or prolonged psychologic distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).
- 5. Marked physiologic reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).
- C. Persistent avoidance of stimuli associated with the traumatic event(s), beginning after the traumatic event(s) occurred, as evidenced by one or both of the following:
 - 1. Avoidance of or efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).
 - 2. Avoidance of or efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).
- D. Negative alterations in cognitions and mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following:
 - 1. Inability to remember an important aspect of the traumatic event(s) (typically due to dissociative amnesia and not to other factors such as head injury, alcohol, or drugs).
 - 2. Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world, for example:
 - "I am bad"
 - "No one can be trusted"
 - "The world is completely dangerous"
 - 3. Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others.
 - 4. Persistent negative emotional state (eg, fear, horror, anger, guilt, or shame).
 - 5. Markedly diminished interest or participation in significant activities.
 - 6. Feelings of detachment or estrangement from others.
 - 7. Persistent inability to experience positive emotions (eg, inability to experience happiness, satisfaction, or loving feelings).
- E. Marked alterations in arousal and reactivity associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following:
 - 1. Irritable behavior and angry outbursts (with little or no provocation) typically expressed as verbal or physical aggression toward people or objects.
 - 2. Reckless or self-destructive behavior.
 - 3. Hypervigilance.
 - 4. Exaggerated startle response.
 - 5. Problems with concentration.
 - 6. Sleep disturbance (eg, difficulty falling or staying asleep or restless sleep).
- F. Duration of the disturbance (criteria B, C, D, and E) is more than one month.
- G. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- H. The disturbance is not attributable to the physiologic effects of a substance (eg, medication, alcohol) or another medical condition.

Appendix Four: Dr Schmidt's account to me of the abduction.

During my only substantive interview with Dr Schmidt for the Family Court proceedings I asked him for his account of the removal of Clara from her school in September 2017. Dr Schmidt asserts that he was advised by both the Police and his lawyer that he was entitled to take this action. He said *"I was legally in New Zealand to pick up my daughter from school...how long should I have to wait (to get her)"*.

Dr Schmidt acknowledged that he had taken other people to the school (he told me three other people) and that he had taken Clara because *"it was necessary to know what Clara was thinking of her situation...so when I took her I discussed with her, with Clara the situation....what is Clara's objection...and I did some activities with her"*.

Dr Schmidt told me that he and Clara were staying with some friends and that *"everything was as if I had met Clara the previous week"*. He acknowledged that (he thought) Clara did not remember him when he uplifted her and he acknowledged that initially she had been fearful and upset but she then became *"happy to see me...everything was fine"*.

Dr Schmidt said that Clara had *"looked at our feet and compared our bodies"*.

Dr Schmidt has supplied visual materials which he considers show Clara to be happy and relaxed in his care following her removal from the school classroom and which he described as *"Clara showing me nature"*.

Dr Schmidt did not consider that Clara exhibited any worry and said that *"the facts are that Clara has no problem with the situation...that is clear from the video...the facts are very clear....I know my daughter, I know her, if it (had) caused a problem I would have contacted her mother but Clara did not ask about that....I had Clara in my arms....the whole thing was recorded⁵⁰ and there was no fear....I have not seen a traumatised child"*.

⁵⁰ Dr Schmidt said he has nine hours of recordings.