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The Honourable Judge William Alstergren
Chief Justice of the Family Court

Monday 1 March 2021

Dear Judge Alstergren

Re: Infringements of Women and Children's Human Rights within the Family Court

Thank you for your letter dated 19 February 2021 replying to our letter of 16 December 2020. As suggested, we have contacted your Executive Assistant Renee Corcoran and we look forward to meeting you in person on Wednesday 3 March 2021 at 1.30pm.

In the meantime, we note that you indicate that you would welcome further correspondence with examples of solutions or changes to the Courts' processes and procedures which would help to alleviate our concerns. With that in mind, we suggest that you issue a Practice Direction as soon as possible to address the following:

Concept of Parental Alienation unreliable

1. The theory of parental alienation syndrome has been debunked and concepts of parental alienation generally should not be relied upon as grounds to remove a child from the primary care of its mother or for otherwise restricting maternal contact.

Opinion of a single expert witness inadequate grounds to remove a child

2. In the absence of evidence from treating specialists, the forensic opinion of a single expert witness is inadequate grounds to remove a child from its mother or restrict maternal contact. All expert witness relied upon by the court must have training in the dynamics of domestic violence as well as attachment theory and signs of child sexual abuse.

Interim Orders must be evidence based

3. Interim orders must not be made removing children from the primary care of mothers or ordering unsupervised contact with fathers in circumstances where there are unresolved allegations of domestic violence or child abuse against the father and there has not been adequate testing of the evidence in this regard. Registrars should never make orders that have this effect.

Children's Voices must be heard

4. Children's reports of domestic violence or child sexual abuse must be taken seriously and not just discounted as evidence of coaching by the mother. Unless Independent Children's Lawyers (ICLs) have met and spoken directly to the children, their submissions should be weighed accordingly as reflecting their personal views rather than the children's wishes.

Unrepresented parties must be better supported

5. In view of the continuing shortfall in legal aid and the large number of unrepresented women who are also victims of domestic violence, greater efforts must be made to reduce formalities and support these individuals who are often victims of serious trauma. Court staff should routinely assist self-represented litigants with the filing of documentation through the portal. Unfortunately, the Family Violence Cross-examination Scheme does not seem to extend to interim proceedings when a great deal of damage is done.

Women must not be coerced into consent orders

6. It is essential that the Court does not unwittingly facilitate further victimisation of women and children by coercing mothers into consenting to interim or final orders that expose children to risk and which cannot be appealed.

Complaints System

7. In the absence of a Judicial Commission or other appropriate complaints body, the court must provide some standard procedure of receiving and responding to conduct complaints not only about judges but others engaged in the family law system including registrars, ICLs, family consultants and single expert witnesses. A database should be maintained to monitor whether there are patterns of complaints in relation to key personnel which should be more closely investigated.

Greater Transparency

8. Section 121 should be interpreted as intending to protect the privacy of parties and their children and not the reputation of professionals engaged in the family court system (ie: judges, lawyers, expert witnesses, family consultants etc) and should be applied sparingly.

A Practice Direction covering these points would help prioritise keeping women and children safe from domestic violence and sexual abuse. The family law system must not unwittingly facilitate coercive control by male perpetrators, but instead support mothers in their efforts to keep children safe. We will bring some additional material, including case studies, with us on Wednesday. We look forward to discussing these suggestions with you in detail at our meeting.

Yours faithfully



Anna Kerr
Principal Solicitor