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The Honourable Judge William Alstergren
Chief Justice of the Family Court

Wednesday 28 July 2021

Dear Chief Justice

Re: Infringements of Women and Children's Human Rights within the Family Court
Misapplication of section 121 and the need for a Complaints Process

I refer to our previous correspondence and your meeting with Nicolette Norris of the NCPA and myself on 3 March 2021, which was also attended by Deputy Chief Justice McClelland and Justice Henderson and others.

I know Ms Norris has already written to you providing some examples of the concerns discussed. As requested, I also intend to provide you and Justice Henderson with other specific examples in advance of our next meeting, which I hope you will be able to make time for in September 2021.

One of the specific concerns itemised in our letter of 1 March 2021, was the inappropriate application of section 121 and the need for greater transparency in relation to proceedings. In this regard, I refer you to the decision last year by Justice Watts in the case of *Re: Imogen* (No. 6) [2020] FamCA 761 (10 September 2020). I quote paragraph 244 of this published judgement in its entirety:

The mother's application pursuant to s.121 of the Act

> The mother sought to make an application pursuant to s 121(9) of the Act that approval be granted or a direction be made to allow her to provide a copy of Dr C's Affidavits filed in these proceedings, the Joint report prepared by Dr C and Dr D'Angelo, the transcript of cross examination of Dr C by the Respondent, to the medical complaints body. The mother has previously, unsuccessfully, complained about Dr C to the medical complaints body. Whilst the mother had sought a similar order on an interim basis in her response filed 25 March 2020 it was not an application that she had pursued on a final basis at the hearing. The mother's motivation was said to be the disclosure by Dr C that he had become aware that Imogen had accessed progynova from overseas and had not informed the mother or prior to giving oral evidence, the Court of that knowledge. The letter provided to the Court by Dr C from Dr Y dated 22 April 2020 (exhibit 13) demonstrates from at least shortly after that date Dr C was aware of what Imogen and her father were doing. When asked when he was first aware of Imogen sourcing unprescribed progynova Dr C was unable to be specific. Counsel for the mother had an opportunity to press Dr C in relation to that issue but did not do so. The father gave evidence that Imogen and he told Dr C about the overseas acquisitions after the brought the first packet but the timing of the provision of that information was also not specific. In the circumstances I did not grant the mother leave to make the application pursuant to s 121 of the Act after the evidence in the final hearing has concluded. Any such application would need to be made in proper form supported by evidence.

I suggest that this application of section 121 is likely to have impeded professional scrutiny of the medical practitioner's treatment of a child under 16 years. This is surely not the purpose of section 121 and its application in this manner is clearly not in the public interest. Requiring that the litigant must bear the cost of a further application to the court to obtain the release of relevant documents clearly reduces the chance that the medical complaints body will ever complete their investigation into the matter. This application of section 121 could result in a medical practitioner escaping any professional consequences for acting in breach of legal requirements. In the circumstances, I would suggest that the court should facilitate the provision of the relevant material to the medical complaints body so that an investigation can proceed as a matter of priority.

This is just one example identified in a reported case, but we regularly hear from women about inappropriate behaviour exposed during family law proceedings which is effectively concealed from public view by the operation of section 121. Their complaints relate to conduct by not only the other party, but also medical experts, legal representatives, registrars and even members of the judiciary. The appeal process is costly and inaccessible and cannot adequately address the range of concerns that arise, with many litigants having the impression that the family law system actively shields wrong doing, not only by perpetrators of domestic violence, but also by legal and health professionals.

In our letter of 1 March 2021, we suggested that there needs to be an internal complaints process to ensure that concerns about key personnel can be reported and that there is a chance of identifying and addressing any systemic issues, without further cost to over- strained litigants. We are aware that you recently instigated a process to deal with complaints of sexual harassment of staff by a Judge. We would suggest a process should also be available to investigate other allegations of impropriety, including claims of bullying by judges, lawyers and other professionals involved in proceedings. As part of this process, free access needs to be provided to relevant transcripts and recordings of the proceedings. Transparency, accessibility and accountability are essential to ensure justice is served and privacy should not come at the cost of women and children's safety and well-being.

I look forward to hearing from you regarding these matters and I will be in touch in relation to our other concerns by separate correspondence.

Yours faithfully

Anna Kerr
Principal Solicitor