

Dear Senators,

I have included my name with this submission, but please don't publish it.

A few days ago, I read committee Chairman Macdonald in The Australian:

"We encourage everyone in Australia, particularly those who've been waiting four years for a decision ... to put in a submission."

I am a dad whose family has been involved in the courts for four years – and counting. I suppose I must do my civic duty and comply with Senator Macdonald's request. Here is the story in as few words as I can manage:

The Story

After 10 years of marriage and 3 children, my ex-wife had had enough of me. She resented the fact that I wasn't fully focused on making money for the family, and she hated me telling her to be a better mum. She thought my behaviour was "controlling", and various government services supported her in this view. She took our 3 young kids out of school and took them to a distant town where she told police I had been committing "family violence" (whatever that is). A young constable listened to my wife's half-truths and outright fantasies and applied for court orders to stop me seeing or talking to the kids.

I was told the only way to combat this was to take the matter to the Federal Circuit Court. Though I didn't know it at the time, there is a standard procedure at the Federal Law Courts and it works something like this:

1. A judge listens to both sides for a few minutes and then sends the family off to a social worker for an assessment.
2. After a few month's wait, the social worker interviews the family over the course of a day and writes a report.
3. Parents go back to the judge who (if they haven't settled) sends them off for further counselling and evaluation (very expensive) until there's time to properly hear the case. This usually takes a year or two.
4. Finally, there is a formal trial where the judge hears both sides of the argument, sees whether anyone has been lying, and makes a decision.
5. If parents get sick of this process at any point or run out of money, then can just settle. Even during the trial, the judge will be more than happy to rubber-stamp any agreement.

This 5-point plan is obviously very stupid, but it's necessary for you to understand it so you can see why people do strange things in the family law courts.

The ex and I first appeared before Judge Frank Turner. I was very impressed with Judge Turner though barristers I talked with in the corridors wrinkled their noses at the mention of his name. His Honour arranged for a speedy trial but retired before it took place.

We went to see the social worker as described above, who saw that my ex had a lawyer and I didn't and told me rather than explore the issues she would write a report in favour of my ex because my ex would probably win anyway. Her report also recommended a psychologist I be referred to.

You can see how the system tries to keep things out of court: The ex's lawyers were then in a position to say to me, "Take this reasonable offer of seeing your kids every second weekend and half holidays, or face further psychological interrogation with the possibility of even less time with the kids."

I didn't accept that offer. I knew that the ex's claims were fanciful, and I did not want the children left in the care of someone who would use her children as pawns in a custody battle.

But the new judge agreed with the lawyers, so off I went to see a psychologist recommended by the social worker. During the course of the interview, the psychologist looked at my test results, looked at me and scratched his head. "You're obviously very capable," he said. "Everyone I examine wants money, power or status, but you seem motivated by something else. I don't know what to make of you."

I guess I put the psychologist in a difficult position. Here he was, a man of modest ability making an absolute fortune writing court reports, needing to contradict the social worker who referred work to him. The social worker had said I was a weirdo, but the psychologist's tests and extended interview showed I was normal other than being unusually intelligent. What was the poor fellow to do? Well, true to his statement that people are motivated only by power, money and status, he covered up the social worker's blunder by dishonestly reinterpreting his test results and hinting at the possibility of personality disfunction. Why did he think he could get away with it? He was from the old school where experts believed they could baffle non-experts with obscure references. It hadn't occurred to him that someone would simply Google his sources and read them carefully – which I did.

I explained some of the psychologist's misbehaviour in written submission to the court. Unfortunately, when it came to trial, the judge suddenly became too busy to hear the case and handed it to yet another judge. Unfortunately, this new judge had limited life experience and gave the impression of being something of a Barbie doll. As Senators would be aware, Barbie dolls come in various models, for example, "Surfer Barbie" and "Motorbike Barbie". I thought here we go, it's "Bench Barbie".

Bench Barbie was intimidated by the preponderance of so-called "experts" aligned on the mother's side. She was also, quite rightly, horrified at the amount of money she imagined that the ex had spent on lawyers. After two days wasted on cross-examining witnesses whose views were already known, it was time to hear from the social worker and the ex. The judge, however, was adamant that this should not happen. She and counsel for the ICL worked together to harangue, grandstand and filibuster to ensure none of the key witnesses were cross-examined. Tired of these posturing legal twits and feeling sorry for my ex, I threw in the towel and let the children live with her.

Sadly, the ex interpreted all this as a grand victory and an endorsement of her behaviour. With victory should come great happiness, but not in her case. Hers became a life weighed down by cynicism and paranoia. Her despair was made all the more bitter by the fact that I was doing better without her. A gamut of hand-wringing public officials had supported her view that all the problems in her life were due to me, and now she was left alone to face the ugly truth. She was in an impossible situation: She could not repudiate her past position, or that of her supporters, but she had to find an explanation for her ongoing malaise. Predictably, she decided that the problem was that I was still "in her life" by virtue of spending time with "her children". That, it seemed, had to stop. So began years of subtle and persistent manipulation to stop the children wanting to spend time with me. Simultaneously, she declined every offer at mediation, ensuring the children remained right in the middle of the conflict.

At one point I had no contact with the children at all and was worried about them. I went to their house where the children, who had only two months previously been happy to spend all day with me, screamed at me to leave them alone. The ex peeked at me from behind the front door. Infuriated, I yelled at her whereupon she ducked inside and called the police.

The police made the usual application for an Intervention Order. The magistrate who heard their application impressed me as model of geniality and old-world manners. Though he accepted the police request for me to stop seeing the children, he assured me with an encouraging smile that matters would get sorted out in the Federal Circuit Court (where I had restarted proceedings).

It turned out that the Federal Circuit Court judges were in no hurry to sort things out. I went back to the police and ripped into them for having made the application. Their response was summarised by one officer:

“It’s the magistrates’ job. That’s why they get paid the big bucks.”

I also vigorously suggested to the various magistrates who presided over the subsequent hearings of the Intervention Order that they should rescind that Order. Finally, after 6 months or so, they did. Two weeks later, the genial magistrate who had made the original Order drove to a disused rubbish dump and killed himself.¹

Fast forward to today, we see the matter progressing yet again through the Federal Circuit Court where no-one bothers to explain to the children why they can’t spend unsupervised time with their father. None of the professionals involved with the family seem to have had the gumption to admit to themselves, much less explain to the children, how badly the system got it wrong. Will there finally be a trial where both sides of the story can be given a free airing? Will I be allowed to cross-examine the ex and ask her about matters that really matter to the children? I’m guessing “yes”, but who knows?

And what happened to Judge “Bench Barbie”? Frankly, I’m worried about her. Her last published family law judgment raises further questions as to whether she is coping in the role. She subjected that family and the taxpayer to a 9-day trial spread over 14 months (yes, 14 months) and then made them wait another 3 and a half months for her to more or less rubber-stamp the ICL’s suggestions².

The legislation

I imagine Senators wondering why they have to read this soap-opera stuff when they have complex legislation to deliberate. Let me explain by focusing on just a snippet of the goodies proposed in the new legislation:

48. Family law proceedings must be quick, inexpensive & efficient.

49.1 & 2 Mums and Dads and their lawyers must work to ensure things go quickly, inexpensively etc.

¹ Loneliness, panic attacks, insomnia: Life for some on the judicial bench – Sydney Morning Herald 4 Aug 2018
<https://www.smh.com.au/national/loneliness-panic-attacks-insomnia-life-for-some-on-the-judicial-bench-20180731-p4zukuq.html>

49.3 Judges can ask lawyers how much money they are draining from their clients.

49.4 & 5 & 6 Judges can belt anyone who doesn't comply with the above (including lawyers).

50 Judges given power (and by implication, responsibility) to control parties' misbehaviour in court.

What difference would it have made for my three children? Here's some quick suggestions:

- Section 49.3 could have been used to make visible to everyone how much the ex was spending on lawyers. Judge Turner's excellent summation that this matter needed an early trial date would have been taken more seriously than it was.
- The prevailing attitude of, "Let's keep evaluating the situation with more experts etc." would have been tempered by the overarching need to keep things "fast, cheap and efficient".
- Section 50 could have been used by Judge [redacted] to set a clear (and enforceable) expectation on what was required of them to limit the length of the trial. We would not have wasted 2 days on semi-relevant questioning with no time left for the real questions.
- The ex's lawyer knew the situation well and seemed to be a somewhat decent person, but the law firm she worked for would have just wanted to make money. Adverse cost orders expressed in Section 49.5 would have made the law firm inquire more closely and think twice about dragging the matter out.
- As it happens, I suggested to Judge [redacted] that there should be cost orders against the law firm, amongst others, but she sniffed away the suggestion. Now if you vote in this proposed legislation her Honour would, in the future, have less to sniff about.

Summary

Attorney General Porter is perceived by the general public as being responsible for family law in this country. His proposed legislation is bold and clear and puts power and responsibility in the hands of those at the coal face.

Senators, I ask that you let the Attorney General and the judges do their jobs and find something else to grandstand over.

17 Oct 2018