

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
FAMILY COURT OF AUSTRALIA

Question No. AE16/017

Senator Heffernan asked the following question at the hearing on 9 February 2016:

Senator HEFFERNAN: It is nearly as bad as farming! I realise the difficulty of the Family Court, and the death threats that come with it et cetera. I also appreciate the fact that judges might well have expertise in an area that involves family disputes, but not the expertise in whether the children are or are not being abused, and the use of the law to outsmart the truth, with parents saying one kid is being abused and vice versa—all of that stuff. I want to go to an issue that has been raised with me about a medico legal report writer, Dr Christopher Rikard-Bell, who told ABC National in June 2015 that he has written over 2,000 reports in his 25 year career. These were to assist the court. He said he is often called by the court to assess allegations of physical and sexual abuse. But he then went on to say that he is not specifically trained in child sexual abuse and/or assessments. As I understand it, evidence rules require specialised knowledge by training, skill or experience. His internet public profiles for clinical work do not reflect specialisation in child sexual abuse assessments. Contrary to accepted research, this particular gentleman believes 90 per cent of Family Court child sexual abuse cases are unfounded. This confirmation bias is reflected in his practice of asking a child, in front of the alleged perpetrator, about any worries or fears concerning that parent. I think that is barmy. This is cruel and contrary to accepted clinical practice. Dr Rikard-Bell nominated Richard Gardner as a role model, and as very relevant. The Family Court publicly decried the parent alienation theory that Gardner invented when he relabelled child sexual abuse symptoms as signs of a mother alienating a father from a child for no good reason. Gardner said: "... the child has to be helped to appreciate that we have in our society an exaggeratedly punitive and moralistic attitude about adult-child sexual encounters. And: Older children may be helped to appreciate that sexual encounters between an adult and a child are not universally considered to be reprehensible acts. The child might be told about other societies in which such behavior was and is considered normal." My God, this reminds me of Justice Garry Neilson. Gardner continues: "The child might be helped to appreciate the wisdom of Shakespeare's Hamlet, who said, "Nothing's either good or bad, but thinking makes it so."" If the Family Court is going to rely on Dr Rikard-Bell's opinion to assess child sexual abuse, and his opinions are not based on specialised knowledge and are clearly out of step with research, how can this be in the child's best interests?

Ms Filippello: I am not familiar with the article to which you have referred.

Senator HEFFERNAN: You can take it on notice if you like. This is just the tip of a very big iceberg I am about to climb.

Ms Filippello: Perhaps if I can address the more general issue that comes out from your question, and that is the role of the expert witness. Dr Rikard-Bell, and any psychiatrist who appears before the court, is appearing provided they meet the criteria as an expert witness. The court, through its rules, tries to minimise the exposure of families to the need to attend on reports and would normally appoint a single expert for the particular family. The rules themselves are very explicit as to the nature of the material that is provided to the expert. The instruction to the expert must be in writing, and the material that the expert has relied upon also needs to be disclosed. The expert's brief is also articulated in that letter. In addition, the expert's qualifications to undertake the work that is required of him or her is also to be disclosed.

Senator HEFFERNAN: Thank you very much for that, but in the system, if you have people giving advice—and I appreciate the huge workload in the Family Court—if you have people who think that there is some question mark over what is so bad about sex with children, which is what is in some of this, how in God's name do they get into the system? Rikard-Bell made public

his lack of specialisation. His disbelief in sexual child abuse cases is dangerously out of step with research, noting the court must be aware of the radio interview. Are you aware of that Radio National interview?

Ms Filippello: No. I apologise. I do not. But I can certainly read the context of that.

Senator HEFFERNAN: You cannot cover everything. I appreciate that. But maybe, as a consequence of today, we might familiarise ourselves with some of these circumstances. I appreciate, Mr Attorney, the difficulty of all of this. In the child's best interests was the name of the radio interview. The question is: what steps to do something about it will be taken by the Attorney-General or the Chief Justice to give judicial notice or otherwise instruct all Family Court judges to not rely on the unsafe opinion of a person with those views?

Ms Filippello: It is probably appropriate that we take that particular question in relation to that particular issue on notice. But, in relation to expert witnesses, they are cross-examined in court by both parties, and the opinion that they express may not necessarily be the opinion accepted by the court.

The answer to the honourable senator's question is as follows:

Chief Justice Bryant AO has acknowledged that the reported remarks subsequently caused alarm. In response, Her Honour took the opportunity to:

1. remind the profession, through the Family Law Section Executive and Legal Aid Commissions, that counsel appearing, in particular independent children's lawyers, as well as judges have an obligation to ensure that the reports from experts that are being admitted are consistent with the *Australian Standards of Practice for Family Assessments and Reporting* (February 2015). A copy of these Standards is available at: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/asp-family-assessments-reporting>). The Court would like to draw the Senate's attention particularly to item number 18 and indeed the entire section on 'Children in family assessments'.
2. remind the profession and judges of their obligation to carefully scrutinise expert reports and satisfy themselves that a report will stand up to close analysis. If not, further enquiries of the expert may need to be made or another report obtained. Once proceedings have commenced and cross-examination of the expert is occurring, it is again the responsibility of those appearing and the judge to ensure that adequate scrutiny is given to the reports and that any departure from what is regarded as best professional practice queried.

Family Report writers (who are appointed by the Court) and others who are called by parties to give expert evidence to the Court have the status in the Court room and in the litigation process, as an independent expert.

Part 15.5 of the *Family Law Rules 2004* and Division 15.2 of the *Federal Circuit Court Rules 2001* provide specific rules for expert evidence. This includes that a party can cross examine independent experts in order to discover any vulnerability in the expert's credentials, report or evidence in a specific case.