

14 October 2009

Professor Richard Chisholm
The Family Courts Violence Review
c/- Family Law Branch
Commonwealth Attorney-General's Department
3-5 National Circuit
BARTON
ACT 2600

Dear Professor Chisholm,

Re: Family Courts Violence Review

The Women's Legal Centre (ACT & Region) thanks you for the opportunity to make a submission to the Family Courts Violence Review.

The Women's Legal Centre (ACT and Region) Inc ("the Centre"), is a Community Legal Centre accredited by the National Association of Community Legal Centres. The Centre has been operating successfully in Canberra since 1996. Its objectives are to:

- provide accessible, timely and accurate information, advice and assistance on legal and related matters to women in the ACT and region;
- raise awareness in the community about the law and the legal system as it affects women; and
- identify and challenge barriers to women's access to justice.

The mainstay of the Centre's work is providing legal advice and assistance to women about individual matters. The Centre does this by operating an advice line each day; seeing clients face-to-face; and operating an evening advice service on Tuesday evenings where clients are given appointments with specialist volunteer solicitors. The Centre currently has six staff members – two full time solicitors, one part-time solicitor, a coordinator, an Indigenous liaison officer and a part-time office manager.

The Centre also undertakes law reform work on a range of matters that are important to women in the Canberra region. Locally, the Women's Legal Centre collaborates with the ACT Department of Justice and Community Safety, Legal Aid and other community partners on issues such as reform of domestic violence and the roll-out of the new Sexual Assault Reform Program. On a national level, we engage with the peak body 'Women's Legal Services Australia' (WLSA), which represents Women's Legal Services in each State and Territory. We understand that WLSA are also making a submission to your review.

As we do not have the resources to represent women throughout the whole of their matter, we are most usually intermittently involved in matters. For example, we may give initial advice and referral or we may assist women acting for themselves to negotiate with other parties, prepare their documents and/or prepare for Court.

We record (confidential) information from all clients who contact the Centre. One of the pieces of information we collect is whether there is a reported history of domestic violence.

We answer the questions for legal practitioners in light of our involvement with matters which is significantly different from the role other legal practitioners play in representing clients. Our response is anecdotal as we do not collect statistics in a way that could be presented quantitatively in answer to these questions.

1. What proportion of children's matters that come to you involve family violence concerns?

In the 2008-2009 financial year, our statistics record reported domestic violence in 41% of children's matters. We assume that the figure would in fact be higher than this as not all clients report.

2. What forms of violence are involved?

The Centre uses a broad definition of family violence which includes: physical abuse; sexual abuse; emotional abuse; psychological abuse; economic abuse; threatening behaviour; coercive behaviour; controlling behaviour that causes fear for one's safety or wellbeing; causing, or threatening to cause, damage to property or pets

3. Do you see violence by women against men as an issue that arises?

We only see women clients.

4. Are there things about the system that tend to discourage victims from disclosing violence?

Whilst the law does not connect orders about children and orders about property, we often see women who feel that they are in a position of negotiating children against property. For example, a position where the father says "If you don't touch my super, I won't go for 50/50". There is also a fear of losing their children, which is often used as a threat. For example, "if you don't sign the Orders for equal time, I won't let you see the children at all / for Christmas / for their birthdays".

Part of this dynamic is a fear to raise contentious issues and instead focus on preserving the relationship with the ex-partner in the children's interests.

There is uncertainty about definitions of violence, particularly violence other than physical violence. The definition of family violence in the Act is not helpful to clients.

There is a fear of not being believed, particularly where there were no witnesses. Women often need to be reassured that their evidence is valid.

5. *Do you take steps to screen families for violence, do you think these are effective?*

In our initial consultation with women, we ask questions that determine whether family violence is an issue. Our staff are all trained and experienced about family violence and have networks with community organisations offering support and services for victims.

6. *If advising the victim of violence, what advice do you give about making allegations of family violence in parenting proceedings?*

The advice we give includes the following:

- the legislative pathway, in particular the impact of a finding of family violence in rebutting a presumption of equal shared parental responsibility
- the legislation's emphasis on "meaningful relationship" with the other parent
- the need for specific evidence about the violence to be given at an early stage
- the need to obtain substantiating evidence if any
- the fact that the lack of witnesses is not of itself a reason not to proceed to disclose family violence, ie one's own evidence is important
- a need to consider the impact of the family violence in any orders sought in relation to the children
- other section 60CC factors including the facilitation of the children's relationship with the other parent
- the role of the family consultant and/or family report writer
- the Court process
- a discussion about safety planning through the court process

7. *Does this advice differ depending on whether you are before the Federal Magistrates Court or the Family Court of Australia?*

Yes, as the client's role in the LAT process is different.

8. *In your experience, are Form 4s always filed when they should be? Any comments? What is the effect of filing Form 4s? Are there differences in relation to Form 4s between the two courts?*

We are unable to comment.

9. *What forms of support does the court provide for victims of family violence? Should it do more?*

The practical support for victims of violence when the Court is pre-advised seems to work well, for example, the presence of security personnel and ensuring that victim is in a separate room. However, this tends to be used when the client is represented and arrangements are made by her lawyer.

For unrepresented clients, the nature of the duty list, the number of people at court and the uncertainty about process means that a victim of violence is often in the same general area outside the courtroom as the perpetrator. It is unlikely that the Court would even be aware of the issue of family violence in matters where clients are self-represented and it

is the first return date. We always advise women to take a support person with them to Court.

10. In your view are family violence concerns given appropriate consideration at interim hearings?

Subjectively, from the woman's perspective, the answer would most usually be no. There are a number of reasons for this:

- In most cases there is unlikely to be any finding of fact about the family violence concerns in the interim hearing. At best, there will be cautious interim orders which may reflect an acknowledgment that the family violence issue is yet to be determined. This needs to be well explained to the client, if not by the judicial officer, then by her legal representative.
- In any event, many clients do not feel "heard" in the interim process given the pressure of the duty list, busy lawyers, limited time for the Court to review the matter, uncertainty as to whether the Federal Magistrate has read the documents.
- The language of the bench can reinforce a view that raising allegations of family violence risks being seen as a "troublemaker" and not looking to the future and/or the child's interests. Violence should not be characterised as merely heightened emotions at the time of separation.

As a case example, there was a matter in the Federal Magistrates Court where there were allegations by the mother of a history of domestic violence and ongoing controlling behaviour. The parties has separated when the child was young and there had been long periods when the father had not seen the child (aged 10 at the time of hearing). The father had a criminal conviction for an offence where a weapon was used. At the interim hearing, the Federal Magistrate made a comment that the parties "knew how to push each other's buttons". The mother felt that this comment minimised and mutualised the history of family violence. The mother felt that the father's history was not given enough weight and there was instead a pressure to "look to the future" and simply forget what had happened. At the final hearing, Orders were made that the child live with the mother and spend time with the father one weekend per month and half school holidays with changeover at a Changeover Centre. By way of comment, one may argue that objectively the orders did take into account the family violence but the language of the Federal Magistrate at the interim hearing has continued to be an issue for the mother in her assessment as to how the Court deals with the issue of family violence. She has lost confidence that the Court will give proper weight to her concerns.

11. Where parties apply for consent orders, Rule 10.15A of the Family Law Rules 2004 require lawyers to inform the court either that no allegations of abuse have been raised or, if such allegations have been raised, how the proposed consent orders attempt to deal with allegations of abuse. In your view, is this measure an effective means of protecting families at risk of abuse? How does it operate in practice? Should this rule be expanded to also include allegations of family violence?

In the Centre's view, it would be difficult to obtain signatures on Consent Orders where family violence is acknowledged in the Consent Orders. In many cases the family violence would not be acknowledged, particularly if it is/was not physical violence.

There are potential consequences for the perpetrator in signing such an acknowledgment, for example, if matters were re-opened.

There is pressure to “close the deal” and no incentive to disclose in the Consent Order process.

At present most of these clients would be screened out of negotiating at mediation (unless they used the Legal Aid lawyer-assisted model) so their choices are to negotiate themselves or use a lawyer. One would hope that lawyers negotiating in such circumstances would formulate orders that take into account the history of family violence and incorporate protective measures as best as possible. In this regard, we note the limited options for supervised contact and/or supervised changeover .

12. Section 63DA requires legal practitioners (as well as others) to advise clients that they may enter into parenting plans, which can include provision for equal shared parental responsibility and equal time. In your view, should this be required where parties have raised family violence or abuse concerns?

Yes, because women need to be informed about all of the options. We would also give advice about whether parenting plans or parenting orders would be more appropriate in their particular circumstances.

13. AVOs.: 66CC(3)(k) excludes consideration of interim non-contested avos – is this a problem?

It may mean that there is more likelihood of having a non-contested domestic violence order which theoretically should provide safety for the victim in having an Order and avoid the necessity for a Court hearing. However, because of the jurisdictional divide the result often is that the victim is required to repeat her story in numerous venues and documents, particularly where she has a different lawyer in each jurisdiction, which could have the effect of re-traumatising the victim.

Is your ability to deal properly with issues of family violence limited by your workload, or lack of time or resources? Would you like to be able to do more than you do?

There is a lack of community resources to deal with the issue of family violence after the Orders are made. Often these families require intensive therapeutic support after the Orders are made so that the Orders can work smoothly in the children’s interests. Programmes. A good example of a successful programme (with a long waiting list) is the Post-Orders Parenting Program at Marymead where the counsellors are trying to shift the party’s thinking and assisting in a practical way by trialling communication strategies for example. As these programme can include the children, the children are also being skilled up in the way to manage the post-Court scenario.

There should be more encouragement for men to attend perpetrator programs in relevant cases, for parties to attend at post-separation programmes including the “managing your emotions” type programmes and programmes where post-separation communication between the parties can be examined.

Please do not hesitate to contact the undersigned if we can be of further assistance.

Yours faithfully,
WOMEN'S LEGAL CENTRE

Rhonda Payget
Solicitor