

## **JUSTICE COMMITTEE**

### **CHILDREN (SCOTLAND) BILL**

#### **SUBMISSION FROM RICHARD SINCLAIR**

I am neither a lawyer nor have any academic qualifications on this subject. I require to rely on my logic and experiences of the past two and a half years. I also believe my work skills set, built up over the past 29 years, are also useful to allow me to make general appraisal.

There was no template available for stage 2 views so please find below.

1. My first note is that there appears to be a move to prevent some Dads from representing themselves in court. I have experienced malicious accusations against me to restrict access to my girls. Any official legislation could make matters worse in the future. It could encourage individuals to use the legislation as methodology to hinder child access. This should be adopted with great care.

The recent Scottish bill to make smacking a criminal offence will also cause havoc in the family courts in the future, for the same reasons. How easy will it be for an aggrieved party to disclose in the civil courts, without foundation "daddy used to hit the kids". Family lawyers will be rubbing their hands in glee. There already is legislation in place, to protect children from physical abuse. (I have never smacked my children and absolutely never would, just to be perfectly clear)

2. Parental alienation is a massive issue that I can vouch for. Any court reporter and social worker should be trained in this topic. All very well training on domestic abuse and coercive control but training has to cover all topics (not just vote winners). Currently the Scottish Government do not even acknowledge that parental alienation exists. Legislation is essential and urgent on this matter.

A coordinated approach covering schools/social works/GPs/court reporters/police/sheriffs is required. It is not an easy task, however, the intended introduction of the legislation within the Bill will mean the issue will only escalate. Perpetrators will have even more options available to hinder access to children. The culture in today's society indirectly/directly encourages parental alienation.

3. The use of video streams for vulnerable children, in theory this is to be encouraged but only when really necessary. A bit like point 1, it has the potential to be abused by a parent to hinder access to a child rather than for protection of that child. Great care and consideration will be required to ensure it is used appropriately.

4. My main concern from Policy Memorandum SPBILLS2PMSO52019. In section 84 of the document, with respect child welfare reporting.

"The Law Society of Scotland and Faculty of Advocates consider the system works well and think there should be no changes"

I am flabbergasted. As I noted in an earlier email from the statistics collated from the consultation process, 3% of respondents thought the system should stay as is. That 3% approval rating can be considered merely noise as 2SD is 95%. May I suggest the bodies mentioned are self-serving? How can these bodies consider the following

acceptable and recommend no change?

- No responsible person for child welfare reporting
- No approved court procedures (therefore no repeatability)
- No requirement for legal firms to provide approved procedures
- No system to regulate court reporting duties
- No system to monitor standards/audit reports
- No transparent appointment process
- No training specific to court reporting
- No competency scheme for the function
- No risk assessments
- No defined time schedules for the submission of reports
- No verification of reference documentation
- No second person QC of reports
- No right of reply for parents
- No pre interview briefing
- No requirement to complete/change tasks
- No agreed reporting template
- No accountability.

The Law Society of Scotland and Faculty of Advocates are highly respected institutions. Do they truly believe that the current system of child welfare reporting, using an unsafe ad hoc process is fit for purpose? Considering the extensive list of deficiencies above, I cannot believe that to be the case. If they insist that child welfare reporting remains as is and requires neither control nor monitoring, then it puts into question the entire Scottish Legal System. It would in my opinion, suggest that they are safeguarding lawyer's positions before the critical task of safeguarding our children.

My working culture over a 29-year career has been moulded by Lord Cullen's recommendations after the Piper Alpha disaster. I have an obligation to adhere to procedures for all tasks as a result of the regulation and procedures adopted, thanks to Lord Cullen. I wonder what Lord Cullen would think of the above list of deficiencies? I suggest asking him.

5. Following on from point 4. There should be greater scrutiny of the role of the family lawyers in child welfare cases. A greater degree of accountability is required. At this time, in general welfare hearings a lawyer can offer statements which they are aware, are likely or absolutely not true. That should NEVER happen in a court of law. Anything presented in court should be fact and evidence based. This is the case in "proof hearings", however it should apply in all hearings. If the above was adopted, then there would be far fewer hearings and resolutions would be speedier, so less stressful. Allowing lawyers to misrepresent (without prejudice) is creating more problems than it solves. Do family lawyers have performance reviews, to ensure compliance and high standards? Or are performances only scrutinised in the case of a formal complaint?

Where lawyers exchange letters with respect to child welfare, there should be an obligation to answer or clarify all points made. At this time, legal letters costing many hundreds of pounds are basically useless. The opposing lawyer can just ignore

questions and fail to clarify, without any justification or explanation, or simply fail to respond at all. Please explain how that is acceptable behaviour? I need to complete a 12 hour shift to pay for a single hour of a lawyer's time, therefore I expect better than is currently deemed acceptable.

Points 4 and 5 above are critical for the improvement in family law. Without addressing these issues the other proposed legislation will be greatly hindered. Despite many of them having great merit.

I confidently predict all my points will be ignored. The result will be another 25 years of inefficient chaos in the family courts. The family lawyers on their generous hourly rates of pay, will be the ones that continue to benefit, while the parents and families will continue to endure unnecessary hardship, stress and expense.

I have only commented from my own experiences. I do not think I have the ability to comment on other issues. So I fully appreciate that my views are impassioned and focussed on a narrow band of topics. I have not seen my children since March 2018, as an indirect result of the failings that I outline above. Many of my points will be considered unwelcome, however, they are made to help not offend.

A structure is only as strong as its weakest component, with greatest focus required on strong foundations. The same applies to any process/system, such as child welfare. This is a wonderful opportunity to improve Scottish Family Law, please make best use and address ALL, not just some of the issues.

Richard Sinclair  
31 October 2019