

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM DR WILL KAY

This will be a 2020 Law. It reads as a Bill / Law which represents society of the 1950s.

1) Why is the starting point not shared care? (unless there are proven legal reasons why not)

Then, evidence presented as to why shared care should not be the case

- Fathers love their children too, and are capable parents.

Evidence from around the world shows that children who experience shared care are significantly:

- likely to have more stable mental health and well-being
- likely to do better at school and gain better employment
- less likely to become involved in the criminal justice system

2) The Children's Bill is a once in a generation (or longer) opportunity for positive change in Family Law in Scotland for the best interests of children and families

- However, this opportunity is about to be lost as the Bill is inadequate
- Indeed, the Bill, as it stands, will act to ingrain discrimination even more deeply and institutionally throughout Scottish society and culture

The Children's Bill itself is gender neutral

- However, it is based on biased and gendered foundations (the resident parent is mainly, although not exclusively, the mother)
- By definition, and historical precedent, it is a gendered Bill
- It is discriminatory. It acts to institutionalise discrimination in Scotland.

3) Domestic Abuse (is not exclusively perpetrated by men although this is the main media portrayal)

- It is an often made accusation with no evidence provided, however it is taken as unquestionable truth until a father can prove innocence (**which is the total anathema to the precepts of Scottish Law**)

- It is a gendered precept, which is 'accepted' despite no police nor social services involvement nor Court investigation.

- o With no evidence provide such allegations should be inadmissible.

- If allegations are considered true until innocence is proven, there must be an opportunity to prove innocence / dispel such accusations

- Then, appropriate action taken regarding false allegations being made in light of the damage caused to the innocent party, and subsequently the child / children involved.

• Domestic Abuse is clearly a serious issue, which requires attention

- However, it is not and must not be the default position taken that all fathers are domestic abusers, **the vast, vast majority are not** but are depicted as such

- **There is plenty evidence to show that women can also be domestic abusers**

- o Not all domestic abuse is physical

- o Women are also capable of coercive control

- Every Law must be based in equity

- 4) Women are not be prosecuted for failing to obtemper a court order for contact
 - Other solutions such as mediation are to be found
 - o Which is not compulsory, is obstructed, which is ignored – is mainly ineffective
 - There is no desire by (the vast majority of) fathers to criminalise mothers, however there must be some form of real and substantive penalty for breaking the Law, otherwise the Law is futile
 - Fathers will be jailed if they fail to pay child maintenance, even when there are extenuating circumstances
- 5) There is, presently, a total abuse / misuse of the coercive control legislation within the new Domestic Abuse Bill
 - Accusations of coercive control against fathers are being made:
 - o by attending invitational school events
 - o by requesting information about foreign holidays
 - o by requesting medical information
 - Health Visitors working only with the mother, is policy
 - False allegations of coercive control are now being written into interlocutors by Sheriffs, no evidence is being provided for such but is now appearing in legal documents

This is clearly biased and evidence of (at least attempted) parental alienation

- 6) There is a denial of the practice of parental alienation
 - despite world-wide research evidence of the practice, and the damage that it causes to children and to the relationship with the alienated parent
 - it might well be difficult to prove, but must be dealt with seriously and vigorously when identified (by either parent against the other)
- 7) **If any of the above were reversed and women experienced them, they would automatically be recognised and registered as discrimination under the Law.**
- 8) Child Welfare Hearings
 - **must be evidenced based not accusation based**
 - **false allegations should be renounced and dealt with seriously**
 - and accurate records of the CWH should be kept for future reference, at present they are not
- 9) The Judiciary has no requirement to undertake compulsory training nor on-going CPD in aspects of Child Welfare or Family Law
 - This should be compulsory before being allowed to preside over cases
- 10) Solicitors have no requirement to undertake compulsory training nor on-going CPD in aspects of Child Welfare or Family Law (last revised in 1993)
 - this should be compulsory before being allowed involvement in cases
 - as should be the case for Child Welfare Reporters / Curators
 - should be compulsory for solicitors to be registered with the Family Law Association and follow its code of conduct, which should be made public, and open to public scrutiny

11) Party Litigants

- are openly treated with disdain by both Sheriffs and by opposing solicitors
- many solicitors manipulate CWH against party litigants, when there is a directive for them not to do so
- there are directives that this should not happen – thus it should not be allowed to

12) Legal Aid

- why does Legal Aid continue to be paid to those who refuse to partake in communication, refuse to take part in mediation, refuse to act in the best interests of the child?
- why is their behaviour and lifestyle not continually scrutinised by SLAB re eligibility?
- they can continue their behaviour with impunity, all at the expense of the welfare of the children involved
- and the considerable expense of the Scottish taxpayer

The Bill is ambiguous in too many aspects – it continues to allow solicitors and sheriffs to interpret it in a way which best suits their biases

- it allows them to continue to operate in the same way as the last two Family Law frameworks, in essence it changes nothing for the better
- the wording requires to be simple and clear to the general public
- it needs to be watertight regarding clarity, purpose and intent to work in the best interests of the children at the centre of all and any judgements made.

There is a genuine opportunity at this time to place Scotland as a world leader in the aspects of Family Law which imbues equity between both parents to the benefit of the child/children involved.

The tenants of Scottish society are purported to be '**Wisdom, Justice, Compassion and Integrity**'. Unfortunately, these are sadly lacking in both present Scottish Family Law and will continue to be lacking in the proposals in the present Children's Bill as it stands.

Dr Will Kay
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