



Royal Commission
into Family Violence

WITNESS STATEMENT OF KELSEY LEE HEGARTY

I, Kelsey Lee Hegarty, Professor of General Practice and General Practitioner, University of Melbourne, Parkville, in the State of Victoria, say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

Current role

2. I am a Professor of General Practice at the University of Melbourne and a practicing general practitioner in Clifton Hill. I am also Director of the Postgraduate Primary Care Nursing course at the University of Melbourne.
3. I currently lead an Abuse and Violence in primary care research program. My current research focus includes the evidence base for interventions to prevent and respond to violence against women, educational and complex interventions around identification of family violence including perpetrators in primary care settings, and responding to women and children exposed to abuse through primary care and through the use of new technologies.

Background and qualifications

4. During the last decade, I have contributed at both national and international levels to the domestic and family violence field. I co-edited a book on "Intimate partner abuse for health professionals" and I am on three Cochrane systematic reviews of screening, advocacy and psychological interventions for domestic violence.
5. I played a significant role in the development of Royal Australian College of General Practitioners (**RACGP**) White Book on Abuse and Violence and an online RACGP learning module on domestic violence for general practitioners. I have developed an innovative domestic violence curriculum for health practitioners and I regularly teach domestic violence and mental health issues to undergraduates and postgraduate medical and nursing practitioners.

6. I also am currently chair of the governance group of the Domestic Violence Resource Centre Victoria.

7. I hold the following qualifications:

7.1. Bachelor of Medicine and Bachelor of Surgery from the University of Queensland;

7.2. Doctor of Philosophy from the University of Melbourne; and

7.3. Fellowship of the RACGP.

Attached to this statement and marked "KH-1" is a copy of my curriculum vitae which includes my publication record.

8. The focus of this statement is my experience treating female patients who have experienced family violence and manage to escape their partners through separation and divorce but who then experience ongoing abuse within the court systems as they battle to protect their children. This is mainly drawn from a small number of families over the last five years.

Impact of the legal system on women who have experienced family violence

9. In my 20 years' experience as a general practitioner, I have seen multiple female patients experiencing ongoing legal abuse following separation and divorce in the context of family violence. Their court experience is across Magistrates', Children and Family courts. The experience of attending court and giving evidence has re-traumatized many of these women.

10. The impacts of family violence are not well understood within the community. It is common for people to ask 'why don't women leave', but there also seems to be an assumption that once separation occurs, the violence can be treated as historical.

11. The legal system, and those working within it, often fail to appreciate the ongoing impacts of the experience of family violence or trauma upon both women and children. They may also perceive the violence as being part of and peculiar to the particular intimate relationship, rather than recognising that the factors driving the violence may be related to the individual perpetrator and may not end with the relationship.

12. Currently, the system does not recognize that a woman's trauma and experience of family violence impacts upon her ability to advocate for herself against the perpetrator of the violence in child custody cases.
13. In many respects there is an assumption by the legal system that a woman who has eventually had the courage to leave a violent relationship has the capacity to advocate for herself on an equal footing with her former partner. She was unable to advocate for herself whilst she was in the relationship and it is unfair and unrealistic to expect her to do so just because she has managed to summon the courage to leave. In my experience, there is usually a significant power imbalance between the man and the woman.
14. Further, a woman's capacity to advocate for herself may be significantly impaired by the ongoing impacts of trauma, as a consequence of the family violence. There is clear evidence that there is a long term effect (in the form of Post-Traumatic Stress Disorder) on abused women, involving flashbacks, avoidance of stressful situations, nightmares and ongoing anxiety symptoms. A woman who has experienced trauma might present poorly, particularly in stressful situations such as court or court-ordered assessments. She may present as 'difficult', be highly stressed and agitated, and will find it difficult to present her evidence in a calm and coherent way. Her fear of what her ex-partner may be saying about her, of having to stand up and give evidence against her ex-partner, and of the threat of losing her children cannot be divorced from the trauma of her past experience of his belittling, controlling or violent behaviour. In contrast, the father (perpetrator) may present as calm and rational and in these cases the father's version of events is more likely to be believed, and he will likely present as the better parent.
15. Many women do not meet the criteria for assistance from Victoria Legal Aid or there is a conflict of interest because they are representing the perpetrator. Many women are let down by a legal system that does not provide them with the legal or other support necessary to redress the imbalance of power that is inherent within family violence relationships, and exacerbated by the impact of trauma. I have seen many instances of women consenting to orders that they would never have agreed to had they had proper legal assistance. In my view, it is critical that women have legal assistance from lawyers who understand the impacts of family violence.
16. The impact on women who have experienced family violence is further exacerbated by the process of giving evidence in court. I have previously given expert evidence

regarding rape in marriage at rape trials in the County Court. I find it intimidating to give such evidence. It is incredibly traumatic for women to give evidence in the presence of the perpetrator of the violence and be subject to cross-examination. I fully support any measures such as giving evidence via video link or from a remote witness facility to assist victims to provide their evidence safely.

17. Rather than supporting a woman to repair the trauma she has experienced, the experience of many women in the legal system is re-traumatizing and constitutes a continuation of the violence and control they have experienced during their relationship.

Impact of legal system on children

18. Despite a woman leaving a violent relationship, her children cannot leave the relationship with their father. In my practice as a general practitioner, I am watching children grow up with all the effects of family violence still happening to them as men use their children as weapons against the mother and also directly abuse them emotionally and through neglect on court ordered custody visits. The Royal Commission into Family Violence has heard of the long term effects on children of witnessing partner violence.
19. There seems to be a poor understanding within the legal system of the detrimental impact upon children of the exposure to violence inflicted by one parent against another. Rather than recognise the detrimental impact of family violence on children, it is often assumed that the perpetrator has and will be a good parent provided they have not engaged in violence directly against the children. Further, the mother may be seen as not a good parent because of 'her psychiatric history'. The Domestic Violence Resource Centre Victoria has clearly outlined this issue in Fish E, McKenzie M, MacDonald H 2009, *'Bad Mother and Invisible Fathers': Parenting in the Context of Domestic Violence*.
20. The history of violence is seen as just that, history. The non-offending parent is expected to put that history behind them, and to fully support her former partner's ongoing involvement in their children's lives. Anything less and she will be viewed as obstructive to the relationship between the other parent and the children. She is expected to assume that her former partner will not engage in any further violent behaviour and will act in their children's best interests, when the reality is that he has

been acting contrary to their best interests by exposing them to family violence throughout their relationship.

21. The children who have experienced the violent relationship between their parents are also expected to put that behind them, with little or no recognition of the harm that has been caused by their behaviour. Some of the children I see clearly state that they do not like being at their father's as 'he is mean'. Usually there is no accountability for the father to attend parenting programs or men's behaviour change programs even though we know that many fathers continue to exert controlling and coercive tactics through the shared parenting arrangements.
22. The system, in particular the legal and child protection system, is failing these children. We are not intervening in the intergenerational effect on them, which as we know from research is as significant as direct child abuse. Some of the boys will grow up to be more likely to use violence and abuse in their own relationships and for the girls to experience it.
23. My experiences with patients here in Victoria are borne out in a project by Associate Professor Lesley Laing in her report *No way to live : women's experiences of negotiating the family law system in the context of domestic violence* (2010) which discusses the experiences that women who have left a violent relationship have of the Australian family law system. In-depth, semi-structured interviews explored the journey through the family legal system encountered by 22 women from New South Wales. The study found that violence against women and children is interconnected, often through children being exposed to violence against their mothers, or vice-versa, or through domestic violence being directed to both women and children, or both. The report found that women encountered a legal system that was fragmented, overly complex and uncoordinated. Amongst the legal professionals women dealt with there was a lack of understanding about domestic violence dynamics and consequences of the abuse these women had suffered. This project also found that women were placed under pressure by legal representatives to agree to care arrangements that they did not consider safe and to remain silent about abuse.
24. Further, the women in the study by Associate Professor Laing had to live with the impacts of the abuser's behaviour on their children, both historically and from ongoing contact. As one participant said '*And my children will come to me "mummy I want to die" like the eight year old even, and the thirteen year old when younger used to say it. And that's really hard to hear your children say that*'. The women in the study also

faced damaged relationships with their children as a result of the abuse. In addition to coping with the children's distress at spending time with their fathers, they were the ones that had to force their children to do this. Another participant said *'my youngest, she doesn't want to go to him and so she cries, she screams, she 'no, no, no', she's grabbing onto my neck as he's grabbing and she's kicking him because she doesn't want to go ... And so I worry about the impact that that's having on them. And so it's – I find it's very distressing some of the things they come home and say. "My daddy said he's going to run over you" or "My daddy wants me to go to karate so I can bash you". Like it's very distressing'*.

25. Overall, my experience is that some professionals associated with the courts such as independent children's lawyers and Family Court report writers are not child centred and are not taking children's voices into consideration. Further, we know that some children are ordered by the court to be with their fathers when they are continuing to sexually abuse their children and the mother's concerns are not taken into consideration.
26. These experiences are paralleled in a review by Professor Thea Brown et al. entitled *Family violence and family law in Australia: the experiences and views of children and adults from families who separated post-1995 and post-2006* (2010) which considered the experience of 1100 adults and children through online surveys. Around a third (39%) of children in the children's survey said they did not feel safe with their father after separation and just under 10% said they did not feel safe with their mother. Furthermore, they reported feelings of hopelessness and powerlessness. They resented the lack of opportunity to express their views about their parents' separation and post-separation parenting decisions, in particular about the arrangements made for their care. For this group of children decisions had been made mostly by courts.
27. In the same review, deficiencies in the system included that many family lawyers did not believe their reports of family violence or did not take appropriate action; often solicitors advised them that unproven allegations of violence may cause courts to regard them poorly and that requests to limit contact with the perpetrator might fail. Solicitors also advised of the new penalties for false allegations of violence and courts were also presented as places where things could go badly wrong. Family dispute resolution practitioners (mediators) had a lack of understanding of the nature and effects of family violence, and did not counter the greater power of ex-partners who were violent. Once in court all respondents experienced common problems. They

felt their experiences of violence were disbelieved, ignored, minimised, or sometimes accepted but put to one side in the ultimate decision. Some complained that their solicitors did not present evidence of violence. Many complained about court-appointed experts (mainly psychologists and psychiatrists) who wrote reports without expert understanding of family violence and/or who did not investigate the allegations or denials of violence. Some claimed that the time allocated to making assessments of family violence for family reports was too short. The system was criticised for not taking reports of violence into account in their decisions, especially with regard to overnight contact for young children, and for ignoring child protection and police reports and state-based domestic violence orders.

Court experts

28. In the context of the Family Court, I am concerned about the court psychologists and family report writers who, in my experience, do not appear to understand the dynamics of family violence and the effects of trauma on women and children who have experienced family violence. In my observation, the court psychologists and family report writers are predominately male, and they almost invariably privilege the father's account to that of the mother's, making the woman feel like they are on the father's 'side'. Further, the women are not believed when they do raise issues around child abuse.

Case study

29. The case study I discuss below is fictional, but is based upon my experiences treating female patients who have experienced family violence.
30. Katie is a 40 year old woman with two children aged 10 and 7. She experienced physical and emotional abuse throughout her marriage, although she did not fully name the behaviours as abuse until after she separated. She and her children presented multiple times to the clinic with non-specific psychosocial symptoms. She disclosed the abuse to me when I asked her directly about whether she was afraid of her partner one time she presented saying she couldn't sleep. I helped her to name the abuse and to see these symptoms as connected to her experience of abuse from her partner.
31. I see her regularly for ongoing support. She has no family support as her ex-husband isolated her from them. She has some friends from the school. I supported her in developing a plan for safety and healing for herself and her children. This included

getting a part time job and finally leaving her husband once she felt more confident about doing this safely. I had referred her to a counsellor who understood family violence who also supported her.

32. She separated from her husband four years ago when she took out an intervention order after her eldest child witnessed his father throwing her against the wall. I find this is a common trigger of children becoming obviously involved in experiencing the violence. Since then she has gone to court to show that he is still harassing her through constant texting and during handover of the children who initially spent 40% of their time with her ex-husband. Her sister subsequently undertook the handover of the children in the early periods post separation. She has also had to go to court to negotiate custody issues. She has been to court over the last four years on eight occasions.
33. She has not been eligible for legal aid as she initially owned a car, although now she is almost bankrupt from legal fees but still not eligible because of a 'conflict of interest'. She has had four different solicitors, none of whom appear to have had any understanding of family violence issues. Her solicitors and barristers have all advised her not to bring up the family violence issues as she has no evidence and that currently he is not being physically violent towards her. Further, she will look like a non-cooperative parent if she brings it up. She has ignored this and tried to get the history of violence onto the court proceedings. Her ex-husband has had access to the same legal team during this time. She has had to represent herself at times when she has not had money to pay a solicitor. She has had to tell her story many, many times and has never been heard or believed in the legal system.
34. The court appointed male psychiatrist and male psychologist reports, male family court reporter and male independent children lawyer do not appear to have any understanding of family violence or the impact of that on the ongoing custody issues in their reports, rather appearing to favour the father's story over the mother's story.
35. In this case, initial shared parenting was disastrous as Katie's ex-husband used every opportunity to further abuse and harass her through their children. She has always been concerned that her ex-husband is emotionally abusing and neglecting the children. Despite the children having many of the signs and symptoms of abuse (behavioural issues, insomnia, stating they would like to die or kill their father, not wanting to go their father, toileting issues and stating their father hits them from time

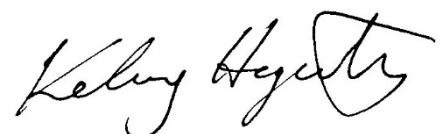
to time), my notifications to child protection authorities on two occasions resulted in no action.

36. Child First saw Katie and the children intermittently, however she found this difficult as she feels judged and watched in her parenting. Child First were reluctant to engage with the father of the children. A private psychologist who I referred the children to also feels they may have been exhibiting child abuse symptoms but said she needed to gather more evidence. A private paediatrician has also made a child protection notification, with no action taken. The Royal Children's Hospital outpatient clinic for behavioural and psychological disorders in children did not appear to have suggestions for a way forward. No health professional or child service I have referred to appears to have any means to support the children when they are with the father to keep them safe. She is not in any area where she could access the Turtle Program at Berry St or other such mother child groups. Katie is frightened to go back to court in case her children are taken off her if she brings up the issue of child abuse without child protection being involved.
37. As I said this is a fictional case, but highlights several areas that need reform as outlined in my recommendations below. There is an urgent need to reform the Family Court system. The lack of understanding of the Family Court system about family violence issues is significant, the privileging of the father's voice by court appointed practitioners is strong and the lack of services for children experiencing or witnessing the partner violence is a chasm.

Recommendations

38. I make the following recommendations to improve the experiences of women and children navigating the family law system:
- 38.1. Provide funding for a comprehensive review of court appointed psychologists, psychiatrists, family court reporters and independent children's lawyers from a gendered perspective and a family violence lens;
 - 38.2. Review the qualifications and training in family violence of family court report writers, court appointed psychiatrists and psychologists;
 - 38.3. Expand specialist family violence courts to include child custody issues;
 - 38.4. Expand court support for women and children who have experienced family violence in child custody issues;

- 38.5. Change Family Law legislation and usual legal practice to recognise that for some child victims of witnessing parental abuse it is detrimental to the children's mental health and development to have any contact with the perpetrator of the abuse. Further that ordering that a child spend any time with a parent who has used violence against the other parent (that is found to be proven) unless the Court is satisfied that such an arrangement could be safe and in the child's best interests;
- 38.6. Lobby Australian Psychological Society and the Royal Australian and New Zealand College of Psychiatrists to identify those practitioners who are prepared to do court reports at reasonable affordable rates for women and children in the court system. When it is considered legally necessary to obtain information from the treating psychiatrist, rather than subpoenaing the medical record, a treating psychiatrist's report be requested;
- 38.7. Mandatory training by experts on domestic violence for all lawyers and judges who work in courts that deal with child custody issues;
- 38.8. Expand Child First support to include an ability for workers to assess the parenting of the father and provide reports to the court;
- 38.9. Develop a system to more easily remove incompetent, poorly trained professionals, including custody evaluators;
- 38.10. Require disclosure of conflicts of interest on the part of all involved in these legal processes at all levels;
- 38.11. Require courts to consider past domestic violence; and
- 38.12. Build effective oversight and accountability for judges and training in this arena.



Kelsey Lee Hegarty

Dated: 5 August 2015

