

Royal Commission into Family Violence - Victoria
Submission by [REDACTED]

I was involved in a custody/family violence matter with a member of my family.
I wish to comment on the process rather than the outcome.

Background

[REDACTED] is the mother of [REDACTED]
[REDACTED] is the father of [REDACTED]
[REDACTED] is [REDACTED]

The parents were only together for a short time before pregnancy and birth of [REDACTED].
They lived together only intermittently. [REDACTED] did not have permanent accommodation. [REDACTED] did have permanent accommodation.

[REDACTED] lived with his mum [REDACTED]

[REDACTED] has been a happy child and attended Gymbaroo, swimming, 3 year old and 4 year kindergarten, and school at the local primary school [REDACTED]. His extended maternal family were a regular part of his life.

Upon the birth of [REDACTED] family violence commenced. There were some physical assaults. Most commonly it was arguments and bullying and threats. There was abusive language and texts.

The police attended the home of [REDACTED] several times over the years, but no charges were pursued. [REDACTED] did not make formal complaints. At the time there was no Intervention Order.

[REDACTED] had the view that [REDACTED] had a right to be with both parents. Access was never denied. [REDACTED] loved both parents.

When there was harmony, things were good. [REDACTED] wanted peace and wanted [REDACTED] to leave [REDACTED] home when things were about to get out of hand.

Drugs and alcohol were an issue for both parents at various times, before and after having [REDACTED]

DHS had been involved with [REDACTED] when his first child was born. [REDACTED] and his then partner were not able to care for their child and that child was placed with a member of [REDACTED] extended family.

DHS visited in [REDACTED] in [REDACTED] after a complaint(s) that she had appeared intoxicated when caring for [REDACTED]. The file was closed and DHS was happy with arrangements.

In early [REDACTED] there was an incident at [REDACTED] home when she was caring for [REDACTED]. She was intoxicated. The police attended. [REDACTED] appeared and took [REDACTED]. He never returned [REDACTED]. He threatened to never ever return [REDACTED]. He removed [REDACTED] from the [REDACTED]. [REDACTED] had recently secured accommodation.

[REDACTED] claimed that the Police and DHS had placed [REDACTED] with him.
The Police had only placed [REDACTED] with [REDACTED] for 1 night.

DHS never spoke to ■ about placing ■ with ■

■ was told that without Court arrangements in place, either parent could keep the child.

Over the next ■ days, ■ only let ■ see ■ and her family for less than ■ days. ■ did not let ■ see ■ for Christmas did not let ■ see his nana, did not let ■ come to the pool and other things he would normally do with his extended family and mum.

■ enrolled ■ in a new school, ■ This was without consent.

■ did not advise the ■ of pending court matters. He did not provide any contact details for ■ He enrolled ■ using the surname of ■.

■ found a family law lawyer, ■ who was prepared to take on a legal aid case.

Legal Representation – Process

Lawyer ■ only allowed one 1 hour meeting in her office. This was to take some details, complete legal aid funding request and indicate that proceeding in the Court was the way to go.

An affidavit was prepared for ■ and myself. Paperwork was lodged with the Federal Circuit Court of Australia.

Legal aid funding was for Recovery and Legal aid funding was provided for preparation for trial.

Lawyer ■ recommended seeking an Intervention Order.

Lawyer ■ recommended that ■ attend a detox and rehabilitation program.

Lawyer ■ recommended keeping notes.

Lawyer ■ offered to answer any queries.

Legal Representation – Process Problems

The process of how the application would proceed was not outlined.

Lawyer ■ wrote to ■ demanding that ■ be returned to ■ at the start of the school year, otherwise action was going to be taken against ■ Nothing happened.

■ anticipated that when the matter was listed in ■ that the issue of ■ being taken, withdrawn from ■ without consent and ■ being withheld from ■ and extended family would be dealt with.

Instead a process of dates was set out.

The actual act of attending Court was not outlined.

■ was not made aware that ■ and ■ could be kept apart. The close proximity in the Courtroom and some provocation from ■ saw ■ express anger in an

emotional (but aggressive) way that was viewed dimly by the Court. She was viewed as being equal to ■ in any violence or anger issues.

Lawyer ■ was only prepared to meet at Court and not prior in her office.

■ was never told that there would be the only one chance to put anything in writing before the Court, i.e. the initial Affidavit.

The role of the Family Consultant and the Psychiatrist was not elevated to the level that lawyers and the Court view the role.

There was no advice of how comments, or corrections to the Family Consultant or Psych reports could be addressed.

There was reference that a psych report could only be challenged by ■ producing another Psych report to counter any issues of concern.

Following the Family Consultants report, ■ was asked to contact Lawyer ■ to give Instructions. ■ rang the office of Lawyer ■ She was not available to meet. Instructions were not given. There certainly was no instruction not to proceed towards a trial.

At the next report back Lawyer ■ recommended to try and negotiate a settlement. This was agreed, but it was not as a replacement for preparing to go to trial. It was not a substitute for having issues that had arisen during the course of ■ addressed by another affidavit.

Phone calls to the office of Lawyer ■ and a request to Lawyer ■ about the preparation of the next affidavit, were met with a response that this could be easily and quickly prepared. They never disclosed they would not be preparing another affidavit.

It turned out that the Law Firm was only prepared to write a further affidavit for \$10,000.

Lawyer ■ was aware, by email and phone conversation and at Court that ■ wanted to have matters that had occurred during the year, put before the Court.

■ had emailed issues about Breach of the Interim Court Order and breach of the Intervention Order that was now in place. No advice was provided on pursuing a breach. ■ then assumed that all these issues would be included, in the next affidavit.

There was no invitation to view the files that had been requested from DHS, Education Department, and Victoria Police. There was no answer to the queries about whether DHS had placed ■ with ■, whether DHS had inspected ■ living arrangements. It appeared secretive.

There was no request by Lawyer █ for the notes that had been taken during the duration of the Interim Order.

Lawyer █ withdrew part way through discussions to try to negotiate a consent position, because their legal aid funding was about to run out.

If Lawyer █ been prepared to meet and take instructions or clearly state at least that they would not assist in preparing an outline, then █ and myself could have done that. To leave that until 7 days before a scheduled trial date, left █ with no options.

Federal Circuit Court of Australia – Process

The Court set out dates when the parties had to do certain things.

The Court was inconsistent.

Initially the matter was to commence in █ have a review in █ and trial date in █

As there was limited availability of the Court appointed Psychiatrist the █ date was moved to █

It was put that attendance at the Family Consultant and the Psych was compulsory and the assigned date and time inflexible.

█ deferred her place at a residential rehab program, because of this inflexibility.

Turns out that it was flexible, with █ attending late at the Family Consultant and choosing not to attend the Psych at the appointed time.

█ attended the Psych about 6 weeks after the scheduled date. His lawyer did not provide that report to Lawyer █ until 1 week before the trial date.

This was acceptable to the Court. In reality there was no opportunity to respond to everything because of the lateness of receiving █ psych report and Lawyer █ not preparing an outline.

There was no ability to put before the Court the high level of absenteeism from school, the pant wetting and the bullying that █ claimed was happening at the new school.

The judge would not entrain anything on the day of the scheduled trial, because there was nothing additional before the Court. There was nothing additional from █ because the Lawyer █ did not prepare or assist in preparing for the trial and/or Lawyer █ did not advise in a timely manner that they would not prepare anything, giving █ and █ an opportunity to do this. It may have added something into the mix, during negotiations.

Summary

There was no full transparent outlining of the whole process.

There was an assumption from [REDACTED] and myself (and I imagine most Victorian citizens) that when a lawyer represents you in proceedings about your child you will be given a due level of care and the opportunity to be heard. You assume that the lawyer will be clear in what is required and that all parties meet dates set by the Court.

You presume if the Court sets out dates for certain procedures that they will be adhered to and you assume that the parties will be treated equally in terms of compliance.

The initial application was about proceeding to final orders, rather than mediation, because of the family violence. However Lawyer [REDACTED] then advocated trying to negotiate a consent position, but without providing the assistance to properly negotiate and put matters on the table.

The keeping of notes effectively was a waste of time.

The waiting for the case was a waste, as the Police could have been asked to assist in retrieving [REDACTED]. The new school could have been advised that [REDACTED] was being enrolled without consent.

DHS could have been contacted to ascertain what involvement they had with [REDACTED] and [REDACTED].

The Court is busy. It was made clear that the Judges want to clear their Dockets. In their desire to do that, the opportunity to actually and fairly work out a good arrangement for [REDACTED] and his parents was stymied.

Reaching a consent position under duress is ultimately not a good outcome. It cleared the docket ... yes, but it was brutal. To be told that the Judge could and would be likely to impose a worse outcome than what was on the table was brutal and coercive.

Had Lawyer [REDACTED] met the Court timeframe for submitting an outline of the case or advised that she would not be doing that, [REDACTED] would have had a voice. Whether it would have achieved a better outcome for [REDACTED] we don't know.

But a process that shuts down your voice is wrong.

Thank you.