

# Court Counselling Under the Family Law Act 1975

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## FAMILY LAW ACT

One of the basic new provisions of the Family Law Act 1975 was the establishment of a counselling service within the Family Court structure. Although previously in the Supreme Court there had been provision for some contribution from the social and behavioural services, this was not actually incorporated into the structure of the Court as is now case.

In the Family Law Act counselling comes under two parts:

### Part III —

#### Counselling and Reconciliation

Though all Court counsellors are marriage counsellors, and the Family Law Act emphasises that reconciliation should be attempted at any time there is a reasonable possibility of such a reconciliation, in Victoria most marriage counselling cases are not dealt with by the Court Counselling Section but are referred to one of the five approved marriage guidance agencies.

### Part VII — Children

The focus of Family Court Counselling is on the welfare of children and the effect of family breakdown on their lives. Emphasis is given to working with families where custody, access or any other child-related issues are central, as it is in this area that Court Counsellors have developed their special expertise.

## TIMING OF COUNSELLING INTERVENTIONS

### In Relation to Family's Development

Counselling may be involved with a family at any point in time from when an intact family decides to separate and seeks help in making suitable arrangements for their children, to a point ten or more years after separation if counselling assistance is still required.

A member of the family may request the counselling, the request may come through their lawyers or through another worker involved with the family. It may also come from the Family Court itself.

### In Relation to Court Proceedings

#### (i) BEFORE COURT

Under s64(1B) the Court will not make an order in child related proceeding unless the parties have had counselling. Most family lawyers as a matter of practical case management comply with this requirement and refer cases prior to the Court hearing.

This pre-court counselling is seen as preventative counselling to try to help parents reduce the tension and hostilities and arrive at an agreement without having to resort to litigation and before they become enmeshed in the adversary system.

Counselling is confidential in that it does not get reported to court, but counsellors can discuss the case with lawyers and they often work together to assist the families resolve the issues.

There is usually not more than a one week waiting period for an appointment.

#### (ii) DURING PROCEEDINGS

The Judge may refer the parties to counselling for a conference under s62(1) which is similar to the pre-court counselling.

The Judge may also request that the Counselling Section furnish a report to the Court on such matters as the Court requests. This report may then be received in evidence. Different counsellors must do reportable and confidential counselling to avoid any problems with the confidentiality provisions of this Act.

#### (iii) AFTER PROCEEDINGS

Sometimes after a more difficult custody or access case a supervision order is made. The counsellor does not physically supervise the case as CSV would, but can be used as a resource person to turn to for counselling assistance.

## OBJECTIVES OF COUNSELLING

Most of the Counselling Section's work is related to pre-court counselling or conferences, and reports. The proportion has been deliberately shifted over the past years to increase the amount of counselling at the expense of the reports. Reports help the court in its decision making and usually come in time at the end of the family's problems, which is at the time of the Court hearing. Pre-Court counselling assists families more directly at a much earlier and therefore more significant point in the separation process. Each type of counselling is approached differently.

#### (i) PRE-COURT COUNSELLING/ CONFERENCES

The aim is to help members of the family understand and handle the emotional and practical difficulties which confront them and other members of the family as a result of the separation. Counselling emphasises a conciliated rather than a litigated approach to separation problems.

Both parents, the children and often the new partners are involved in from one to three or more sessions of about two hours each. The counsellor tries to firstly reduce the level of conflict between the parents by helping them understand and come to terms with the effect of the conflict on the children and themselves, and secondly to focus on the children's emotional needs rather than on their own needs by assisting them to understand what

their children are going through and how they can be helped.

Counselling provides a forum where parents are able to come together to work out their children's future. Parents are encouraged to accept that as parents they still retain their responsibility to their children though divorced or separated from each other.

#### (ii) REPORTS

The report focuses on three major areas:

- (1) The relationships the child has with significant others in his life, especially each parent, their partners and his siblings;
- (2) The child's attachments, wishes and view of the situation;
- (3) The parenting abilities of each parent and some assessment of their life adjustment.

The preparation of the report involves activities such as office visits, conferences, home visits, discussions with teachers and other professionals such as doctors and social workers. What is essential in one case may not be required in another. This applies particularly to home visits which are not always necessary.

When the collection of information is completed, the counsellor discusses his findings with each parent. This de-briefing gives the parent time to assimilate the content of the report and, especially if the report is adverse to one parent, perhaps dispute it with the counsellor.

Once prepared, the report is released to solicitors and parties.

## ISSUES IN COUNSELLING

There are a number of significant issues in Court Counsellors' work, some, such as grief, arise invariably due to the nature of the cases, others, such as sexual abuse occur less frequently but with considerable impact when they do occur.

## EFFECTS OF SEPARATION ON ADULTS AND CHILDREN

This is the most basic theme in counselling and every adult going through counselling attends, prior to counselling, an information session describing the effects of separation on adults and children.

#### (i) ADULTS

The Kubler-Ross grief model and the stages of shock, sadness, anger and moving forward are described in the information session as they apply to separating partners.

Though simplistic, the model does explain and structure a complex pattern of behaviour and change confronting most adults going through separation.

It is also reassuring for those going through the earlier stages to know that they are "normal", that they will probably recover, and that their reaction is not a sign of severe and permanent mental disturbance.

However, two important points must be made about this process.

### 1. Simultaneous Progress Through Stages

First and most significant is that it is unusual for both partners to be at the same stage of adjustment at the same time. One partner, the partner who initiated the separation, often the wife, may have already gone through the earlier stages within the marriage. In some cases the marriage has been over for this partner for up to ten years before the break is actually made. This partner initiating the separation may wait until they are at the final resolution stage before being certain the marriage is over and announcing it to the other partner as a final decision. The "abandoned" partner then proceeds to go through the stages of shock, sadness, depression, etc. This is the most difficult feature of the process. The firm resolution of one partner that the marriage is over can exacerbate the anger and depression of the other, who is at a psychological disadvantage. This "abandoned" partner then perceives their spouse as having plotted and planned the separation in secret which heightens the sense of betrayal and desolation.

### 2. Time Frame

The second aspect of this model is the time frame. Most people progress through the stages to resolution of the marriage breakdown. A small minority seem to get stuck in one phase, for example sadness or anger for a long time or even forever. But the progress through these stages takes some time — two to three years is average.

When considering this time factor together with the point made above, that couples rarely proceed through the stages simultaneously, it becomes apparent that satisfactory resolution of the issues may be difficult for some time after the initial separation.

#### (ii) CHILDREN

Children also suffer a great loss, just as their parents do, and react to this loss just as they do to any other. The loss they experience is for the parent they are not living with and for the family unit that has been broken up. Unlike their parents, at least one of whom may be prepared, children are never emotionally ready for the separation of their parents, and this is true no matter how bad the conflict between parents was or how much they have been warned by their parents of the impending separation.

Children go through similar emotional reactions to their parents. They suffer shock at the actual separation, sadness, depression and anger. But added to this children experience other emotional effects, especially fear of abandonment, guilt and responsibility for parents.

These emotional effects are reflected in the behaviours children exhibit as symptoms of their distress which include attention seeking

and misbehaviour, withdrawal, physical symptoms, regression, aggression.

While it is true that the children go through great emotional upheaval at the time of their parent's separation, it should be noted that these behaviours are also typical of a child going through the many traumas or difficulties which are features of children's lives such as starting school, birth of a sibling, moving home.

The complication which sets this trauma apart from other childhood problems is that their parents are also going through their own adjustments to the marital breakdown, and are not as available to the child emotionally for support as they might be in other developmental crises in the child's life.

These adjustment problems for children are exacerbated by hostility and conflict between the parents. Of course children do experience emotional trauma at time of marriage breakdown but they do also at several other points in their childhood, from which they recover. Children are vulnerable but they are also resilient physically and emotionally — they need to be to get through childhood. Certain parental behaviours can impede this adjustment.

All the research indicates that level of emotional stress in the children is closely related to level of conflict between parents. The more hostile their parents are towards each other, the more bitter and protracted the dispute between them, the worse is their child's adjustment.

Some of the reactions and behavioural symptoms of children can be alleviated by parents understanding their cause and reacting appropriately. Counselling tries to assist children's adjustments both directly through counselling session, and indirectly through advising parents on how to help their children.

### PHYSICAL AND SEXUAL ABUSE OF CHILDREN

Over the past years an increased number of custody and access cases in the Family Court have involved allegations of child physical and sexual abuse. It is unlikely that the increase reflects a higher incidence of abuse in the population than formerly, but is probably due to a greater readiness to report the abuse because of a greater openness about sexual matters and publicity about these issues. It has been suggested by some lawyers, (Glezer, 1988) that this increase is due to a high proportion of malicious and false allegations on the part of litigants seeking to advance their case. Court Counsellors disagree with this analysis (Macvean, Skoufis and Galvao, 1988). Possible reasons for the high incidence of sexual abuse cases amongst separated families is that children are more ready to disclose what has occurred once they are physically separated from the abusive parent and that the non-abusive parent is more receptive to these disclosures after separation, than in the course of an intact marriage.

The Family Court Counselling Section becomes involved in almost every abuse case whether through self, solicitor or Court referral. In cases where the alleged perpetrator of the abuse is the custodial parent, a minority of Family Court cases, then Community Services Victoria or the

Community Policing Squad and the Children's Court play an important role in assessing the degree of risk to the child and deciding on alternative courses of action, such as removal of the child or supervision.

It is in the cases where the alleged physical or sexual abuse has occurred during access that the responsibility of management of such cases in Victoria falls entirely on the Court Counselling Section. This is because the main CSV alternatives of removal of the children and supervision are inappropriate in the access situation where the child is only with the access parent for a limited time but returns to that situation regularly often under a Court order.

The Court Counselling Section has developed a specific approach for management of sexual abuse cases. Initially, at referral stage, every effort is made to avoid counselling these cases confidentially and solicitors' consent is always sought and obtained for a report order. This bypasses the complications which arise when disclosures are made in a confidential counselling session, the contents of which are, per s62(5), inadmissible in any Court.

Once the order is received, these cases are given priority allocations, so that the reports are commenced as soon as possible after the order has been made. This is obviously important in cases where the child's access to the alleged abuser is continuing without supervision, but is also important in cases where access has been stopped as a result of the allegations.

Court Counsellors undergo an extensive and continuing training in management of sexual abuse cases. These cases are emotionally draining on individual counsellors so that the number of cases any one counsellor can handle at any one time is limited. They also demand considerable supervisory time. However, as a result of the counselling resources put into sexual abuse cases, in Melbourne few have reached final hearing stage as most parties and practitioners prefer to come to consent orders based on the counsellor's assessment.

Apart from counselling, the issue of how the Family Court itself is to handle cases which do get to Court where sexual abuse has been alleged, but not proved, is under consideration by the High Court at time of writing (October 1988). In two South Australian cases, Judges refused father's access on the basis of lingering doubts about whether sexual abuse occurred, though not satisfied on the balance of probabilities that the fathers had sexually abused their children. Both decisions were upheld by a majority of the Full Family Court. The cases went on appeal to the High Court which had reserved its decision.

### CONCLUSION

The Family Court Counselling Section is involved in both policy and day-to-day handling of issues related to children and divorce. These include complex problems such as sexual abuse as well as the more common problems of reaction to separation. The Section has developed expertise in this field which it is continuing to develop.

### REFERENCES

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