

## Issues, inequities and disparities in Family Court as observed by a third party

### Judge:

- Doesn't understand and appreciate/respect nuances of trauma/coping/survival behaviours and strategies and how this affects memory, coping abilities in regard to hypervigilance etc
- Extremely limited understanding of FV and why people don't report everything, particularly in a timely fashion: ie fear of children being removed, shame, fear of exacerbated and escalated violence if they leave, fear that PFVO or FVO may trigger partner to be more dangerous, or to act aggressively or violently, fear of not being able to protect children if they leave and other parent has time with children alone, retribution, fears a court will order children to be with other parent after separation and therefore they will be unable to protect children as have been managing to in the past to a certain extent, no understanding of fawning behaviours to calm, soothe or manage perpetrator. In this particular incident judge was questioning why when report was made to police about FV as victim was seeking an FVO, victim did not make disclosures about physical violence perpetrated on her and the children, only just 'emotional'. Victim stated that she did not understand that some of the behaviours of perpetrator could be deemed physical violence, such as driving recklessly and dangerously with children in vehicle, utilizing smacking as a punishment, putting his hands around her throat. Victim also intimated that she was fearful of her children being removed and that violence would escalate placing them in more danger and that she felt she needed to be able to control *when* and *how* they left in order to maximise safety for her and the children. Also not acknowledged or understood that many victim/survivors are not aware of the extent of the abuse they are experiencing due to 'frog in boiling pot' situation.
- Judge 'mocked' witness's use of FV language such as 'triggering', and her saying "I was highly anxious at this time". His responses were to ask her who had told her about words such as "triggering", "gaslighting". This felt to practitioner that it is further shaming witness for using 'psychobabble'. Finally witness has words to put to her experience that explains the abuse after FV support and counselling and is then being mocked for being fluent in words to express what she has been through. This demonstrated to practitioner that judge had so little understanding of trauma/FV and stress responses that he was further re-victimising her and gaslighting her.
- Judge asked victim "who told you about the cycle of abuse?" after she tried to explain the 'love-bombing' part to him. This was in relation to her exchanging friendly and colloquial text messages with perpetrator after alleged sexual assault of her that morning. After trying to explain that he said something along the lines of "oh well at least we're back to the nice part of the abuse" or words to that effect.
- Judge trivializing and scrutinizing incidences of violence and control rather than appreciating whole pattern of coercive control and FV. Judge clearly demonstrated no understanding of reasons why women feel unable to act, to leave and to say no (ie fawning behaviours, being emotionally worn down, trying to protect children, placating perpetrator to maintain safety).
- Legal counsel had organised safe room for client. Barrister stated to judge at beginning of trial that due to FV his client was highly anxious about being in the court room with the perpetrator. He stated that she would begin in the courtroom but he may apply for her to give evidence from the safe room if it becomes too much for her. The judge stated that he would not be interested in, or grant such an application as in his courtroom he expected the clients to be present. This client was a breastfeeding mother with her current partner and baby sitting in the safe room for the week.

### **Legal counsel:**

- The breastfeeding client mentioned above also experienced a number of panic attacks during the course of the trial which required several times for an adjournment for the client to be able to attempt to calm herself. It was also incredibly confronting for her to attempt to ask her counsel during proceedings to allow for a toilet break and a breastfeeding break. When a breastfeeding break was granted she was extremely rushed and given minimal time. Due to her stress, she has great issue 'letting down' and therefore found it extremely difficult to feed in the minimal time she was given. The ICL (female) was most hostile toward the client and was overheard sighing and muttering "why can't she just express?" One time as client was attempting to hold herself together to avoid a panic attack and rushed to leave the courtroom (after the judge had stood down for her to catch her breath and have a break), the ICL yelled out to her that she was not to leave so quickly as she needed to speak to her. This led to a greater panic attack which the client was unable to recover from for approximately half hour after a great deal of intervention.
- Complexity of language, jargon and phrases used in court go over the heads of many clients, in particular the use of Latin phrases that are common to lawyers but not to laypersons.
- Extended cross-examination that means that witnesses are unable to speak with their legal counsel for lengthy periods of time ie this worker's last 2 clients were under cross-examination for 3 and 1 ½ days respectively. Both women were victim/survivors of FV and highly stressed yet unable to communicate with their counsel during this period. If not for a support person and support worker, they would not have had anyone to debrief with or to calm them in this time.
- Isolation of witness box is confronting to clients as they are unable to have a support person with them and in one of the trials this worker witnessed, physically closer to perpetrator
- Ongoing lines of questioning that have already been put to victim/survivors and have been answered. Worker observed repeated legal counsel asking same questions of witnesses over and over sometimes with different wording as if to try to 'catch out' witness. When witness would reaffirm their stance regarding the question, legal counsel would then state "I put it to you that you are lying" or words to that effect. This contributes to the witness feeling foolish and as if they are being exposed to further 'gaslighting' by legal counsel as well as other party
- Victim/survivors expected to account for incidences and occurrences that happened years ago, often before they even thought of leaving the relationship and therefore weren't taking notes and keeping records. They are expected to have a far higher level of accuracy regarding record-keeping than the perpetrator. This leads to the questioning of these witnesses being far longer than the other party. This 'record keeping' does not appear to apply to the male party. In both these trials, the men were on the witness stand 1-2 days less than the female witnesses.
- Why is focus on 'fact checking' of victim/survivor rather than 'issue investigation' of perpetrator?
- Witnesses being harassed by judge/legal counsel for not having messages etc from old phone. It should be reasonable that many people change phones regularly, sometimes annually and therefore if they hadn't thought to screenshot at the time, this information is lost-it doesn't mean it didn't exist.
- In the most recent trial this worker witnessed, there was some contradicting information obtained from subpoenas from services such as police. The witness was being asked to interpret this information and was called 'a liar' when this information did not match hers. In this instance, it was clear that these discrepancies were down to miscommunication between

stations and services, or different styles of policing/different values of individual police officers, as there were contradictions in the way the different police officers and stations handled her statement. The error was not hers to own.

- A further example of this was when the witness was questioned as to why she followed a certain path in relation to dealing with her child's allegations of harm from the father. She was berated for how she managed this incredibly challenging series of events. The witness stated many times that she has spoken with particular professionals, and they had advised her on how to handle these situations. She had followed the advice given but she was admonished for following the advice of specialists and clinicians, as it was evident the judge and legal counsel did not agree. These were sexual assault and FV specific services.
- Witness being badgered by legal counsel as to why they did not include certain information in their affidavits. Clients pointed out that their legal counsel had asked them to minimize the information and had encouraged them to edit some out as it was deemed less important than other aspects or incidences.

#### **General injustices and disparities:**

- Women are required by CSS/CP to act protectively, whereas fathers do not have this same level of responsibility. Women are 'punished' for example if they do not leave a home where there is abuse, despite the fact that this may escalate the level of violence, they may not be able to afford to leave, to obtain accommodation, to remain safe, to keep children safe if father has access to children. They are also 'punished' or held responsible if they continue to send a child to spend time with an abusive father. From a legal/court perspective, they are held responsible for NOT sending (an often unwilling) child to spend time with the father/perpetrator and can even be imprisoned for this. This enormous disparity between the expectations of CSS and courts is confusing for women and places them in a no-win situation.
- In the above situation, the 'burden of proof' regarding abuse is placed on the mother, rather than on the 'alleged' perpetrator to prove safety. The ability to 'prove' abuse (in particular sexual abuse) is far too overwhelming and complex for a traumatized mother, who is most often victimized also.
- Like many victim/survivors, this worker's recent client has significant MH issues due to the impact of her trauma from both childhood abuse and abuse at the hands of her husband. During the trial she was continually berated for having spent time in a mental health inpatient facility. What was evident here was that the full-time mother of small children did not have family supports and therefore did what she felt was best at a time in her life when she was having an emotional crisis and did not want her emotional state to impact on her children. Having no other supports and believing the father of the children had sexually abused both the children, this young mother sought to get some help for herself in order to be able to cope with motherhood and her own traumatic past. This time when the children were in respite care was raised continually by both the OP's lawyer and the ICL. This mother-shaming did not sit well given that the father (and many men who are not the primary carers) have ample time away from family responsibilities to seek support whereas primary carers do not.
- The mother was harassed about an isolated incident when she had drunk too much and allowed her partner to drive. It seemed extremely inequitable to shame this very young mother for a not untypical youthful behaviour (that did not lead to any disaster or impact on the children), rather than spending time questioning the father as to why he felt it ok to assault

and perpetrate FV on his wife and young children. Additionally, why is it assumed that Dad has time off to 'misbehave'? Why doesn't the father get questioned about where the children might be when he has such 'incidences'?

- In first trial this worker sat in on, the mother was the first to be cross-examined. This went on for 3 days. The counsel for the father was alleging 'alienation' and this became the focus of her cross-examination. It seemed to this worker that given that the case outline from the mother's counsel was abuse and FV (for which the father was cross-examined for only 1 day), it would have made more procedural sense to attempt establish FV first, rather than spending 3 days berating the mother for 'withholding' the children when her reasons for doing so became clear in the second part of the trial when the father was cross-examined. This appeared to be putting the cart before the horse, dragging the trial out (in this case for 8 days), rather than getting to the pertinent facts first. This worker appreciates that this may be the current process, but it felt as an outsider that this was completely backward and time and money wasting use of resources.
- Why is there no thought or empathy given to a mother who is managing not only her own trauma from FV, but that of her children? The complexities of raising young children who have witnessed FV (and in one particular case, alleged sexual assault from the father): organising and attending appointments for therapists, specialists, paediatricians; managing their challenging behaviours brought on by their trauma appears to be overlooked.