

## DISCUSSION ON UNACCEPTABLE RISK

PP = protective parent, AB = abusive parent.

Central to understanding is understanding how formulae for unacceptable risk works. Positive finding of abuse at State level, weighed against benefit gained from child knowing other parent, - always results in right to access prevailing of late. See below post I recently did - explains this- may be of use to understand WHAT you are up against. Not many lawyers know about "Contact and Unacceptable Risk" decision - that the decision was upheld our only window of hope - possible avenue for supervised access.

### **Parents obligation to facilitate Contact.**

Have to have a **reasonable excuse** - for not being sufficiently active in ensuring a child attended contact.

Plus - the reasonable excuse must be **based on a lack of understanding of obligations under the orders.**

Best if that lack of understanding stems from state authorities telling you information which led you to withhold access - which may be misconstrued as you being unreasonable. Now you understand obligations!

### **Contact and Unacceptable Risk.**

The question of "unacceptable risk" is not dependent on a finding of sexual abuse. Where a positive finding of sexual abuse may decisively constitute unacceptable risk, the converse is not necessarily true.

**In this case, though her Honour could not make a positive determination that sexual abuse of E had occurred, she appropriately considered and weighed all the evidence to make a finding that there was an unacceptable risk to E should she have unsupervised contact with the AB.**

### **Recent post.**

The fact a child is disclosing and alleging sexual abuse will not be disputed. What the child wants will be considered inconsequential. The PP's attempt to protect the child from being sexually abused (alleging abuse, seeking to reduce the AB's contact, carefully documenting the child's complaints, going to the police etc) will be viewed by the court and court workers as prima facie evidence of alienation by the PP against the AB. A positive finding of abuse by State authorities will not alter the outcome.

The children's representative, instead of advocating for the wishes of the child (to have no contact with the AB) will dismiss the child's views as a product of "brainwashing" and alienation by the PP. The child's disclosures of abuse will be similarly discounted. The representative, believing in the universal benefits of contact for children, will decide that contact with the AB is in the child's best interests and will offer the PP a choice between two options: allow the abuse to continue or lose the children permanently. If (usually when) the PP rejects this option and chooses instead to protect the child from ongoing contact with the perpetrator, the representative will recommend a change of primary residency.

Any attempt to utilise the Family Court to protect the child from sexual abuse will prove not just futile, but disastrous, with primary residency often being reversed, unless the PP accepts ongoing abuse without further complaint. They will go from primary caregiver, to being allowed only supervised contact with her child. Parents seeking to utilise the Family Court to protect their children from sexual abuse will be confronted by

a pro-contact family law culture where child-safety is a low priority.

What is regarded as alienating?

I would say the language used by the person making allegations on the child's behalf. All allegations must be made **bearing in mind** Right to safety v/s Right to access and must demonstrate a willingness to foster a meaningful relationship, despite there being abuse.

Do not request No-Contact Orders **as it demonstrates** your inability to foster a child's meaningful relationship with the abuser. Request instead supervised access and stress that despite abuse you feel a child deserves to have contact/ a meaningful relationship with her abuser – they are after all the child's other parent.

The few cases where courts have denied "convicted abusers" contact with their children, are being overturned on appeal. The appeals are centred on the standard of proof required in sexual abuse cases and the balance between the risk of detriment to a child from sexual abuse and the possibility of benefit to the child from contact with a parent.

For case examples and more information see "Allegations of child sexual abuse in Family Court cases". *Law Society Journal* v. 43 no. 7 August 2005: 66-67.

Until such time as the Federal Inquiry's critical recommendations as to how children should be given greater protection from abuse and family violence have been adopted (ie the Family Court system be altered to allow greater scope for the investigation of claims of abuse, and the suggested presumption against parenting in cases of family violence), this is the only advice I can give to PPs trying to protect children from abuse.