

A Warning for School Counsellors

School Counsellors have certain obligations as professionals when disclosures are made to them by children. A recent Family Law case has had to consider a school counsellor's behaviour, and the consequential impact on the child's care arrangements, where the counsellor failed to comply with their professional obligations.

The Facts:

- The parties had a 10 year old daughter who, following separation had lived primarily with the Mother. The parties lived 3 hours apart and therefore the child was only spending block holidays with the father.
- The child commenced seeing the school counsellor approximately 6 months prior to the proceedings coming before the court. During the sessions with the school counsellor the child made a variety of disclosures, including: -
 - her mother had punched her in the face;
 - she was made to do significant chores;
 - the step-father used to be 'fun' to be with, until her half-sister was born;
 - that she had stolen money from her step-father's wallet and tried to run away but the police had collected her and returned her home; and
 - that the step-father threatened to break her wrist.
- Over the sessions the school counsellor provided the child with legal advice about the family court process.
- The school counsellor contacted the biological father numerous times to discuss the disclosures the child had made to him. At no time did the school counsellor contact the mother to discuss the disclosures made by the child.
- The school counsellor ultimately decided that she had a 'duty of care' to the child and as there were no court orders in place assisted the father to unilaterally remove the child from school.

Court Found:

- By the time that the matter was listed before the court the child had withdrawn a number of allegations of abuse that she had previously made, including that the step-father had

attempted to break her wrist and that she had run away. The court concluded that the child had an active imagination given the significant detail in her stories and the subsequent withdrawal of allegations.

- The court also found that the child's stories would have been fanciful to an ordinary person. Such examples included the child's allegation that the mother punched her in the face the day prior to making the disclosure to the school counsellor, yet the child showed no bruising, and that a police officer would not have made a formal report if a child had run away from home.
- The court was also particularly concerned that when the child had made disclosures to the school counsellor that she had then received some sort of reward, including being able to watch her favourite TV program, or getting breakfast. The court was also critical of the school counsellor treating the child as an adult, by attempting to provide her with legal advice.
- The court found that nothing in the *Family Law Act* provides for a teacher or social workers 'duty of care' to override the parental responsibility that by law is vested in the parents.

Court Order:

- The child was ordered to be returned to the mother.
- The court did not order any restraints on the school counsellor from having continued discussions with the child, however, did order that a copy of the decision be provided to the Department of Education.