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I make the following submission in regard to "*what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted*".

Much is made, particularly by Chief Justice Nicholson, of the fact that only 5% of cases handled by the FCA go to trial. We are told that this means the other 95%, in which consent orders are made, have been settled agreeably, often, if not usually, in consequence, or partly in consequence, of FCA counselling/mediation.

My case is one of the 5% that went to trial, and I will tell you about my experience with FC Counsellors.

The first Counsellor spent a lot of time telling me that shared parenting was not a reasonable outcome; that the Court would not grant it. I quoted verbatim from Hansard of 21 November 1995 when Peter Duncan, the Parliamentary Secretary to the Attorney-General, moved amendments to the Family Law Act with the words:

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"*The original intention of the late Senator Murphy was that the Family Law Act would create a rebuttable presumption of shared parenting, but over the years the Family Court has chosen to largely ignore that. It is hoped that these reforms will now call for much closer attention to this presumption and that the Family Court will give full and proper effect to the intention of the parliament.*"

The Counsellor said it did not matter what Duncan, Murphy or anyone else thought, "the law is the law". How profound! He eventually agreed that it was a discretionary law, but was still adamant my daughter would not be granted joint residency.

At a pre-trial conference on [redacted], a Family report was ordered, and a mandatory meeting with another FC Counsellor took place [redacted], [redacted]

The report was not produced until [redacted], and then only after I requested and received a hearing before the listing Judge and said I could not prepare for trial without the Family Report. Her Honour contacted the Director of Court Counselling, who later rang me when it was ready and apologised for the lateness. I chose to go to the FCA to collect it personally as the trial was less than 2 weeks ago.

[redacted]

It was thus 6 weeks between the interviews and the preparation of the Report. That is a disgrace – how can a person who deals with many people adequately remember what happened 6 weeks before? The Counsellor's evidence at trial indicated he could not remember many important aspects of the interviews.

During my interview the Counsellor repeatedly told me there was no hope of my daughter being able to reside with me, or being allowed to share residency with both parents. He repeatedly told me I was an intelligent man, that I should stand back and look at what I was doing, that I should withdraw my application. He told me he was a Court Officer, whose report would form the basis of the Court's decision. He implicitly threatened me by intimating he might recommend I have no contact with my daughter. He would not allow me to record, or even take notes of, the interview, but he made notes. He said he did not care what happened. He told me he was ex-army, a judo champion and the first thing he had done at each of the 16 schools he went to was "pick a fight to get it over with". I regarded those disclosures as further attempts at intimidation.

He subjected me to supervised contact with my daughter, but not the mother. In the hand-written notes he made of the interview, he mentioned I was sitting in a chair a lot and was not very active. Apart from the fact I had a very painful back that day, I would like you to imagine what it is like to be expected to interact with your child knowing that someone who has implied he has the power to determine your future contact with her is watching from behind a two-way mirror. Would you, could you, act spontaneously?

The Counsellor's Report made mention of the mother's allegations that I had been involved with a prostitute when we were separated some 4 or 5 years before the birth of my daughter. He did not ask me about it, and it was, I feel, totally irrelevant to the situation. The Family Court sent that report to my mother, even though she had long ceased to be a party to the proceedings.

The Counsellor's Report made mention of the wife's religious attitude to marriage. He did not question me about that (I took, and still take my daughter to Church whenever she is with me on Sunday; the mother did not and does not, other than on rare occasions). Again, his mention of the mother's religious attitude seems irrelevant to me, but if it is relevant surely he should have asked her how come she, a Catholic married in a Catholic Church, deserted her husband, unilaterally ended the marriage and was living in public adultery.

I enclose the transcript of the Counsellor's evidence. I hope someone will take the time to read the disgraceful manner in which he gave evidence. Her Honour was clearly perturbed at his evidence, and she immediately ordered a transcript. I represented myself for the property part of the trial, and when I gave my summing up I said "This Court has subjected me to the abject humiliation of being evaluated by that Counsellor whose incompetence has been so amply demonstrated in these proceedings", and neither Her Honour nor the mother's barrister batted an eye-lid.

I obtained a University Degree 35 years ago, have lectured in tertiary institutions, represented the Australian Government at a senior level overseas, and have friends who are qualified psychologists. Her Honour, in her Reasons for Decision (property) wrote, "Mr [redacted] is intelligent and articulate". I know excrement from yellow clay, and what I experienced at the hands of the FC Counsellor was monumental incompetence.

As the Counsellor slunk from the Court he said to an Orderly "I hope I still have my superannuation". Unfortunately this man not only has his superannuation, he is still a FC Counsellor, still bullying and intimidating people, still reducing children's chances of having a meaningful relationship with both parents. Or at least he was recently.

The result of the 8-day trial was a Consent Order for shared residency, albeit a 65-35% time split. The mother had originally offered 1 day a fortnight contact and I accepted her much-revised offer as it stipulated shared parenting and a reasonable time with my daughter. The decision was made under enormous pressure, with an understandably anxious Judge wanting to get on with the trial (it was set down for 4 days). I spend as many waking hours with my daughter during the 35% as the mother does during the 65%.

If a presumption of shared parenting had been in force, the trauma and bitterness of the trial would likely have been avoided, as would the cost to the taxpayer of the trial and counselling, and it is likely there would now be an extra $100,000 available to provide for my daughter.

"*Given that the best interests of the child are the paramount consideration*", the abysmal quality of FC counselling, the fact that the Counsellors actively discourage shared parenting, the fact that Counsellors' Reports to the Court are ill-considered and sloppily prepared (please read the transcript) and the financial loss to the child of the necessary Court proceedings to achieve shared parenting should be taken into account.

[redacted]