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Secrecy or Privacy of the Family Law Courts?

Letter to the Editor

Dear Editor,

The recently announced Civil Liability and Courts Bill reported in the Irish Times (February 14 2004), indicates changes to the operation of the "In Camera" rule in Family Law Courts.

The "In Camera" rule as it presently operates, prevents anybody, including professional bodies, and notably politicians, elected TDs or Senators from being made aware of or discussing the details of a family law case. Furthermore there are no complete and accurate written or taped records kept as a matter of course of the words used by anyone during such court cases.

There are two distinct aspects of the "in camera" rule which need consideration, namely the separate elements of Secrecy and Privacy.

Chief Justice Keane (Supreme Court April 2 1998) stated that "the most benign climate for the growth of corruption and abuse of powers, whether by the judiciary or members of the legal profession, is one of secrecy". Secrecy prevents benchmarking, monitoring and evaluation of the quality of justice provided in family courts. It prevents judges, solicitors, barristers, expert witnesses and court staff from being investigated for misbehaviour. The culture of secrecy within the family court system, is underpinned by the continuing failure by the courts administration to keep accurate records of the evidence given and the statements made in court.

In order re-establish public confidence in the quality of justice in the Family courts all elements of secrecy need to be outlawed.

Privacy, as distinct from secrecy is intended to address the intimate and vulnerable aspects of family problems. Ostensibly secret courts protect the identities and the intimate details of parties to a case, in particular the children. However, the reality is that in foyers and waiting areas of family courts throughout the country it is obvious who is involved in family disputes.

Gossip, the original broadband, which from the beginning of time has spammed communities, particularly in rural and smaller urban settings, with its mixture of part-truth and part-lies, spreads unchallenged details of relationship breakdown. Contrary to the intention of protecting the privacy of families, the "In Camera" rule, and the non existence of accurate records of evidence, gives gossip free reign and allows it to gain credence. Having access to accurate records of what is claimed and stated in court could provide family members with evidence to protect their reputations, which is a basic constitutional right. There are also many cases of false allegations being made under the veil of secrecy of the Family courts. It is in the public interest to expose any such false allegations and to hold the alleged accountable publicly.

There are already effective examples such as the hearing of rape trials, which are held in public but with appropriate reporting norms.. If this model is combined with the installation of competent digital recording and archiving equipment in every court case, and the institution of effective, independent means of redress for litigants against judicial and professional misbehaviour, then the family courts can serve justice and fairness by being respectful of the individuals identities while ensuring transparency, accuracy and accountability.

Yours Etc
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