

8 May 2002

EP

The Hon. Justice Alistair Nicholson
Chief Justice
Family Court of Australia
GPO Box 9991
MELBOURNE VIC 3001

Dear Chief Justice,

We refer to the submission made to you of July 15, 1991 on behalf of the Brethren community, your reply dated August 30, 1991, and the subsequent personal interview accorded to Messrs Bruce Hales, John Salisbury and Stuart Jensen.

We were grateful for the courtesy of meeting with you on that occasion. We are also thankful for the efforts the Court has made in some areas to recognise and provide for the welfare of members of our community.

At this stage we would like to bring to your attention ongoing difficulties the Brethren community is experiencing when members of the community are brought into contact with the Family Court as well as associated pre-trial and ancillary services - such as the counselling and family reporting services.

Our perception and experience is that many of these difficulties arise from:

- (a) a failure to understand and recognise the religious beliefs of the Brethren. This submission sets out in summary form some of the principles, values and practices of the Brethren to which, we consider, insufficient regard has been paid on some occasions;
- (b) forcing Brethren children into contact with former members of the church who have become bitterly opposed to the teachings and way of life of the community of which they were formerly part; and
- (c) the conduct of hearings which, rather than focussing on the best interests of the child or children concerned, permit an attack by the (usually disgruntled) ex-member on the beliefs, values and fundamental religious principles of the church and community. The evidentiary issues concerning the testimony of ex-members of any organisation and the analogy with informant evidence is dealt with elsewhere in this submission.

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Fortunately, there are very few cases involving Brethren children appearing before the Family Court. This is largely because less than 0.5% of marriages involving Brethren members end in divorce.

We are unaware of any longitudinal study of the effect on children of their exposure to the Family Court system, its ancillary procedures and pre-trial processes nor of the impact on children of having to comply with court orders for contact which are against their wishes and beliefs. However, we are acutely and continually aware of the excruciating suffering of those who have been involved from our community in family law litigation - particularly the children involved.

In all those cases the children's wishes are:

- (i) to reside with the parent among the Brethren
- (ii) to refrain from contact with the former member
- (iii) to remain together as a family unit with the Brethren parent.

In cases where the Court has directed no contact, the ongoing conflict for the children has been removed (see extracts in Attachment 1.)

Where the Court has directed contact:

- (i) the conflict has always been very severe, emotionally traumatic, and damaging.
- (ii) the children have ultimately themselves terminated the contact and remain among the Brethren, but with very damaging and unhappy memories which continue to traumatise them in later life.

This leads to the conclusion that if this evidence was put to the Judges and Counsellors much trauma for the families involved could be avoided, as well as the likelihood of future litigation by those children who have suffered harm as a result of disregard of their expressed wishes.

BRETHREN: BACKGROUND

Brethren, as they are now known, commenced in Dublin, Ireland, in 1827 when John Nelson Darby with several others separated from the Established Church, and celebrated the Lord's Supper in its simplicity as originally inaugurated by the Lord Jesus Christ.

From this simple separation the Brethren fellowship grew and spread. It is now a universal fellowship in many cities and towns in twenty countries.

A brief background of Brethren is included in the publication "Many Faiths One Nation" commissioned by the Australian Bicentennial Authority, 1988.

An outline of the Brethren, "The Brethren"-A Current Sociological Appraisal, 2000, by Professor B.R. Wilson is enclosed.

Brethren assemblies have been in Australia since the 1850's, and 'Brethren' are registered under the Commonwealth Marriage Act.

BRETHREN: PRINCIPLES

In Christianity, Scriptural principles are fixed. They never change, nor can they be varied to suit the declining moral standards of a changing and permissive world. These principles and the teaching and application of God's word in the Holy Scriptures are held by Brethren as a precious heritage.

The principle of separation from evil as enjoined by Holy Scripture (2 Timothy 2,v19-21) is a fundamental principle governing the Fellowship.

Because of the diligent application of this principle, Brethren families are closely bound together. Relationships, commitments and social involvements are all within the Brethren community, yet the maintenance of integrity and responsibility ensures a positive contribution to the local external communities, the business community, and society in general.

BRETHREN: PRACTICE

Brethren view the marriage vow as sacred. Marriage is held "honourable in all" as the union of a man and a woman, to the exclusion of all others, voluntarily entered into for life.

Mr JN Darby said in his ministry:

"As to the obligation of marriage, it cannot be held too highly; instituted in paradise, and confirmed by the Lord Himself, its sanctity, I doubt not, is the providential bond of all moral order in the world."

The commitment to the family underlines the description of the family in Section 43 of the Family Law Act as 'the natural and fundamental group unit of society'. The family is cherished as the area where the teaching of God's truth in the Assembly is practically upheld and applied in all areas of secular life.

Everyone approaching marriage would have an unmistakeable understanding that any personal departure from the vow to uphold in the household, scriptural principles as held among Brethren, immediately forfeits any rights to the continuance of family relationships, until repentant, and communion is restored.

Brethren children live at home until marriage - none live away from home. There are no radios, television, computers or the like in the homes or businesses. Such instruments can be a conduit of the world's corruption and defilement.

However, in the homes there is instruction from the Scriptures in moral values, being "simple as to evil", to uphold law, and to respect and pray for Government.

All Brethren children complete secondary schooling, and further training is often undertaken such as trade courses, business studies and the like, usually by distance education.

The disregard of marriage in society in general is in stark contrast to the way it is held dearly among Brethren. Divorce, as cited earlier, in the Brethren community world-wide is less than 0.5%, in contrast to the general divorce rate in Australia which is approximately 40%.

The married women do not go out to work, being devoted to caring for the children, and the household.

The elderly are usually cared for by family or relatives rather than have them placed in aged care facilities.

Brethren do not participate in life insurance plans or join medical benefits funds.

Many Brethren have their own businesses, employing both Brethren and non-Brethren, and are regarded as reliable suppliers and customers, paying their accounts on time, and paying their due taxes. Business owners do not belong to any trade or other associations in keeping with the principle of separation. Provision for this conscience has been made in Industrial legislation in several States.

As a community we do not have the social vices of drugs, delinquency, crime, welfare dependency and homelessness that Governments and the Courts are plagued with. In the words of one Judge our "children are fortunate to be part of a loving and caring community with family and pastoral care."

BRETHREN: TOTAL WAY OF LIFE

The Brethren way of life has been described by the Family Court Bench as:

"a complete way of life and the beliefs of the faith govern the entirety of an adherent's life. Unlike many religions, it is not simply a matter of going to a place of worship from time to time and otherwise being part of the wider community. Brethren practise the entirety of their lives in accordance with that faith."

Difficulties arise when one parent leaves the fellowship and deviates from the way of life that both partners were committed to at the time of marriage and after the birth of children. The judiciary are then required to consider what are the best interests of the children.

One of the Judges of the Family Court made this clear when he stated:

"The flawed nature of his relationship with his children arises directly out of that decision to leave the faith of the Brethren and to practise beliefs which are contrary to that faith. The children see that practice as being totally conflictual and poses for them a fundamental challenge to their moral, ethical and ideological beliefs which are intolerable for people of such a young age."

Those members who have departed the Brethren way of life are often obsessed with living a different lifestyle - as far removed from their previous belief system as possible. It has been a feature of some ex-Brethren litigants that they have been 'almost defiant' in their insistence on exposing Brethren children, when on contact, to manifestations of a lifestyle they themselves previously abhorred, and which they know must cause serious conflict to the children.

OPPOSITION TO BRETHREN WAY OF LIFE

There has always been opposition to the Brethren teaching and way of life, particularly by the media. This is usually incited and continued by ex-members. The introduction of the Internet has now provided an anonymous medium to spread worldwide, scurrilous and unsubstantiated allegations against the Brethren Fellowship and respected members, with no redress. This medium projects a grossly distorted perception of a recognised way of life based solely on principles contained in Holy Scripture.

CONCERNS

The recent report "The Family Law Reform Act 1995: the first three years" responds to amendments to the Act and highlights areas of general concern arising from the authors' research. Some of these are of specific concern to Brethren, as follows:

1. THE CHILD'S BEST INTERESTS

Section 60B outlines the principles underlying the objective that "children should receive adequate and proper parenting" except "when it is or would be contrary to the child's best interests".

These principles include that children:

Have the right to know and be cared for by both parents, and

Have a right of contact on a regular basis, and

That parents share duties and responsibilities.

These principles each impinge directly on our practice of separation where there has been a marriage breakdown, as, with all Brethren children, their religion pervades their entire way of life.

Section 68F outlines how a Court determines what is in a child's best interests and includes matters which are expressly applicable to children who have been born and raised among Brethren.

Examples are:

In consideration of 2(b), the Court should have an understanding that all relationships between Brethren children and parents, or any other persons, are governed by the principle of separation, and where a person is withdrawn from the relationship is suspended and direct contact is avoided.

In consideration of 2(f) the Court should be aware of the particular background and characteristics of children that have been raised from birth in a way of life unique to Brethren.

In consideration of 2(g) the Court would know the psychological harm to children by being exposed directly and indirectly to verbal abuse directed against their way of life, and acquaintances of our children.

In 2(1) the Court should consider relevant, that separated parents would not have any recognisable level of contact which would make joint responsibilities and decisions extremely difficult, if not impossible.

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It is submitted that in cases where one parent has left the Fellowship it is not in the child's best interests that they:

- (i) reside with that parent
- (ii) have contact with that parent or
- (iii) are subject to the jurisdiction of that parent where such control is or is likely to be opposed to their welfare and development as continuing in the Brethren way of life.

It is in a child's best interests that it remain in the spiritual and secular environment into which it has been born and raised by both the parents prior to their separation. Invariably such a child, or children, would have had no previous exposure to the new environment in which the separated parent now lives, and such exposure induces very severe stress.

2. CONTACT

Where contact has been ordered by the Court, this has been respected and obeyed by the Brethren parent who has residence orders. It would be understood that this is traumatic for

- (i) the children who remain within the Brethren fellowship and
- (ii) that parent who has to contend with the stress forced on the children by those orders.

These children are forced from the environment in which they are being raised, into one which is diametrically opposed. The stress from the anticipation of contact is evidenced by anxiety, tension, emotional effects such as bed-wetting and sleeplessness, nightmares and outbursts of frustration.

On returning children often evidence remorse where they have been forced to participate in activities, or have been taken to places which they have protested as to not being suitable to their way of life. These are not imagined occurrences, but real-life experiences of Brethren children, current at this time.

3. FAMILY REPORTS AND ASSESSMENTS

Under S62G, reports are prepared for the Court to enable an informed determination to be made.

Our concern is whether the persons appointed under S62G have any knowledge of Brethren issues and way of life.

Of particular concern is the prejudiced attitude of some Court-appointed Counsellors who would prefer to expose children to all the evils and immoralities of this world rather than have them be guided by a parent who would teach them true Christian values. Sadly enough, this poor world sees these time-honoured values as old fashioned and restrictive, whereas the happiness and continuity of our family circles is testimony otherwise. These attitudes have led to prejudicial reports being submitted to the Family Court, even to claiming our way of life as harmful to a child. Nothing could be further from the truth.

Prof. Bryan Wilson, University of Oxford, says in an appraisal of the Brethren, that -

"Only on the basis of thorough study of the history and teachings of the movement, and of their sociological significance, is it possible to understand the nature of family life in a sect like the Brethren, and to form any properly informed judgement about such matters as the psychological maturity or emotional stability of members of the movement, including the children. Without such knowledge, psychological and psychiatric appraisal of individual sect members must be subject to very severe distortion. It is well established among sociologists that individual behaviour can be assessed only once the norms of the community are understood. Psychological development is very much affected by the norms, mores, and values of the community in which the individual is brought up and it must be apparent that the tenor of life among the Brethren differs in significant respects from that of the wider community in western societies.

Prof. Wilson further states in correspondence to The Editor, Evangelical Times (U.K.) as follows:

"Much of his comment on the lifestyle of the Brethren appears to derive from accounts provided by those who have defected from the fellowship. It is a well-accepted principle in this field that the testimony of ex-members must always be in some measure suspect. Any commentator who relies on informants, should be aware that apostates are often all too willing to "inform" and that their motivation is not infrequently that of retribution."

Counsellors who are acquainted with the Brethren background is of prime importance. We think it is essential that those involved in such cases have a proper appreciation of the way of life of the Brethren, the beliefs and practices of members, and the overwhelming experience of children who have been forced to comply with court orders and procedures contrary to that way of life and to those beliefs.

In many cases in which members of our community have been involved, court personnel seem to proceed on a presumption as to the 'rights' of a non-contact parent, ie., that contact between children and non-resident parents is a given.

The (usually strongly expressed) wishes of children not to go on contact with a non-resident parent are regarded as very much a secondary consideration if not the result of a deliberate attempt to alienate the non-resident parent. At the same time, those personnel who adopt such an attitude deny the legitimacy of behaviour experienced by children brought up within a religious and moral value system about which some are adversely judgmental.

Suggestions that the total way of life represented by the values, the belief system and the community in which the children have been raised since birth of necessity will cause conflict to children forced to confront those who have chosen to remove themselves from that way of life (particularly when they wish to change or contradict those values, beliefs and practices) are met with barely concealed hostility.

As has been stated elsewhere in this submission, we are unaware of any longitudinal study of the effect on children of their exposure to the Family Court system or orders. Our attempt to provide evidence from a variety of Brethren children (now adults) as to the impact on them of the exposure to the system at different ages and different areas - and the harm that that exposure caused them over later periods of their lives - has been regarded as not relevant to individual cases.

4. WISHES OF THE CHILDREN

There is also concern as to how the expressed wishes of Brethren children are regarded by the Court. Wishes expressed by children are provided for by S68F, but it appears that in practice (some of our experiences) these wishes are submerged by "factors that the Court thinks are relevant to the weight it should give to the child's wishes".

It is well recognised that a child of 8-years normally has a moral judgement of right and wrong and knows who can be trusted and who they are uneasy with. Their instincts should be respected.

In the case of a thirteen year old child, one of your Judges has said:

"I am not prepared to make an Order which compels this young woman to go on access if she does not wish to. That may have an impact on the other children but there is nothing I can do to prevent that."

The notion that a child should be exposed to the lifestyle of a parent who has abandoned the family home and the Brethren way of life with the consequential impact on the child and his or her long term development, is untenable. Our experience has shown that a child

brought up in a Brethren household normally prefers to remain in that environment, and their social interaction with friends and peers within their fellowship is a major component of their lives.

In each and every case the children have the personal right of decision to make their own way in the world, and contrary to widespread perception there is no pressure or force brought to bear on the children to remain in the Fellowship. They are held by the constraints of their conscience before God, their affection for and direct link with their Saviour, and do not wish to hurt those who love them.

CONDUCT OF HEARINGS

Trials instigated or prolonged by ex-members often take the form of an attack on the beliefs, values and fundamental religious principles of the church and community. Our members have felt that on some occasions, the hearing has become a forum for the organisational, doctrinal or personal disputation surrounding the reasons for the departure from the church of the ex-member, rather than dealing with the children.

There is very rarely any suggestion in any cases involving Brethren children that the children have not been properly and lovingly raised and nurtured while within the particular family and the wider Brethren community; further, that that lifestyle and community will continue to provide for the best interests of the children concerned. In those circumstances, the central issue should surely be whether the changes proposed by the ex-member to the total way of life represented by the values, the belief system and the community in which the children have been raised since birth are in the best interests of the child or children concerned.

FURTHER OBSERVATIONS

We have noted in one particular judgement since our submission of 1991, what we believe are unjust critical references to Brethren. Some examples are:

"Given the hold the Brethren apparently has on its members.."

"I refrain from mentioning the Brethren's culpability in that eventuality."

"...the pressure which the Applicant would appear likely to encounter from the Brethren and the conflict that would create.."

These comments are entirely unfounded. There is no pressure brought to bear on any member.

CONCLUSION

There is a distinct need for a more detailed consideration by the Family Court of cases involving Brethren, so that the principles set out in this submission are applied to maintain the unity of families and govern every action which would interpose anything between Brethren children and the way of life in which they have been brought up.

We therefore submit that when matters come before the Family Court regarding Brethren children, that -

1. Their expressed wishes as to contact must be a prime consideration, which should not be departed from.
2. Shared parenting is inappropriate. The children have been born and raised in the Fellowship and will continue that way as is their expressed wish.
3. Specific care should be taken in the appointment of counsellors. They should have an unbiased understanding of the Brethren way of life.
4. The Court should not be used as a forum for attack against the Brethren, nor should it be allowed to be used as a medium of retribution against a spouse. The rules on admissibility and relevance need to be rigorously applied.

We are proposing to send a similar submission on this and related topics to the Attorney General. However, we would prefer, if convenient to you, to meet with Your Honour prior to discussing the matter with the Attorney General.

The writers would be readily available to meet with Your Honour at any time suitable if your time affords it.

Yours sincerely,

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All of the above being registered Marriage Celebrants.

Citations for the quotations referred to in this Submission will be provided if required.

ATTACHMENT 1

LITCHFIELD:

"This is not a normal situation. The access would place unacceptable pressures on R. Access can only continue in circumstances of conflict and stress for R. Continuing access will also increase the likelihood of further proceedings between the parties, particularly enforcement proceedings...but the cost to R of the Court ordering access now clearly outweighs any benefit she might derive. I therefore order that the husband's application filed 12 March 1986 be dismissed." (1987)

HORNSEY:

"(He) must accept that the children are part of their particular belief system and the entirety of these proceedings is conditional on that fundamental proposition..." and

"...Accordingly, as a result of the above matters, I have concluded that there will be no order for contact, that any order for access or contact will be discharged." (1996)

The above was upheld in Appeal as follows:

"Similarly in relation to the far more significant matter of his Honour's refusal to grant any face to face contact between the children and the husband, we are not satisfied for the reasons we have given, that any matter has been raised before us which would justify our interference with his decision in that regard. Accordingly the appeal must be dismissed." (1998)

SHIRREFF:

"Here I consider that the children's upbringing, from birth, in their present religious beliefs and value system is a significant characteristic of these children that may make it appropriate to deny them their right to contact with their father in its present form. It is a characteristic that has to be seen as the cornerstone of their wishes." (2001)