

# False Allegations in the Family Courts of Australia: holding Family Law Professionals and their clients to account.

## Summary

I am conducting a research project on false allegations arising during child custody disputes, to establish whether certain Family Law Legal Professionals are predisposed to using false allegations as a strategy of choice to alienate the targeted parent from their child(ren). In other words, to win at all costs, regardless of what is considered best interest of the child.

If Family Law Legal Professionals, and their clients, are complicit in this process, they ultimately need to be held to account. But first, factual data is needed to work with.

After false allegations have been made and investigated, there is also the issue of not being able to access the individual State or Territory Police Force files through Freedom of Information. The standard operating procedure is to deny the falsely accused's application on the grounds of accessing documents which identify a third party. But, one step at a time, maybe Freedom of Information requests will largely become redundant if the issue of false allegations is addressed.

## Background

Between 2008 and 2010 I was the "applicant" in an ongoing case before the Family Court of Western Australia (FCWA). I was seeking increased parenting access to my then young son. My parenting time with my son was very limited, and overnight stays were not even an option. They were a pipedream at best! As his father – also paying significant annual child support – I considered my application as fair and reasonable. I believed – naively as I was to learn the hard way – my application would be given fair and proper consideration, and as a consequence my parenting time with my son would be significantly increased. I stupidly assumed the outcome of increased parenting time with my son was logical, and thus a foregone conclusion.

In February of 2010 I received a letter from the respondent's lawyer advising my son was not being presented for contact and I was not to contact her client. This was not the respondent's first contravention of our Minute of Consent Orders (MCO). Some weeks later in the FCWA, after being pressed by the Registrar for a response, I was advised by the respondent's legal team I was being investigated for sexually abusing my then 33-month old son. Ironically, this was April Fool's Day, but the joke was on me! I knew I had never abused my son in any shape or form, so obviously I expected these allegations to be put to bed expediently. This was not to be the case. My parenting contact with my son was stopped immediately until such time supervised visits could be instigated – at my expense of course! I was never formally interviewed by the West Australian Police Force (WAPF) and only via telephone by the then Department of Child Protection (DCP). Some months later I was informed in writing

by the DCP the allegations could not be substantiated. These official notifications always seem to stop short of declaring the falsely accused “innocent”. In her report, the FCWA appointed and highly experienced (in this area) Single Expert Witness (SEW) stated:

*Despite his presentation as an extremely angry and egocentric man, his assessment did not suggest that he is at risk of sexually offending against his young son.*

What falsely accused parent wouldn't be “extremely angry”! In my opinion, anger, not to mention indignation and disgust, are natural reactions to false allegations. Such false allegations strike at the very core of any decent person.

Nearly a decade on I have had no contact with my son. NONE, not even a photo or school report! I chose to walk away so his mother could concentrate on parenting him. I didn't believe it was in my son's best interest for him to be caught in the crossfire – and I still believe this now. I never viewed this as winning or losing, to me it was always about what was best for my son's wellbeing.

Although I was self-represented at the time the false allegations were aired in the FCWA, I was previously represented by a local legal firm recommended to me by a Criminal Barrister friend. Having already had a taste of how ferocious the respondent's previous lawyer could be, I asked my own lawyer if she was willing to fight fire with fire? Her response was a swift and firm “No, we don't operate that way. If you are looking for a lawyer like that I suggest you look elsewhere”. I decided to stick with this company. A decision I subsequently came to regret as a waste of my time and money. I ended-up returning to being self-represented. If I was going to be screwed over by the FCWA I didn't to spend a fortune for the privilege.

So, it seems to me there are two types of Family Law Professionals: those who are more honest and morally and professionally ethical, and those who are the complete opposite. I believe the latter group will stop at nothing to ensure victory for their clients. Ethics don't come into it: this group of Family Law Professionals use false allegations of abuse and domestic violence as a matter of routine. There are just too many instances of unsubstantiated allegations of abuse and/or domestic violence for this strategy not to have become standard operating procedure for many Family Law Professionals.

There is one other unintended side-effect of false allegations. I'm not for one minute suggesting false allegations are an excuse to overlook genuine crimes, but they are being used far too easily with malicious intent. The unintended side-effect of false allegations is injustice for genuine victims.

### **My Research Project**

If the survey results support such action, I would like to compile a list, state by state, of Family Law Professionals who use false allegations of abuse and/or domestic violence against either their client's former partner, and/or their children. It is no

coincidence such allegations are strategically used to cause immediate and maximum damage to the targeted parent-child relationship. It is usually the non-resident parent who is on the receiving end of false allegations. This is an opportunity for the Family Courts to actually do their job and act in the best interests of the child, to first preserve and then encourage their relationship with the targeted parent. Sadly, this opportunity is habitually lost and is often the first nail in the coffin of the targeted parent-child relationship. Of course, acting in the best interests of the child is often at odds with what the alienating parent wants, or is advised by their Family Law Professional.

In my case, a letter (see appendix 1) from the DCP proved the allegations were unsubstantiated. This is solely due to the fact I never abused my son in the first place. I will not be persuaded that the allegations were anything but false and malicious. And deliberate and strategic.

I firmly believe some Family Law Professionals routinely use this strategy, in fact, it has become their strategy of choice. It is by far the best way to proceed if they are intent on heading-off at the pass the targeted parent's application for increased parenting time with their child(ren). If on the other hand, a Family Law Professional believes their client's claims of abuse or violence are false, they have a responsibility to act. In other words, this is behaviour the Family Court would not approve of, and as an officer of the court if their client wants to engage in unconscionable conduct, the Family Law practitioner needs to advise their client away from requesting such actions. Further, the Family Law practitioner can also recuse themselves from the case.

### **How You Can help**

I would like to collect data from parents who have been the subject of false allegations of abuse and/or violence against their ex-partner and/or children, especially where these allegations have surfaced during a custody case before the Family Court. I welcome all survey submissions. I am especially keen to hear cases where the allegations have been officially proven to be false, or found to be unsubstantiated. This is the crux of the issue of false allegations.

If upon completion of the data analysis it is apparent certain Legal Professionals use false allegations as their strategy of choice, or they continually engage clients who seek to use this strategy, they will be reported to their relevant state Legal Practice Board and Attorney General, and the Federal Attorney General.

What is required is a complete and systematic overhaul of the Australian Family Court system, however, I don't think we should be holding our collective breath! Whilst we may not be able to change the Australian Family Court system in its entirety – not yet anyway – we can certainly put these unethical Family Law Professionals on notice that such behaviour will not be tolerated.

I should add, if you believe the other party's Family Law Professional is engaging in behaviour that results in continued contraventions of Family Court parenting orders,

you should report them to your state Legal Practice Board. These Family Law Professionals will no doubt argue they were only acting upon instruction from their client, however, to contravene parenting orders is Contempt of Court. If nothing else, it gives the state Legal Practice Boards something to do, but more importantly, it puts these particular Family Law practitioners under the microscope, and that can only be a positive outcome!

Lastly, being an alienated parent myself, I understand the need to protect the privacy of all concerned. All information will be treated with the strictest confidence, and will be anonymised. This is not about revenge, this is about holding false accusers and their rogue Family Law Professionals to account. By design the Family Court and Family Law Professionals operate in secrecy, and this is one of the reasons they are rarely held to account. We need to overcome this institutional secrecy and indifference and hold them accountable.

If you would like to contribute please use the attached "False Allegations Requesting Information Survey".

### **Freedom of Information (FOI)**

In theory, accessing the documentation surrounding false allegations should be straightforward, however, by design it is anything but.

The Single Expert Witness report was provided to me as a matter of course because it was ordered by the FCWA. However, there was nothing ground-breaking in there. In fact, all of the information about me had been provided by me, or via subpoenaed documents. All of this I already knew.

After an internal appeal I was granted partial access to the then DCP (now called the Department of Communities - Child Protection and Family Support) case file notes. In reality what I received was a very heavily redacted bunch of papers which, again told me very little I didn't already know.

My FOI application to the WAPF was unsuccessful. I was told in no uncertain terms that neither my first application or any subsequent appeals would be successful. I was advised to withdraw my application and be granted a full refund – I didn't. The official WAPF documentation quoted various legislation in support of their refusal to grant me access to the case file. I now know the standard operating procedure is to deny the falsely accused's application on the grounds of accessing documents which, identify a third party/ies. It seemed a supreme irony that 1) the WAPF were protecting the false accuser, and 2) one of the third parties was my son.

I was subsequently advised to appeal the WAPF decision to the Office of the Information Commissioner (OIC), which I did. My application was quickly refused because I was well outside the appeal timeframe. If I want to access the WAPF case file notes I will need to commence the FOI process from the beginning, even though I know my application and any appeals will be refused. Then, and only then, can I appeal to the OIC.

## Legal Practice Boards by State

### Western Australia

- <https://www.lpbwa.org.au/Complaints/Complaint-Enquiry-Form>

### Northern Territory

- <https://www.lawsocietynt.asn.au/for-the-community/make-a-complaint-1.html>

### Queensland

- [https://www.lsc.qld.gov.au/\\_data/assets/pdf\\_file/0011/97787/Printable-Complaint-Form.pdf](https://www.lsc.qld.gov.au/_data/assets/pdf_file/0011/97787/Printable-Complaint-Form.pdf)

### New South Wales

- [https://www.olsc.nsw.gov.au/Pages/lsc\\_publications/lsc\\_forms.aspx](https://www.olsc.nsw.gov.au/Pages/lsc_publications/lsc_forms.aspx)

### Australian Capital Territory

- Call **02-62740300** and contact the Professional Standards Manager or Committee Secretary

### Victoria

- <https://www.lsbv.vic.gov.au/documents/Form-Complaint-July-2016.pdf>

### South Australia

- <https://www.lpcc.sa.gov.au/complain>

### Tasmania

- <https://www.lpbtt.com.au/complaints-process/make-a-complaint/>

## Appendix 1

Letter to me from the Mirrabooka (WA) Department of Child Protection Intake and Assessment Team dated 28 June 2010.



Government of **Western Australia**  
Department for **Child Protection**

Mark Kosmider  
[REDACTED]

MOSMAN PARK WA 6012

28<sup>th</sup> June 2010  
[REDACTED]

Dear Mark,

As you are aware the Department for Child Protection has an open case with regards to your son [REDACTED]. I am writing to inform you of the outcome of this investigation. The Department has found that concerns in relation to the sexual abuse of [REDACTED] can not be substantiated and therefore the case will now be closed.

Given you denied harming [REDACTED] in a conversation that took place via telephone on the 7<sup>th</sup> June 2010, there is no need for you to attend the Department to meet with me in person.

If you would like to discuss this letter further, please contact me during office hours on 9344 9666.

Regards

A handwritten signature in blue ink, appearing to read 'S. [REDACTED]'. The signature is written in a cursive style.

[REDACTED]  
Department for Child Protection  
Intake and Assessment Team  
Mirrabooka