

## **INTERVIEW, DECEMBER 2008: Shaun O'Connell, McKenzie Friend**

Shaun O'Connell is a vastly experienced McKenzie Friend and works on several areas of the law, not limited to Family cases but inclusive of environmental and Human Rights issues.

Having witnessed the system first as a self represented parent and then as an advisor to other parents, Shaun's personal involvement in his own case and subsequently his interaction with the family courts as a McKenzie friend, a field in which he has personally been involved in setting precedent, make him the ultimate eye: an all seeing one. In this interview, Shaun explains the delicate balance between the difficulties in the system and the strengths.

### **What led you to work in the family courts?**

I studied Ecological Science at university then travelled in Europe. I then did a PGCE to become a teacher. I worked with children for 12 years. I had a few problems with my wife and got beaten up regularly by her so I met the Family Courts and discovered that argument and facts presented in behind closed doors can be left out of the Judgement, State bodies can commit perjury and pervert the course of justice without any effective redress, hearings invented that have never taken place, and under the guise of discretion all manner of assumptions and matters may be judged to be fact when material evidence exists to disabuse the Court.

No-where in any of the Judgements will you find an analysis of my own children's welfare including my daughter's daytime wetting since 1997 to 2005 at the very least, my son's referrals to child and family guidance every year since 1997 except for 2003, counselling at school for low self esteem and lack of confidence in 2004 and referral to psychiatrist in 2005 and severe behaviour problems at school nor the school forging school reports as they had unlawfully changed my children's surname without my knowledge.

I can no longer teach children as it is too painful but began assisting others alongside the Environmental Law Centre ([www.elc.org.uk](http://www.elc.org.uk)) - the only non-Governmental law centre in the UK. The effects of the decisions can be very severe. I was stopped from seeing my own children in October 1999 and then in April 2000 given an order for no contact direct or indirect, section 91(14) order and a ten thousand pounds costs order for the pleasure of it.

In 2002 I met Dr. Kartar Badsha who along with others assisted me and became involved with their work. The Environmental law centre gave me free in-house training and advice, helped me with my own predicament but more importantly acted humanely when I was at my wits end and gave me a glimpse that all was not well in the UK. ELC is a 'we' organisation not 'I' and we are just finishing our protocol for referral to McKenzie Friends via ELC.

### **What kind of things are you asked to do as a McKenzie Friend?**

Most people do not have experience of Courts, they do not know what a trial is. They do not understand the legal process or terminology. By the time most people find us findings of facts have been made. They seek advice and usually their money has been wasted on lawyers paying privately or they have used up legal aid in fruitless battles for justice. Others feeling aggrieved may not understand the law, legal terminology, legal process prior to trial, and the importance of honesty.

We will not lie on behalf of anyone but do the adversarial role of presenting the case in the best light possible and seeking evidence to back up our case and dismantle the opposition case. We have to read case papers as so many parents are unable to read their papers properly as they are emotionally blocked with the trauma, we prepare submissions, statements, give advice on steps to

take, we give them varying strategies to take so that they choose their way with warnings of what may happen with each strategy presented and of course attend Court with them. We may act on their behalf with leave of the Court.

Often we find ourselves counselling people as they just want to talk their worries away. We also collect case studies of prima facie evidenced cases for various submissions to Europe and the UN.

### **Have you seen any changes to the way the McKenzie Friend is treated in court?**

I only started acting as McKenzie in 2003. I had by then accumulated six years of representing myself in my own case. Now in 2008 there has been an opening up of the system to permit McKenzie friend to act as advocate. Five times to date I have been granted the right of audience and it is helpful as often as McKenzie friend all the party is often doing is repeating what the McKenzie friend tells them.

Many people claim that they have felt let down by their legal team and at the end of the day it is their choice to seek alternative support. I can foresee that this maybe a dangerous route to go as some misguided or without proper thought may set up potentially harmful Judgements in the Higher Courts leading to bad precedents such as Judges talking to children or CAF/CASS officers/ social workers asking children under 14/ 15 who they want to live with as early as age six.

I think this has been a big development and at least there is a chance of pursuing arguments that previously lawyers would not pursue in case they affect their careers. There are many dubious theories being used by so-called experts in the family division and court reporters. Attachment is the classic. So far not one Court reporter has been able to answer how they assess attachment because there is no methodology. It is purely subjective opinion.

I have noticed that as I became more distanced from fathers4justice I was treated better. They somehow perceived a threat where-as our weapon is the word and law. It went from having a security guard every time I went to Court to the present situation of being granted rights of audience and finding that the Court is more willing to take us more seriously.

### **Being unable to access the same databases as lawyers who have the advantage of large resources in-house, what resources do you rely on to prepare your cases?**

Large cities usually have a good selection of the available law reports in central libraries and Universities, the internet is a useful tool but sometimes people don't realise that mere words in an article do not make law. We mostly stick to Higher Authorities such as European Court judgements and statute law [all available on the internet] and common sense. Most English law is discretionary and behind the use of discretion hides all manner of sins. Some law books are also useful.

### **How do you find the judges at different levels of the court hierarchy?**

The higher up they are the more practised they are. I would say it is individual Judges rather than level of hierarchy that is the important factor. Generally speaking District judges are failed solicitors, Circuit Judges have a better knowledge of law and I have had brutal experience at hands of Senior circuit judges. High Court judges have a highly political role and have not inspired the greatest of confidence.

Appeal Judges vary immensely. I would say in their defence that the policy brought in by Thatcher of the Courts being funded by itself has had a very detrimental effect as well as the over-riding objective in particular to give time for other people's cases. Over time Judges who we have met more regularly are more prone to assist once they realise we do not play dirty tactics and are acting honestly.

### **You must face some frustrating aspects of the court system on a daily basis: what is your worst experience to date?**

This is a difficult one to answer as there are so many experiences - there was the case that was transferred to a Court 120 miles away at 2pm the day before the hearing [the father lost his payment for B and B and it caused us delay in preparation], documents being before the Court that the party is unaware of, the failure to give copy of the court bundle to the LIP, late serving of documents/ reports on the day of the hearing, prima facie perjury and underhand acts by the opposing parties and the sheer lack of independence of Guardians. I have been ejected from Court (on the basis that there is no such thing as McKenzie friend in family proceedings), prevented from pursuing argument and cross examination, and on one appeal [DJ to Circuit Judge] informed that putting insufficient weight on a factor is not a valid ground of appeal! That case we were winning the argument and then at 14.20 the Judges mobile went off and she returned a different character. Winning the facts of the case but then losing in the discretionary use of powers in the Judgement under the Children's best interests. Watching a mother being taken to prison after her barrister had pursued an adjournment [which was refused so witnesses could not attend] and then seeking permission to appeal when both the Judge and the barrister knew permission to appeal was not needed from committal hearings.

In another case the Judges informed us that the section of the Children's Act on unmarried fathers being forced to apply for parental responsibility has been determined as compatible with the European Convention in B v UK. No such authority exists as far as we can tell. I think the worst moment was two years ago on being given the right of audience by LJ Potter and I shook and trembled with anger at the way he bludgeoned any sense of a fair hearing and tried to order the father to provide his skeleton argument and all evidence he relied upon in two weeks and the mother could give her reply the day before the hearing.

Even prima facie procedural law which the Judge must obey has been regularly breached.

### **Have you had any good experiences in court?**

Yes undoubtedly. Getting right of audience granted after a withering attack on my character by barrister for the Local Authority - that was a nice feeling since it was the Judge who protected me that day. A three day hearing in the Court of session where we spent the first day roundly criticising the top English Judges for their lamentable actions and yes we did win that one. Seeing parents cry with happiness when told they will be able to see their child. Watching a social worker kick the door as he was forced to admit he did not investigate fact or evidence. At the higher end of the spectrum we seem to be getting biscuit crumbs and without seeing the bench memorandum - an advisory opinion of the case lawyer [which is disclosable under ECtHR decisions] have no knowledge of what the case lawyers opinion is or what facts the Judge relied upon or was informed of. We tend to win battles on the whole but not the wars. Otherwise we would have some very interesting precedents set-up. Even in the last week we have won two Appeals and lost a challenge to ICO under sections 6,7 and 8 Human Rights Act 1998 but with a very interesting Judgment made.

### **There are so many divides in the family sector, from judges who disagree with each other on policy and mothers' groups and fathers' groups who are in conflict over contact issues for example; how would you feel about the courts trying to implement a more collaborative process to give every family the ability to be heard un-stifled by strategy and secrecy?**

I think the gender wars are very unhelpful. Any mother who loses a hearing will blame it on her sex and vice versa. I do not believe in State intervention to the extent that is taking place and rapidly increasing. I think any divorce/ separation is harmful to children and a whole industry has been created out of the misery. This society of ours has lost it's way. They say a dog is for life and not just for Christmas - the rule applies to children.

I think people should think long and hard before having children and if they decide to do so it should be for better or for worse. Most cases could be sorted out without the prolonged process that is in place. 90% of cases would be just reducing the conflict and sorting out time. Sadly some parents resort to lying and manipulating the system to get their own way and that is not helpful to the children and should be regarded as acting against the children's best interests. Experience has shown the

Courts tend to favour the PWC [parent with control] and in effect reward the wrongdoer in cases where the parenting of the PWC is poor.

There are many industries now evolved which make their lucrative livings from the system - DV, contact centres, adoption, experts, foster care etc. One expert alone has £2 million in assets alone. Families should not be money spinning businesses and vested interest groups and even the meek and the mild such as FNF are now getting Government funding and media coverage to keep the system going.

**The media may be given the ability to report family cases in order to bolster the notion of a fair and impartial hearing: do you think media reporting will have a positive effect in achieving this goal?**

There has been no change at all. It was always at the discretion of the Judge to allow media in. The Journalists will be self-serving and report what goes into the Judgement and if a journalist is present the Judge may well behave in a manner which he would not do otherwise. How many journalists does the Public think are available to attend trials? Most cases [99% or more] won't have a journalist and it is those cases to be more worried about. Only fully open Courts will hold the hands of the Judge and make the system workable. The law as it is worded is largely fine but from experience the mighty hands of the State are rarely rebuked for their acts. The Courts must be accountable to the Public.

**If there was one thing you could change about the system, what would it be?**

Judges to become judges again totally independent of the State and to obey their judicial oath to do justice by mercy and right in open Courts and funded by the State to allow them to do their jobs properly. However given the acts of successive Governments this seems a pipedream. This act alone would allow just and right precedents to be set-up.