

WORLD PRESS FREEDOM DAY

# Public scrutiny in family courts

The Globe and Mail Editorial - May 2, 2009

If Canadians could cram en masse into the bitter courtrooms where child-custody disputes play out, there might be fewer nasty divorces. Since they can't, they should be allowed to read about them, which is why an Ontario judge was right to reject a request from the provincial Office of the Children's Lawyer for a gag order on the lawyers and family members in a notorious case of "parental alienation syndrome." A cautionary tale that no one can hear is not much good to anyone.

Would a gag order have benefited the children involved? Only if one believes that family law always protects children, that all the players have only the children's interests at heart and would arrange for the best possible resolution, without any public scrutiny. Such paternalism should have died out a long time ago. The OCL's request shows why World Press Freedom Day tomorrow remains important: Even in Canada in 2009, the openness of the courts is not guaranteed. Last month, a Quebec judge suggested that journalists could publish only information that people were authorized to give them.

Parental alienation syndrome is a label given to the brainwashing of children by their divorced spouses. No doubt such brainwashing happens, and is extremely harmful; but increasingly the courts have been ordering the Draconian solution of forced "deprogramming" at a clinic in the United States. This use of coercion, to the point of virtually kidnapping children, needs more public debate, not less.

Everything about the case before Ontario Court Judge Steven Clark this week cries out for debate. Why does the legal system tolerate a 10-year slugfest between parents? What can be done to protect children when parents use the courts as a boxing ring? What evidence made a previous judge in the case think that forcing a

12- and 14-year-old to submit to deprogramming would help, rather than traumatize them?

What the courts couldn't fix, the siblings' 19-year-old brother appeared, heroically, to have managed. He brokered a deal among the warring parents in which the children would be reunited with the mother they had been alienated from, without the younger boys being forced to take deprogramming. A local therapist would be retained. "We emancipated ourselves from these professionals that have been breathing down our necks the whole time," the 19-year-old said outside court. Those words are well worth hearing.

And who could object to the deal? The Office of the Children's Lawyer, which insisted on the deprogramming while asking for the gag order.

Judge Clark, to his credit, accepted the arrangement worked out by the young man, while rejecting the publication ban. "The principle of openness is deeply entrenched in our system."

While people in democracies may associate World Press Freedom Day with the need to expand free speech in places such as China and Zimbabwe, there is no shortage of cases in Canada where limits are requested - or imposed - on free speech. Every time a judge gives in to a requested publication ban, more requests quickly follow.

All Canadians have an interest in making sure that the children of high-conflict divorce are protected, and that those charged with protecting them, including the courts and the Office of the Children's Lawyer, do good, and not harm. That is why the courts are open. The freedom of the press belongs not only to the media, but to all Canadians.