

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1200

Date Received: 7-8-03

Secretary:

Committee Secretary

Standing Committee on Family and Community Affairs

House of Representatives

Parliament House

CANBERRA ACT 2600

AUSTRALIA

SUBMISSION TO PARLIAMENTARY COMMITTEE

CHILD CUSTODY ARRANGEMENTS



SUBMITTED BY

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Submission to Parliamentary Committee

For anyone who has had no contact with the Family Law Court it is easy to assume that it all functions adequately, and results in its stated aim of producing outcomes that are “in the best interests of the children”. For those of us who have been involved (in our case 2 divorces) the truth is quite different. The whole system is grossly overloaded, resulting in lengthy delays which can distort judges’ decisions on “status quo” (since women are invariably granted interim residency pending trial). This overload also leads to a number of judges dealing with one case, with judges making statements like “I have not had time to read all of the paperwork”, “I have skimmed through the papers” which can only result in “ad hoc” justice.

The litigation process is also open to manipulation by unprincipled and biased Solicitors and Court Officials. Very few people leave the Family Court system with anything like a satisfactory outcome. The current system definitely does not serve “the best interests of the children”

There are several points that need to be addressed with reference to adversarial behaviour and child support. :-

1. **Perjury.** It seems that in the Family Court, little or no action is taken against anyone who makes statements and accusations under oath, which are later proven to be lies. eg. Accusations of intimidation, violence and sexual abuse of children, which on cross examination become “felt threatened”, “feared violence”, “considered relationship with child too intense”. These lies are intended to influence the judge’s determination and are frequently used in custody cases. While most judges recognize these lies for what they are, some do not. When these statements are proven to be lies no action is taken.

Further, this form of behaviour is encouraged by some members of the legal profession.

2. **Bias** One court appointed psychologist in Darwin, Treya Derrington brings her personal bias and prejudices to the cases she handles. In my son's case dealing with residency she said to him "I think you have a good relationship with your children, but I will be recommending the children relocate to Sydney with their mother because girls need their mother more than their father" She clearly brings her gender bias to the case. Her report to the Family Court was pivotal.

This form of predetermining bias has no place in any equitable consideration of custodial access. All court officers in this area must be absolutely neutral.

3. **Children as chattels**. Because of the current aggravated adversarial roles divorcing parents are forced into, the children are treated as chattels to be "won" or "lost" in court. If the initial presumption is that there is to be shared parenting, then "winning or losing" becomes less important and there will be more chance of better results for the children, who as a result of current practices frequently lose contact with their father.

There is no doubt that in the future there will be action taken against the government by children who have been unfairly deprived of their fathers, as a second "stolen generation".

4. **Child support** The current system of child support payments frequently leave a separated father on the breadline. If the mother “wins” the children she usually gets the family house and car. Consider a father earning \$35,000 p.a., after tax of about \$9,000 a father of two children pays 28% of \$26,000 approximately \$7,300. This leaves about \$18,700 to make a new life, find somewhere to live and organise transport. This may explain the high number of divorced fathers who simply give up and go on unemployment benefits. Because of the exorbitant costs of Family Court litigation, most fathers simply cannot afford to try to get justice for themselves and their children.

If nothing else, the child support contribution should at least be tax deductible.

5. **Suicide** Anecdotally, the suicide rate among fathers who divorce, losing wife, kids, home, car and future is extremely high (accurate statistics are unobtainable, but one source puts the number as high as 35 per week) The suicide rate needs thorough investigation.

6. **Percentage of fathers with residency** in divorce situations with children, the percentage of fathers who are granted residency in the court is of the order of 5%. It is difficult to believe that only 5% of fathers are considered a suitable parent to look after their children. No doubt, the numbers are influenced by the problems men have in obtaining support and legal aid. While the mother who usually has the children under interim orders is granted the family home, car etc. and all kinds of assistance from government, the father is faced with the problem of earning a living to support everyday life.

No doubt, many fathers faced with this government imposed insurmountable obstacles simply “give up” and in consequence lose their children.

7. **Manipulative professionals** there are legal professionals in the Family court field who give no consideration to the “best interests of the children” but proceed on the basis of “whatever is necessary” for their client to “win”. This frequently results in a litany of lies, accusations and implications which range from intimidation to violence and sexual impropriety with the children. There is one prominent solicitor/barrister [REDACTED] well known for the high number of clients who “win” by alleging sexual abuse of the children by the husband. We know of a case where this solicitor acted for a mother seeking custody [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] Needless to say this mother “won”. Behaviour such as this requires the strongest censure.

In this context it should be noted that while it is easy to make allegations of child sexual abuse, such allegations are impossible to refute, and so the father is further damaged.

In a case in which we were involved, the mother, who had absconded with the children, and had been ordered by a judge to return, took the children and the maternal grandmother to a psychiatrist (Dr. Rosemary Fawns, Women and Children’s Hospital, Melbourne) the mother, who was a psychology student convinced Dr. Fawns that the father was a sexual threat to his four year old daughter. This psychiatrist then, without seeing the father or investigating his relationship with the child, wrote a report which was included in an affidavit.

The report said, among other things that , “based on descriptions of {the child’s } behaviour, and behaviour of {her} father with her, provided by her mother and grandmother, I am extremely concerned that there may be an inappropriate, physically intimate relationship from which the mother is excluded” The first judge,{ Judge Murray,} to see this report, said “I presume, because the allegations that the mother has made which come after my order of the 17th {the mother must return the children to their home} make very serious allegations about alleged sexual abuse” The mother’s solicitor said “-----the wife does not allege sexual abuse-----“Judge Murray then said “Well, I do not know what else one can read into that. I do not know what it means if it says it is an intense, physical and inappropriate relationship-----“ The judge then went on to say “-----frankly, I give little weight to it, I can tell you because I could not understand how she could make such an observation without having seen the father and or, seeing the interaction between {the child} and the father” “-----it seems to me that this is a deliberate attempt by the wife to frustrate the father in his efforts to gain the A. the contact” “-----trying to frustrate the orders-----“

It is in the solicitor’s interest to encourage divorcing people to pursue an aggressive adversarial course and in the words of one seasoned professional “it’s not over until the money runs out” and “the one who tells the biggest lies, wins”

These unprincipled, unethical and amoral professionals have no place in a just and fair system which purports to place ” the best interests of the children”

first and foremost. Some investigative body, with real teeth needs to be set up to expose such people and remove them from the system.