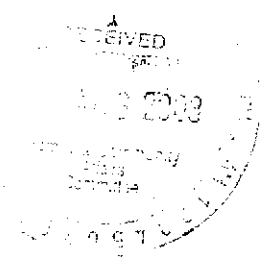


Submission No. 347
Date Received: 5-8-03
Secretary

Committee Secretary,
Standing Committee on Family Affairs,
Child Custody Arrangements Inquiry,
Department of the House of Representatives,
Parliament House,
Canberra ACT 2600.



SUBMISSION

Dear Sir/Madam,

I am a single male parent with custody of my eight year old son. The mother and I had a reasonably amicable separation and today get on better than ever. However, for three and a half years we were mortal enemies and our child suffered as a result. I believe the main causes for this extreme hostility were the lack of rules in current Family Law prior to court appearances and the tendency of the Child Support Agency to jump in and rub salt into the wounds of the parent who has not "assumed" custody (usually the father) and flash dollar signs in front of the one who has (usually the mother). My ordeal lasted from 1998 to late last year so I am somewhat of an authority on the subject. This is my submission of suggestions.

1. Legislation is required outlining, in explicit terms, rights of both parents to have regular contact with children after separation and until a court order is made and at least a 50/50 chance for both in the family court. I was advised by a solicitor to take the child and not let the mother see him and this would make the status quo in my favour come court day. I was told that this was perfectly legal. I rejected the advice but I have heard of many stories where mothers have done this to fathers. In my own case I obtained an interim court order (against the mother's and her solicitor's wishes) for a 50/50 shared care order until the final hearing. This arrangement worked well and there was no status quo advantage for either parent on the trial day. Specifically, the parent who assumes temporary custody should not be allowed to move to another town unless there are mitigating circumstances like violence or child abuse and there must be reasonable proof of these claims.
2. Deliberate misleading of courts and perjury should be severely punishable. I was able to prove that my son's mother, her new husband, both her solicitors, and her barrister lied on written affidavits and in the court but was unable to get anything done about it. After filing formal complaints with the Queensland Law Society, Queensland Bar Association, and the Australian Federal Police in vain I was informed by the Queensland Legal Ombudsman that lying was considered OK in the family court. He said that he could see from my material that the above people had lied but there was nothing that could be done about it. The emotional nature of the Family Court allowed for this lapse of requirement for truth. I do not understand this rationale at all. The more lies are allowed, the more protracted the dispute is liable to be, and the more bitterness between the litigants is allowed to fester and, ultimately, the more the children suffer. In fact, the more both parents suffer as well. The only winners are Family Court solicitors and barristers who have a financial interest in seeing disputes drag on. Once lying is out of the equation parents may feel that an out of court agreement is a good option.
3. Solicitors should be duty bound to inform mothers that their female status will not ensure them of getting a court ruling in their favour. Even a government advertising campaign to this effect would be helpful. If mothers realise the contest is more even than they would wish, out of court agreements would be more common and more suitable to the parents and children's needs. And lots of money would be saved.
4. Both parents should be legally aided or something similar. Usually the mother "assumes" custody and it is up to the father to take legal action to see his children and the mother gets legal aid to defend herself against the father's initiated legal action. Many fathers do not have the financial

resources to continue the action for very long and are soon out of the contest. I was lucky enough to find a solicitor who believed in my case and in me enough to allow me to pay the debt off but I am a rare exception. Again, this levels the playing field a bit and will encourage out of court agreements.

5. The Child Support Agency should stay out of things until a court order has been made. They rub salt into already very painful wounds, financially disadvantage (for legal and parenting purposes) the temporarily non custodial parent, encourage the malicious and vengeful pursuit of financial gain by the temporarily custodial parent and put paid completely to any hope of reconciliation. I know of many amicable separations and things only get nasty when the CSA gets involved. In my case I took the CSA to court for deliberately misinterpreting court documents. They refused to respond to affidavit material served upon them and refused to turn up to court. They are a law unto themselves and accountable to no one. The magistrate made an order that I did not have to pay child support to my non custodial ex partner but I had already paid thousands that I should not have. One employee of the CSA gloated to me that I might win in court but they would continue to garnishee my wages until then and I would never get the overpayment refunded.