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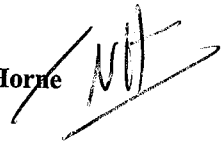
From: Simon
To: Committee, LACA (REPS)
Sent: Tuesday, July 19, 2005 9:56 AM
Subject: Re: SUBMISSION

RECEIVED
20 JUL 2005

(referred by the Attorney General on 23 June 2005; reporting date: 11 August 2005)

BY: LACA

To: Dr Nicholas Horne



Submission No. 55
Date Received

Submission.

The following submission addresses the four heading of your Terms of Reference;

a. MEDIATION AND COUNSELLING

Encouraging parents to reach parenting arrangements is great in theory but with out changes to the law and the way it can be misused by solicitors it becomes meaningless. Any mediation that occurs is currently overshadowed by the fact that the Court empowers and facilitates mothers to remove fathers from the children lives. Mediation can only be a solution if one parent is not disadvantaged by the other's power to make unilateral decisions about their children's arrangements.

The problem is impounded by the culture of social workers that work in the industry of counseling and mediation. There is an entrenched view that women that leave marriages do so because their husbands have been "abusive" in some way or other. The role of the social worker is traditionally seen as protecting women from abuse and helping them and their children estrange the father. While these attitude are beginning to change, fathers mostly will find themselves defending themselves against accusations, in the knowledge that they would lose their rights if the matter ever went to court. The simplest way to shift this cultural disposition is to change the law so that Courts are not able to marginalizes men from the lives of their children.

b) BENEFITS OF MAINTAINING BOTH PARENTS IN CHILREN'S LIFES □ THE SOLUTION IN ITS SELF.

This envisages a cultural changes in the Court. I am at a loss to know how this could be brought about save by changing the laws. The current culture of the Family Court is that the mother should have authority over how much if any time a fathers can having with his children whilst there are no orders

in place. Any instances of a father insisting on arrangements that involve him is routinely interpreted as "abuse".

When minimal Contact with the father is ordered the Court should not allow mothers to breach its orders with impunity. The simplest and fairest way to enforce Contact orders is to award greater contact to the parent that is not excluding the other.

Family Court Judges don't seem to be up to date with the enormous amount of research that makes it plain that father exclusion is damaging to children. They should be required to keep abreast of research on Children's issues especially research on the harm done by father (and sometimes mother) exclusion. They seem to rely on the Family Court beurocracy for their information, an administration that is falling over it self trying to both justify and deny its policy of marginalizing fathers and having a mutually exclusive approach (ie: only allowing one of the parents substantial involvement with their children and restricting the other unless the "primary" parent is happy to share the children). Needless to say after a few rounds of litigation the parent awarded primary care giver status can not be expected to be positive about the others ongoing involvement.

c) FAMILY VIOLENCE

It is essential that the court protect children from unfounded allegations of abuse by one parent against the other. This problem far outweighs any problem of real violence in terms of the welfair of children.

The Court's powers in real cases of violence are more than adequate to restrain offenders.

Unfortunately solicitors almost always advise mothers to allege abuse in custody litigation. Therefore abuse needs to be carefully defined so that any instances of disagreement from an excluded father are not cited as abuse. It should include the very serious (in terms of protecting a child from the known harm of father exclusion) "abuse of abuse allegations" by one parent to exclude the other.

Unsubstantiated allegations of physical abuse should be rigorously tested.

Unproven allegations of abuse by a mother should not be used to limit assess of a father to a child.

It should also be said that of the subset of people that resort to violence in the face of their difficulty and exclusion form their children's lives would have been less likely to had they not been faced with one parents exclusion

of them. It should also be recognised that women are equally responsible for family violence when it occurs.

Sexual abuse allegations should not be allowed to limit a child's relationship with their other parents unless they are proven. "Lingering Doubt" should be abolished as a reason for limiting a child's contact with its other parent.

Sexual abuse allegations should be investigated within three months or withdrawn.

Hearsay evidence of what a child has said in the context of discussions with parties that oppose contact with the other parent should be disallowed.

We are all appalled by the notion of men being violent toward women. Most men simply find it difficult to understand how any man could deliberately hurt a woman. We should therefore be very careful that abuse allegations are not used as a weapon to dis-empower fathers who want to stay involved with their children. The court is not as concerned about the equally serious problem of women physically abused by men. It should be.

E) COURT PROCESS

The Family court needs to discard its uses of special forms so interlocutory orders can be dealt with in the same way as the Supreme Court.

The Court should not suspend contact on an interim basis unless there is sound evidence of serious dysfunction with one of the parents. ie: no more suspension of contact whilst the father mounts his case for his inclusion and the mother gathers evidence and the president of exclusion to support her argument.

Restriction in Contact should not be used as a punishment for fathers that have been alleged to have acted inappropriately or in defiance of the wishes of the primary parent.

The court should abandon its approach of appointing one parent as the primary care giver and the other as the contact parent because it is the source of serious conflict.

Contact should always include overnight contact during school so the other parent can remain involved in the child education. Contact centres should not be used when the school can be utilized as a change over point nor

should they be used on the back of unsubstantiated allegations or punishment of men deemed to have caused problems in their efforts to stay involved with their children.

Contact should be equal ie: 50 / 50 when both parties are willing and able to provide appropriate care of their children, or at the very worst substantially more than the current two day a fortnight formula.

Child representative solicitors be abolished. Alternatively they should be used less often and prohibited from taking sides and prejudicing witnesses.

Children should be protected from the use of psychologists and psychiatrists hired by one parent to discredit the other. The Court should be especially careful that children are not abused by psychologists and psychiatrists in a campaign by one parent to exclude the mother.

Supervision of contact between a child and its parent should not be allowed other than in rare occasions when a parent can be proved to be a risk to his children.

The essential problem of the Family Court is its empowerment and facilitation of one parent to exclude and discredit the other. The problems are simply addressed and largely solved by preventing the exclusion, which caused the problem in the first place.

Regards,
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From: Simon [email@dashlite.com.au]
Sent: Wednesday, 20 July 2005 9:54 AM
To: Committee, LACA (REPS)
Subject: URGENT Supplementary Submission re: Section 121
To Dr. Nicholas Horne
Inquiry Secretary
House of Representatives Standing Committee
on Legal and Constitutional Affairs

Supplementary Submission

Accountability and Section 121

One very important issue with the Family Court is accountability issue.

The Family Court and its practitioners regularly intimidate fathers and the media by citing Section 121 of the Family Law Act.

This is a abuse of this section of the Act which is designed to protect children - not those who can and do otherwise seriously harm children by unfairly preventing their contact with one of their parents.

For Family Court reform to be possible Section 121 needs to be rewritten to allow accountability and stop its use for intimidation. Parents should be able expose the conduct of the Family Court and its practitioners publicly.

Without transparency there can be no accountability. The institution of the ombudsman needs transparency to function properly, otherwise it can too easily act to protect the legal industry (of which its is a part) as opposed to the public. Transparency would significantly ease this problem.

Accordingly Section 121 should be re-written to allow parents to identify themselves, magistrates, judges lawyers, barristers and psychologists and psychiatrists so that their actions are properly accountable, whilst only specifically protecting the identity of the child or children involved in proceedings.

In the face of enormous public dissatisfaction with the Family Court's interpretation and implementation of the Family Law ACT, I would also propose that an independent non-judicial government review committee is established to investigate individual cases in the Family Court.

"Case Drift" Judicial reluctance to make final determinations

Childhood is a finite thing. With judges reluctant to make final determinations, instead preferring on going interim orders to "manage" families, and therefore providing financial incentive for the parents to settle (by virtue of the cost of litigating), childhood can be largely gone before there can be any resolution of unfair exclusion of a parent. Accordingly Judges must be required to make final determinations and not be allowed to drag matters out on the basis that they need reports from psychologists, psychiatrists and social workers to restore essential bonds between children and their estranged parent.

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