

House of Representatives Standing Committee
on Family and Community Aff.

Submission No: **1360**

Date Received: **8-9-03**

Secretary: _____

JOHN MEDINA J.P. (QUAL)
31 KARINA ST
GAILES 4300 Q

4-9-03

SEP 2003

The COMMITTEE / INQUIRY
FOR CARE & RESIDENCE ISSUES
FAMILY COURT / Federal Magis Ct.
Parliament House, Canberra ACT 2600

I work as a volunteer JP (QUAL) at the Brisbane registry of the Family Court of Australia and the Federal Magistrates Court. During the, so far 2 1/2 years I have seen a range of actions and reactions to preparation, and results, of Family Court / FMC decisions. As will be appreciated I deal with a majority of Self Represented Litigants, and, to a lesser extent Legal Reps.

I would like to make some observations that have arisen over time, I have a unique perspective as often, I over time, may deal with both sides of the same case.

One of the comments I have made through letters to the Editor (QLD TIMES) is the range of abilities to present a case shows up in the detail presented in affidavits. Normally the best results are those where full details are spelled out in affidavits.

Generally however it continues to amaze me that we use an adversarial system to solve what is already adversarial. Doing an argument ~~with~~ with another argument. As around 37% of cases are self represented there are no statistics that show if one side is represented or not. Those that are and indeed where both are, there is the need for the lawyer to gain the best result for the client. This need does not take into account the fact that "best results" often result in both unfair

decisions and importantly decisions that are not necessarily what is best for the children -

I have long been a proponent of 50/50 shared care where the sharing is not necessarily week on week off but more set up for a longer term set up, giving access on weekends for the one who does not have primary care for that period. I am very hopeful Mr Howards suggestion of a 50/50 default starting point is immediately implemented.

There is sound logic to this as it replicates what is normally pre-separation circumstances anyway. It is also a start towards removing the Family Court from operating like a criminal court where there is a right and a wrong and the wrong is punished, ^{not a}

If we have no fault Divorce, why is there 'no fault' settlement. Even in mediation, if something is mentioned at mediation it cannot be introduced in court. There are too many similarities between criminal court and ~~not~~ a court that is meant to solve problems. This is possibly the one big area that seems to be missing in discussion.

I wonder if for example it was set up - not as a court is - bar table / respondents & applicants facing off in a sterile court set up. How about, a Registrar's lounge chair and husband and wife chairs, with the pomp and formality left at the Criminal court where it belongs. How about the final step being looking for a solution not an artificially created confrontation - Without lawyers! too radical to work? I don't think so, give people the choice of solving it this way until it is discovered if it works. We need to get away from solving an argument with an argument.

the other area of huge problems is in the CSA

this organisation creates as many problems as it solves.

Letters of demand without even a computerized signature attached, this used to be illegal!

Women who use as a lever for care & residence the fact they stay at home, yet the husband (ex) has to work, create a new life, pay maintenance, see his children on a minimal arrangement but has to pay because of his circumstances, yet the woman stays home still and adds nothing to increase the contribution.

Another area of unfairness is the no fault rule, as an example. A woman establishes an affair before a separation, setting up ready to leave, taking children, going to live with her new partner. The husband loses his wife, his children and is forced to pay maintenance with a minimal contact (every second weekend.) The woman on the other hand walks into an established relationship with assets, the children must accept the new "step father" and also accept the "cutting out" of their own father, the more he is cut out the more he is forced to pay.

If at some point the cause of the breakdown was allowed to be discussed to give balance then there would be more equitable decisions made.

These are the root causes of sieges / murder / suicides - the fact they have not been able to express in some way what has led to the breakup.

The 50/50 starting point for shared care would prevent a lot of these situations ever occurring as the non-custodial parent would have a 50/50 say in all aspects of the child's welfare, without the intrusion of a new, but often resented new partner for one of them.

Re-introducing the statement of causes will help to equalize some of the hurt caused by the party who caused the breakup.

The whole system of operating as a "court" rather than as a centre for problem solving and providing solutions, these are areas that need to be looked at.

Lawyers will need to look elsewhere for their high fees.

Here you have my thoughts, while not complete, will give you an insight into what is seen from my perspective as a volunteer JP in Brisbane. QLD

Thank you for your time.

~~JP (out)~~