

Submission No. **1327**

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Secretary:

PO Box 315
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The Committee Secretary
Standing Committee on Family and Community Affairs,
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600

6.8.03

Re: Submission to House of Representatives
Family and Community Affairs Committee

Dear Sir/Madam,

I am responding to a recent request by my Local Member in our paper for input into changes to Family Law.

I recently separated from my partner of 7 years with both Residency and Property issues arising in the course of separation.

Aspects of the process and protagonists in that process struck me as general obstacles to resolution and moving on.

Firstly, by "protagonists" I mean the applicants, respondents, their legal representation and the agents of the Court (such as mediators, counsellors, judges etc).

Definitions

By "process" I mean the legal process, which begins with the two parties feeling the need to separate. At this point one or both parties usually contact a solicitor for legal advice. The next step seems to be taking legal action to ensure residency with the child/ren. This legal action becomes an issue for a local judge to decide, in context of most local court circuits with wide range of criminal and civil matters to be heard on the same day. The next stage is once Interim Residency is established, both parties to work with their respective legal representation to undermine, disparage and spy on the other parent until a Hearing.

It is a real shame that the aim of this process is not to reach a settlement but to win an overall contest in front of a Judge (The proverbial "five minutes of fame")

For me, it wasn't until the third Mention (after 6 months) that I realised I was able to negotiate a settlement with my partner at the Mentions. I had asked prior to this if I was needed at the Mentions and my legal representation said "no" but did not explain that this would be an opportunity to resolve issues in a legally binding way.

Mediation

Running parallel to this process is Mediation Sessions that take place at the Family Courts. These sessions are aimed at getting the parties to discuss the issues relevant to the child/ren and property before going as far as a Hearing and taking responsibility for one's own family rather than letting a Judge decide.

Unfortunately, these Mediation sessions are not legally binding and the outcomes are generally negated by legal representation. Both parties are prepared by their legal representation not to take mediation seriously. When the parties return to their lawyers with a negotiated agreement, they are met with how much more they should get.

Making the process and options transparent at all times

I was very well represented in my Case by well respected firms and Barristers, yet even with excellent representation, I should have been made aware that settlement based on mediation provides a much more equitable and workable outcome than entering into an adversarial contest.

I was also saddened by the lack of hard data presented to me by Lawyers; regarding my legal questions.

A parallel- if I went to the doctor and asked him/her if taking a particular medication might have health altering side effects, he/she might say there is a 50% chance of this happening. Surely we must have some firm statistics in relation to outcomes for Family matters. The issues that should be transparent include: costs overall in comparison to settlement, important steps in separation, residency percentages, violence or crimes related to family breakdown (ie suicide rate), what happens if one party breaks residency orders, ways to make separation seem normal for children.

We must now be able to outline a clear process and options in this process in the form of a map. (For example: Step 1 You decide to separate- Option 1 stay together but live separately in the house, Option 2 live in separate houses and split time with the children, Option 3 begin the legal separation process. Step 2....)

This information should be disseminated in easy to read brochures and handed out to clients when they first enter the solicitors' offices.

The responsibility for making the process transparent should be taken up by legal representation.

Practitioners should be accountable for their actions and advice at all times.

A body should be established to ensure their accountability to their clients.

Ways to reduce the incentive to prolong adversarial process

Cost is a big issue for families going through separation.

An easy way to reduce that cost is for solicitors to have little or no incentive to prolong cases that should be resolved quickly.

Is it possible that at the point of going to a solicitor, they must make an appointment for their client and the other party to participate in mediation.

For instance, if the first step in separation was to attend a Community Justice Centre mediation or some form of counselling, then both parties could speed up the legal process by presenting an agreement before moving to litigation.

This may seem impractical but even the most abrasive couples can sit in separate rooms, have their thoughts heard and notes taken, then present their common or disparate goals on paper.

After all, separation is an emotionally taxing process without the related legal factors to be defined by blame. Hatred of the other party and an inability to make important joint decisions together is often exacerbated by what takes place in the process of separation. This can only serve to harm the relationships that parents have with their children.

Alternatively, actions of the protagonists can reflect society's changing view on separation. The process can be simplified and the anxiety of families be reduced by making our choices clear at all times and making mediation and finally the legal profession should be accountable for their actions and advice to their clients. This accountability should become a systemic part of the legal process.

If there are any clarifications needed regarding the above statement please feel free to correspond through the above address.

Yours Sincerely,


Anna Blackburn