

Submission No: 946

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Secretary:

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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Submission to the Inquiry into Child custody Arrangements in the event of Family Separation

I agree with the proposal, that in family law the initial presumption should be that children spend equal time with each parent. In the majority of cases, this presumption will ensure that the best interests of the children are of paramount consideration.

The presumption will assist in reducing the stresses placed on families in this type of situation by;

1. Reducing the ability of parent(s) to 'use' the children as bargaining tools;
2. Will ensure that children are provided with the opportunity to seek and obtain emotional support and security from both parents;
3. Will, in many cases, reduce the tendency of parent(s) to expose the children to the conflict arising out of a contested custody battle; and
4. Will potentially result in more equitable property settlements.

The presumption should be rebutted in the following circumstances;

1. One of the parents does not wish to have equal residence of the children;
2. One of the parents has a proven history of violence towards the children;
3. One of the parents has a history of violence or abuse in adult relationships;
4. One of the parents is deemed unable to provide a proper level of emotional, physical and intellectual support.

Of more importance to promote the interests of the children than a presumption of equal residence between the parents is, in my submission, that where serious allegations such as domestic violence or sexual abuse or other allegations which would, if true, indicate that one parent is unsuitable to share residence then far more effort than is currently exerted in attempting to assess the veracity of any such claims should be expended. Such investigations should be conducted in a thorough, unbiased factual manner.

My experience of the family court was that serious allegations were trivialised on the basis of gender, with superficial (at best) investigation.

My experience indicated to me that practitioners of family law readily accepted that unfounded, vicious allegations would be levelled by one of the parties to ensure 'success' at trial.

Despite the seeming acknowledgment of this as a regular occurrence in the Family Court the court does not seem willing to impose sanctions for parties levelling unfounded allegations.

It is my submission that if a party makes serious allegations, which are shown to be baseless, the Family court should take far stronger action than it currently does. The family court should place much greater emphasis on the honesty and integrity of the parties involved in custody disputes when determining where a child should reside.

I would suggest that the suitability of any party making deliberately false allegations (of the type mentioned) should be seriously questioned with regard to their suitability as a custodial parent.

Furthermore , anecdotally at least, it would appear that some individuals and gender based groups, have emerged who have no hesitation in encourage constituents involved in family law matters to make the most heinous false allegations about the other party in order to advantage their position.

The effect of these false allegations on the party on which these allegations are levelled should not be underestimated by the Family Court. More importantly the detrimental effect on the children when they are exposed to these allegations about one of their parents should be treated with the utmost seriousness by the Family Court.

If the court were to take a stronger line on the honesty of testimony in family court proceedings then surely this would discourage the making of false allegations and allow the court to make better determinations with regard to the interests of the children.

It is my understanding that there are no current guidelines on how "expert witnesses" should conduct psychiatric assessments or family reports.

I submit that the family court should, as a matter of urgency, develop guidelines as to how and by whom such investigations should be conducted.

While I accept that lawyers play an important role in family law matters I believe that in many cases, particularly where serious allegations are raised, then the emphasis should be placed more on impartial factual investigations.

This approach, in my submission, would have the potential to reduce the costs to the parties of family law proceedings as well as provide a superior basis for the family court to determine the best interests of the children.

Yours Sincerely,

Greg McPherson

