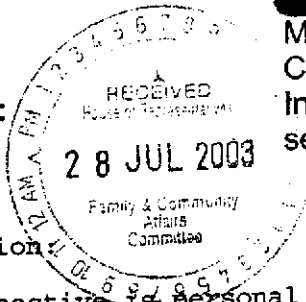


Submission No: 292

Date Received: 28-7-03

Secretary [com.au]

From:
Sent:
To:
Subject:



Monday, 28 July 2003 1:16 PM
Committee, FCA (REPS)
Inquiry into child custody arrangements in the event of family separation

Submission #

My perspective is personal and I trust it will not be disregarded because of this factor. It is about 18 months since my separation from my wife and 2 daughters of 9 and 4 years respectively. Having been trained as a lawyer I had certain expectations of the Family Law process, which soon translated into some considerable concerns. I am now coming to the end of a process where unfounded sexual abuse allegations have been made, investigated by the Police and Department of Families and proved unsubstantiated in relation to me. During the process I was required to be supervised, be investigated, attend court on numerous occasions and be the subject of reports by social workers and others. Knowing the allegations to be untrue I found this process very difficult. I was required to be medicated by my doctor for depression and almost lost my job. Coming out of that experience I wonder about the mechanism for joint residency. I clearly would love such a premise in favour of the non-resident parent to exist, but I think such a presumption will be untenable across the board.

A similar presumption 'in practice' exists for routine contact. However, as I found out, raising an allegation of sexual abuse to displace the presumption easily negates it. Once the allegation is made it has to be investigated. Almost anything qualifies for such allegations. I am now almost back to where I would have been, but for the mother's actions. I fear that the practical reality will be that there will be an increase in the adversarial approach if this presumption is introduced. I am concerned that the Departments at a State Government level charged with the investigation of abused children will not be resourced for the rise in such claims, and that genuine cases of abuse may not receive the resources they deserve.

Having said this, it my concern that I cannot participate fully in my daughters lives, but because I cannot prove enough 'fault' to obtain residency I am stuck with contact, unless I want to embark on another acrimonious and expensive legal battle. Therefore I raise the consideration of moving away from a fault based system for obtaining residency without having a presumption of joint residency. Proving fault of the other party as the basis for obtaining an order should be the exception and not the norm. Often both parties can satisfy the requirements of s65E and 68F of the Family Court Act. But, the status quo principle will reside with the resident parent and only be displaced by fault. How to translate this into legislation is another question. I welcome the opportunity to be heard about this matter and any further opportunity to be further involved. Feel free to contact me to discuss this issue further. Whilst I have provided my name and details for the purpose of contacting me, I request because of the sexual abuse allegations mentioned herein, that my details remain anonymous to protect my daughters.

Yours truly,