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Family Law Misconceptions

There are a number of common misconceptions about how Courts decide cases involving the care of children. Here are just some of them:

- Property has to be split up 50/50. This is one of the most popularly held misconceptions. There is no automatic entitlement to any particular percentage division.
- "S/he left the kids so s/he can't have them". This is also wrong. A person may have left the children behind for any number of reasons. They may have left in a crisis or may not have had suitable accommodation for the children. The Court will look at many factors when deciding who is best able to care for the children.
- "Women always get to keep the kids". Many men believe that they have little chance of obtaining an order for residence of children and that the Family Court is biased in favour of women. Recent Court statistics indicate that men get residence (previously known as "custody") of at least one child in 40% of all cases decided by a judge.
- "The separation was his/her fault so s/he doesn't deserve the kids". As with divorce, the fault in the marriage breakdown is not relevant to the case when deciding where children should live, unless the behaviour or conduct affects the children.
- Some people believe that if one parent has a new relationship or goes out socially they are exposing the children to moral danger. The Court considers that people's lives are generally their own business and that it is usual for separated people to find new partners.
- "S/he left, so I don't have to let him/her see the kids". Except in rare cases, the Court will order that the non-residential parent have contact with the children. If a parent does not allow a child to have contact with the other parent, this may make the case of the other parent stronger if they seek a residence order; that is, the Court generally believes that a good residential parent will facilitate contact with the non-residential parent.