

8 August 2003

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



House of Representatives Standing Committee
 on Family and Community Affairs

Submission No: **713**

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

Secretary:

Dear Committee Secretary,

Re: Inquiry into child custody arrangements in the event of family separation

Western Suburbs Legal Service Inc. has been offering legal advice to members of this community for 25 years. The client group has tended to be people from low socio-economic groups and from diverse cultural backgrounds. Over that time, family law matters have represented a large proportion of the concerns faced by people who have visited the service. In the most, these concerns have centred around residence and contact issues for their children after separation. Where there has been significant disagreement between the parties, this legal service has been forced to refer the matter to private solicitors and where possible assist clients to access legal aid funding. Where parties have been prepared to negotiate an arrangement that would be best for the child(ren) and themselves, assistance has been given to complete consent orders.

Part (a) – factors which should be taken into account

Our experience has been such that the current provisions of the Family Law Act adequately provide for parties to make arrangements that are in the best interests of the child(ren) and where there is an intent to do that amicably, the best result is obtained. Being forced into an arrangement by a presumption that children spend equal time with each parent would remove that willingness to negotiate an arrangement that suits all.

We believe the essential factor that must be considered in all discussions about living arrangements for children is that they receive the greatest amount of stability in their lives, particularly in the formative years. This involves considering schooling needs, leisure and sporting activities, regular contact with friends and extended family. It is very hard for anyone to live out of more than one residence, having to pack up belongings and move them from one place to another. Even if finances permit the purchase of clothing and necessary items to be located in each residence, individuals do have attachments to favourite things that cannot be discounted.

Two cases that have recently been assisted by this legal service follow. In the first, the mother and father had made an agreement upon separation that the 2 children, a daughter 12 years and a son 10 years, live with the mother and see the father regularly during the week and stay with him on alternate weekends. No formal consent orders were drawn up. After six months, the father repartnered. It was agreed to alter the arrangement so the children spent one week with their father and one week with their mother. Both parents were insistent that the relationship they both had with the

children not be jeopardised. This arrangement lasted for one month (4 change-overs) before the daughter refused to move between the two homes and demanded to live in one home, with her mother. At approximately the same time the son's school rang the mother to ask for a meeting. They wanted to discuss whether there were any changes in the family that might be impacting on the son's behaviour as he had become quite unmanageable and disruptive at school.

The mother approached the father and suggested the shared care arrangement be stopped while they sorted out the difficulties for both of the children. The father refused. He demanded that the arrangement continue. On the night the children were to go to his house he arrived at the mother's house demanding both of the children go with him. The daughter was hysterical, hiding behind a door refusing to go leave. The son was in the bath. The father pushed his way into the house and removed the child from the bath, who was also extremely distressed by this time. The mother asked him to leave. When he refused, she contacted the police. The mother has subsequently been forced to take out an Intervention Order against the father, prohibiting him from coming to the house. The magistrate impressed upon both parents the need for the children to obtain counseling which had already been organised.

In the other case, upon the separation of the mother and father, the child (8 years) lived with the mother and spent each weekend with the father. The father moved interstate after 4 months. The expectation of the father was that the child would travel interstate to visit the father once a month. This occurred regularly at the mother's expense as the father refused to pay as he considered the cost of travel was covered in the child support he paid. The child continued to do the travelling over many years during which time the father put pressure on the child to move interstate with him. The child was unable to withstand this pressure and agreed during one of the weekend visits. Upon return to his home he broke down explaining to his mother that he agreed because he couldn't stand continually being asked about where he wanted to live. The mother was advised that the child undertake counselling. During these sessions, the child was clear that he did not want to move interstate but did not want to lose his relationship with his father. He suspected that by saying no, his father would not want to see him. The child was right. When told by the child he wanted to live with his mother, the father refused to see him again.

These case studies are not unusual or dramatic. In many instances a parent can demand their rights for contact with the child(ren) irrespective of the impact this has on the child(ren). Children's needs must be paramount.

We would argue that addressing each child's needs cannot occur where there is a system that is prescribed for all families. Rather the needs of each family must be considered separately as occurs currently. Where families are unable to make arrangements for themselves, the family court can make that determination for them.

Part (b) – child support formula

In relation to the existing child support formula, our casework reflects numerous concerns. These include:

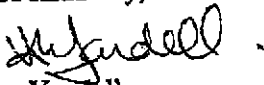
- payer parents accurately assessing their taxable income and not deliberately minimising this in order to pay less child support

- making payments on time. Even when the child support agency has agreed to collect the amount from the paying parent, the paying parent is given the option of making the payment to the agency themselves rather than having the amount removed from wages. This can result in the situation that payments to the agency are not made on time and hence cannot be paid to the carer parent on time. When reported to the agency, carer parents have been told that unless the payer parent does not pay at all for a couple of months in a row, they will not intervene. They do not see an issue with the payment not being made by the required date. This can cause severe financial difficulties for families
- where a paying parent has child support arrears, the agency can collect from tax returns. If this occurs a lump sum payment can be made to the carer parent. This amount can then affect other benefits as it is deemed income for that period not money owed over an extended period

In these examples the current child support system does not operate fairly for both parents.

There are many other examples that could be given and we would be happy to discuss those in detail if that would be appropriate. Suffice to say we believe the current provisions of the Family Law Act provide for the best interests of the children to be the paramount consideration in any residence and contact issues for children. The current child support system unfortunately has many inconsistencies that do need addressing.

Yours faithfully,



Helen Yandell
Community Legal Education worker