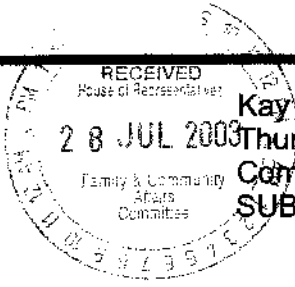


From:
Sent:
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Subject:



Kay Barralet [kay@mbfamilylawyers.com.au]
Thursday, 24 July 2003 9:12 AM
Committee, FCA (REPS)
SUBMISSION

House of Representatives Standing Committee
Family and Community Affairs

Submission No: 36

Date Received: 28-7-03

Secretary:

Dear Sirs

I wish to make a short submission to the Standing Committee on Family and Community Affairs' Inquiry into child custody arrangements in the event of family separation.

I am Family Law specialist solicitor, practising in Canberra. I have practised exclusively in this area since 1991. I am the managing partner of my firm, Mazengarb Barralet Family Lawyers. My experience includes seven years as a Legal Aid Family Law solicitor.

When I first heard of the proposed Inquiry, I thought that it must be a joke. Anyone who has practiced law in this area knows how difficult and emotive childrens' matters can be. A number of basic emotions come into play, including

1. Greed - money and/or income support is often at the base of such disputes. For example, one parent is on Centrelink benefits and will seek to restrict contact to protect their income source. This is because their income is reduced by a percentage for each night that the other parent has a child in their care. Another parent may want more contact in order to reduce their Child Support liability.
2. Power - Parties often use children as a weapon to try to exert some form of control over the other parent, either by denying contact or else seeking excessive contact. This can also be the reason behind refusal to allow the other parent to relocate with the child/ren.
3. Unresolved relationship problems between the parents - with the obvious 'punishment' factor tied in to point 2 above. The result is disrespect shown by one parent to the other through disparaging remarks to or in the presence of the children, the parents arguing in front of them, name calling, etc. This can extend to family violence witnessed by the children. The obvious effect this would have on their children is frightening to consider for their psychological development.

All solicitors practicing in this area would agree that shared parenting arrangements are just not feasible when the above circumstances exist. It is only with mutual respect and a capacity to back up the other parent that such arrangements work smoothly. We are aware of anecdotal evidence that such arrangements do work beautifully in some families, but as a practitioner dealing with these issues every day, I do not see the parents who are happy with a private arrangement for shared care. They have no need for lawyers. Imposing a shared care regime on unwilling participants smacks of the 'Nanny State' and of totalitarianism.

The obvious questions arising from a presumption of shared residence upon separation of parents have to be:

1. When parents are both on Government benefits, how is the benefit going to be 'shared' between the two households such that either or both parents and therefore the children are not left in poverty? What of other parents with a disparity in income? What proposals are there for a rejig of the Child Support Assessment Scheme?
2. What happens when a parents wants to or is forced to leave the area to reside elsewhere, usually through economic necessity?
3. Who pays the children's additional costs - travel between the households/duplicated clothing or schooling requirements etc? Is there going to be some presumption of equal cost sharing?
4. Is this presumption to be rebuttable under legislation?
5. Is the Government going to provide the extra resources which people will expect for adjudication of their disputes, including extra Federal Magistrates, Registrars and Judges, together with the extra support and registry staff that will be needed? This may also require additional buildings and security measures. What costing will the Government provide for these resources?
6. Will extra public resources be spent on counselling and mediation services to help parties resolve their issues in a non-legal setting? Will fees be imposed for these services? Will such services be mandatory?

7. Will extra resources be provided to the Child Support Agency for sorting out the shared cost dilemmas which will inevitably arise?
8. If there is alleged family violence, how will a presumption of shared residence benefit the children?
9. Will there be a duplication of medical services needed for two households? What impact will this have on the public health system?
10. What extra resources will be provided to Legal Aid Commissions for advice and representation work?
11. What educative measures does the Government intend to put into place for community enlightenment of this new proposal?
12. Will State and Territory housing schemes need to be boosted by the Commonwealth for the provision of bigger public houses for what is now a duplicated family structure? What if the family was previously housed in public housing, will this now require two houses of the same size?
13. What of those parents who employment does not allow for regular, "normal" working times such as shift workers, military personnel, parliamentarians. What will happen to the children when it's their week for residence and Mummy or Daddy has to work the night shift?

The likely economic impact on all levels of Government, both State/Territory and Commonwealth is high.

CHILD SUPPORT

In relation to child support, it seems to me as a practitioner listening to complaints on a daily basis from both payers and payees that there are obvious flaws in the system, particularly relating to collection. The Agency does not do enough to actively pursue deadbeat payers who will try to avoid payment by any means. Further funding should be provided for a vigorous legal pursuit, by the use of the current enforcement provisions through the Courts of those parents not fulfilling their obligations under law. A beefed up legal enforcement section, properly resourced with competent solicitors and support staff should be allowed to take action. I believe that once publicity is out about this enforcement method, more payers will comply.

OTHER PERSONS

Grandparents already have specific standing under the Family Law Act to bring proceedings (section 69C(2)(c)). The same applies to other persons (eg section 60B(2)(b) relating to childrens' right of contact). I fail to see why any other specific provision needs to be made for these classes of people to bring proceedings under the Act. In my experience dealing with these type of cases, both the Federal Magistrates Court and the Family Court adequately and competently deal with all the relevant issues and make sensible decisions. The Court applies the Act and the case law as it has always done. I do not believe that a proscription to the Court will change the outcomes as the Court will apply the facts to decide what is in the best interest of those children the subject of applications by parties other than their parents.

In summary, as a practitioner and business operator, in some ways I can see that any changes to the law for the introduction of a legal presumption about shared parenting would be marvellous for my business and guarantee me a comfortable retirement income. I foresee an enormous increase in confrontation, litigation and breakdown in parental relationships resulting from such a proscription by Parliament which will increase my business. As a sensible person and parent however, I do not believe that this proposal has been thought out properly and will only result in a further fracturing of families and decline into poverty for Australian children.

Sincerely
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