

House of Representatives Standing Committee
on Family and Community Affairs

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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
Australia

Personal Submission

The Committee,

This submission addresses ;

(a) The best interests of the child are the paramount consideration:

i) Factors to be taken into account in deciding the respective time each parent should spend with their children post separation. In particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

I do this by explaining my difficulties as a father with the following subjects ;

1. The Family Law system in relation to the parenting of children for the children's best interests.
2. The existing Family Law legislation in relation to step children.
3. Fairness of the child support formula and attitude of the Child Support Agency

OVERVIEW

In 1988 my wife of 12 years and I divorced. We have four children and a Family Court order was prescribed to encompass property settlement, child maintenance and child access. This access was on the standard basis of each second weekend with their father and living with their mother who had established a subsequent live-in partner. I accepted this situation per the advice of my legal representative.

In 1988, I established a new relationship and commenced a second family. This was a defacto relationship of 10 years with three children. We separated in 1999. Extreme difficulties with child access after separation led to my nervous breakdown and later extensive litigation. Litigation made difficult by a gross income preventing legal aid but with a low net income (after child support) unable to employ legal representation. This necessitated self representation in the Family Law Court against solicitors and barristers afforded by my former partner. This former partner has been found guilty of contravening court orders and is now on a good behavior bond.

In 2000, I established a new defacto relationship. My new partner having two daughters, one who has been living with us for two years since 2001. The stress incurred from Family Court litigation has been detrimental to my new family and all my children. Three of those children being required to attend Family Court and professional counseling sessions.

I have a strong parent ethic and have always endeavoured to be available to all my children and step children. This has resulted in a very large extended family where almost all the children have exceptional relationships with their parents and each other. *I find it disappointing that individuals within the Family Court, Government Agencies (CSA and Legal Aid representing children) and Institutions have conditioned ideas of the abilities, attitudes and onus of fathers and mothers.*

One never contemplates such a complicated life, it is the result of human nature and the needs we have for love from another. Those needs and desires are instilled in us by our parents and society. If I desire my children to have a happy and balanced life, then I must engender values, examples and actions to them which are supportive to them. This has been difficult in the extreme with mothers who either exclude one from their thinking or are angry and aggressive. No amount of legislation will change individual attitudes, but appropriate legislation may make life more stable and secure for children and non custodial parents who long to see their children.

I have been unemployed since August 2002 from a redundancy. I have secured only irregular income since then as a 50 year old in a highly competitive workplace. The ATO does not tax redundancy money, but the CSA extracts any and all from those it can. I have no funds with \$13,000 in CSA arrears and debts since October 2002. I have largely been supported by my defacto wife. I have been judged as a guilty and evasive non payer by review and objections officers in the CSA. From 1988 to October 2002 I have had an exemplary record of child support payments.

1. The Family Law system in relation to the parenting of children for the children's best interests.

Magistrates and Judges in the Family Law Court are pre-disposed to the custody of children with their mother. Up until recently, as a non custodial father, I have been conditioned to accept this as the status quo in family separations.

- i. I have four children from my marriage dissolved in 1988. There are three sons and one daughter.

Part of that court order was for me to pay the children's education expenses. This is because their mother and I had always agreed on their Catholic education. I was to be party to decisions of the education of these children, such as which schools they would go to. This never occurred, there was never any consultation nor discussion, just a bill. Furthermore, in the school records, I was never a contact in case of emergency, their step father was. I have only been welcome into the house where my children live when their mother was not home. These unspoken actions are detrimental to developing attitudes.

Each weekend I would watch these children at their weekend sport. On the alternate weekends I would take them to sport. I was allowed 2 weeks annual holidays with the children from Boxing Day in December. I never had a Christmas Day with them, nor a Fathers Day depending on the calendar. I visited these children at school, attended school functions and ensured that I had current information on my children from their schools.

Even though I have good relationships with each of my first four children, I am disappointed at the commitment by them to a parent-child relationship. This is partly due to their current ages of 18, 20, 22 and 24. But I think more so, as their father, I am more like a distant relative. This is why I have tried so hard to secure more time with my latter three children, but to no avail.

The limiting factor for a weekend-about, non-custodial parent is the degree of influence on the developing minds of children. Children are adaptable to such situations and quickly realise where their strengths and weaknesses in relationships are. They know their mother has control over their life and they see dad for a good time on that weekend. *The children do not see their non custodial father having much influence on their life.*

These four children are reasonably well balanced, intelligent, polite and hard working people. If I had been permitted more time with these children, I would have;

- Made sure I lived closer to them. This would allow them continuity with their friends and schooling.
- Been less likely to develop another relationship so quickly as I would have loving family with me.
- Without doubt a stronger relationship with my children

- ii. I have three children from a defacto relationship of ten years which dissolved in 1998. There are two sons and one daughter.

In 1998 after separation and by agreement I had access to these children each alternate weekend. After legal consultation (for property interests), the mother denied all contact and it was necessary for me to apply for contact through the Family Court. This was granted. At specified contact times the children were not always made available and our daughter had become aggressive to me.

In 1999, the inconsistencies and difficulties of contact on top of work difficulties, financial management (child support) and property settlement took its effect in the form of my nervous breakdown. This required medical and hospital attention with ongoing medication. I discontinued child contact and could not resume contact as the mother had taken out orders to prevent this. I resorted to visiting my children at sport and school as I could not regain contact without lengthy court times. Child support was assessed and paid on time.

In 1999 I applied to the Family Court to resume contact with these children on request from my children. This was necessary on a self represented basis as Legal Aid refused service based on my gross income. I could not afford to employ legal representatives because of child support commitments. The mother employed the legal representation of solicitors and barristers in order to ensure as far as possible that contact did not occur.

In 1999 I was awarded difficult alternate weekend contact. This was difficult as I was required to pick up the sons on a Saturday at 10am, the daughter on Sunday at 12pm and return them on Sunday at 6pm. The mother ignored the court order and was found guilty of contravening these orders from the first weekend of inception. This process took 6 months to rectify.

This behaviour of the mother created discomfort to our two sons and polarised our daughter in being conditioned to the unacceptable behaviour of her mother.

In 2000 at the final hearing listed for three days with myself self represented, the children represented by a Legal Aid Solicitor, Legal Aid Barrister and the mother with Solicitor and Barrister. Agreement was reached at the commencement of the hearing. I am sure had I proceeded I would have had a more favourable outcome. However, based on conditions and a reasonable agreement, I accepted alternate weekend and two weeks annual holidays as contact times with my children. This was preferable to three intense and stressful days in court.

In 2002 based on well developed relations with my children (especially daughter), I applied to the Federal Magistrates Court for additional time with my children. I had discussed this with the children and my request was based on their decisions. The mother opposed this with outrageous allegations that the children did not wish to see me. Legal Aid again represented the children and we were delegated by the court to mediate an outcome with Legal Aid. Legal Aid advised me that if we returned to court I may lose some contact time. Legal Aid simply wanted an agreement at my expense. **I lost faith in the system and did not wish to return to court.**

Against my wishes (and those of the children) I agreed to forgo a number of contact weekends in order to have three one week periods with my children during each year. This outcome was no extra time with my children. What kind of world is this?

Coincidentally, our 14 year old daughter has recently expressed the desire to live with her father but is too scared of her mother to say so. Our daughter knows her mother will oppose her wishes. I am not playing a game of one-upmanship, but would like to see my children more or have them live with me. The children do not like being embroiled in such antagonistic family affairs. It is not fair on our daughter.

The 15 year old son in this family regards his school friends as his most consistent and stable relationships. He has expressed the desire to leave the home he shares with his mother as soon as possible at age 18. His intention is to live with his friends.

2. The existing Family Law legislation in relation to step children.

In 2001, I applied to the Family Court for recognition of support to my defacto wife and step daughter then aged 12.

My defacto wife had lost her casual job based on available work and receives no child support from her daughter's father. Because my defacto wife is living with me, she was not eligible for any benefit and so had only me as a source of support to her and daughter. I was paying child support for my three children. My finances were untenable. The Family Court rejected my application.

I appealed the decision. The judge in the Family Appeals Court had me, my defacto, her ex husband and the mother of my three children in the court.

- The ex husband confirmed his inability to support his ex wife and daughter.
- The mother of our three children opposed the application as she did not want to lose any child support.

Based on legislation the judge denied my appeal. **The judge did remark that I was not being treated fairly but that he must comply with the law.** He put the mother of our three children in the witness box as she was being misleading when answering questions. She sought to obtain costs for her presence.

Circumstances such as the existing legislation affecting the support of partners and step children are complex and do not provide deserving applicants justice. My inquiries with the Ombudsman's Office reveal that this situation affects many people. If my case is not uncommon, then there are many people who are denied access to Legal Aid and who cannot afford legal representatives. The law is complex, there are many self represented litigants. How many more people are intimidated by complex law and do not bother?

My step daughter has been living with us for three years next February. I am entitled to apply to adopt her but cannot currently afford to do so as it means a Family Court application to be heard in the Supreme Court with an application fee of \$1,000. This is the only process for legal recognition and would reduce my child support \$3,000 per year from \$20,000 per year. It is not retrospective in recognising my previous support of my stepdaughter. There is no recognition of support to my partner when she was unemployed.

The reason I cannot afford this procedure is that I am currently unemployed without funds. The Child Support Agency refuses to accept this and continues to bill me \$1900 per month. I now have \$13,000 in arrears since February 2003.

3. Fairness of the child support formula and attitude of the Child Support Agency

Because the Child Support Agency did not ever recognise my first four children it was necessary for me to submit to a Child Support Review each and every year.

There are many considerations to make when applying child support. It is not simple enough to look at the individual custodial and non custodial incomes.

The real problem is law. CSA officers apply no variation to the law for fear of reprisal from applicants or respondents. One set of rules cannot accommodate each and every individual. Therefore there will always be a number of individual cases who will be disadvantaged by a one for all law.

I feel disadvantaged because;

- I have been unable to obtain the desired level of child contact in the best long term interests of my children.
- I have been unable to obtain recognition for the very real expenses of my defacto partner and her daughter.
- I have been unable to have my current financial circumstances accepted by the CSA.
- The motor vehicle FBT component added to my previous income gave me no cash benefit but created a higher income for a higher child support calculation. My employer would not make accommodations or departures from standard company motor vehicle policies. That is, for me to park a company car at work.
- Now that I am unemployed, my leased vehicle on which I paid FBT is not considered as an expense. It ought have the same validity as the FBT it created in employment. I cannot terminate the lease without incurring a \$7,000 expense from the de-valued vehicle.

I am currently supported by my defacto wife to a small extent and with borrowings on my credit card and from my mother. The CSA refuse to recognise my circumstances. The Objections Officer Coralie said " You can live on \$1,400 per month".

- Firstly I have no funds to draw \$1,400
- Secondly, my mortgage on a humble 3 bedroom house to accommodate my children is \$1,000 per month (borrowed from my mother).
- That leaves \$400 per month on which to pay rates, food & maintain a car. (Court Order to transport children, plus novated lease, plus essential in sourcing new work, plus essential for factory labouring jobs I did which were on call).

After having paid high levels of income tax for many years I find myself ineligible for any form of support and beleaguered by child support. My only recourse with the CSA is to go

to court. I have had enough of court and will wait for their action on me when it comes. I have been unable to secure regular employment. This is primarily due to my age of 50 years and the fact that recruiters seek specific work experience to take the least risk with their guarantees of placing an employee for one year.

The Australian Bureau of Statistics indicate that the cost of living (excluding mortgage) for most families is approximately one half of their gross income. I know many two parent families with three children who confirm their costs typically about \$2,000 per month. If that is the case **I have been paying the full cost of maintaining my children.**

Property settlements favour custodial parents for provision of child accommodation (2 to 1 in both my property settlements). Adding a component of child support assessment to encompass the accommodation of children is double dipping the non custodial parents finances. Both my former partners live in houses double the size of mine, much higher in value than mine and in higher status suburbs.

Additionally, why is it that the unconsidered income for a non custodial parent is circa \$12,000 while that for a custodial parent is circa \$34,000?

Conclusion

The society we find ourselves in with respect of children and families is lop-sided. Why must a father be required to take out court action to have contact with his children? What right does one parent have to deny the other contact with their children?

Decision-makers (Courts, Legal Aid & the legal community) currently favour custody with the mother unless the mother is a demonstrated risk. Women have long sought equality with men. Then why aren't women prepared to give equality?

Our society is supposedly based on equality and fairness. That has not been my experience. This inquiry may provide both parents with equal opportunities to accept their parental responsibilities or deny them. Working fathers will need to be counselled prior to any decisions. Men feel the onus to work and provide, and may not visualise their ability to do both as many working mothers do.

The age of children and the care of pre-school children is a factor in deciding joint custody. Day care with a mother and night care with a father is worthy. Or if the mother works, then alternate days and nights.

In my case I am prepared to travel and take my children to and from schools if necessary.

The non custodial parents' employment success is a windfall for custodial parents. In my case a child support jump from \$11,000 per annum to \$20,000 per annum based on previously achieving in my employment.

There is no encouragement for mothers to work. The CSA have advised me that if a mother has no strong work history, then it is her choice not to work. That does not convey sharing costs equally. Joint custody will not only ensure financial fairness but ensure that children receive the best interests of equal parenting for balanced role modelling. That is, from both parents who will have influence on their behaviour and support.