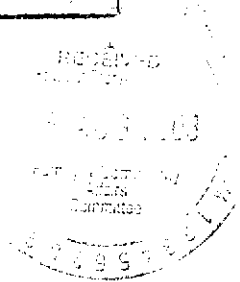


House of Representatives Standing Committee
on Family and Community Affairs

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INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

I WISH MY NAME TO REMAIN CONFIDENTIAL
ALL ITEMS OTHER THAN MY NAME ARE FREELY AVAILABLE FOR PUBLICATION

SUBMISSION

TERMS OF REFERENCE (a)

All children, regardless of their parents financial status should have equal representation in discussion regarding their rights and welfare. Too often one parent, after leaving the family home, has to seek rental accomodation, buy second set of furniture etc. They are still required to work and pay child maintenance. Legal Aid is virtually NON EXISTANT for a worker on an average wage and they are at a distinct disadvantage in the Court system representing themselves on behalf of their child, unable to afford costly lawyers and Court fees. They often have to appear opposite a representative from Legal Aid.

A good starting point would be to remove residency discussion from the Court room and set up a Children's Residency Hearing Commission where no lawyers are representing either parent. A presiding Chairman of suitable accreditation could make Orders taking into account the child's rights and welfare which would be Binding and Enforceable to both parties. N.B. If there is a history of violence or abuse against the child, the matter of residency and contact should REMAIN with the Family Court.

TERMS OF REFERENCE (a) (i)

The presumption of equal time with each parent is a great starting point. However, factors that should be taken into account include;

Schooling

It would be preferable to allow the child to receive schooling at the same school regardless of which parent they are staying with. This would necessitate both parents remaining in a reasonably close area. This may require support in finding rental accomodation etc for the parent leaving the family home.

Parents may need additional counselling if problems arise through living in close proximity. However bearing in mind the childs best interests, this should be the best option.

General Care

Consideration to parents work hours:

Who will care for the child while parents are at work? Are relatives available to help out? Will Employers co-operate? After School care, Pre-School, help with finance? All these aspects would require careful examination.

If one parent was unable to provide daily care due to employment commitments this should be accepted, after all, financial provision for the child's welfare is very important. However this loss of contact time should be reparable by additional week-end and holiday time where possible.

TERMS OF REFERENCE (a) (ii)

It is of utmost importance that every child be aware of its own family members including the extended family of Aunts, Uncles, cousins and Grandparents. Should either parents endeavour to refuse contact of the child with any family member without proven good reason, i.e. abuse, violence etc, they should be penalised in some way for violating the child's rights.

It should therefore be a MANDATORY right for the child to visit, write, phone and in any other way, contact family members and to receive such contact also, unless circumstances require an Order against such contact.

TERMS OF REFERENCE (b)

The existing child support formula is very flawed. The decisions regarding the child's residence, contact Orders etc are often made under very adversarial conditions. Frequently one parent is at a disadvantage to the other regarding the representation of a lawyer. When mediation is advised, one parent can prevaricate to postpone the appointment several times to stretch out the length of proceedings, hoping that the other will give up. Also unfounded allegations and vexatious A.V.Os can be taken out in the hopes of getting "the edge" in a dispute (information regarding ways and means of doing this is often available through woman's groups).

Even when Orders are made for regular contact, these can be ignored, knowing full well how long it will take to get a case to Court. Plus the Courts are extremely reluctant to jail or fine a resident parent even when found guilty of breaking Court Orders. Frequently the contact parent is required to represent themselves, due to lack of finance (as mentioned before: Legal Aid is often only available to an unemployed supporting parent).

There are also many cases where a resident parent takes the child interstate without warning or discussion with the contact parent. Court Orders are ignored. Even though this is illegal, the non-resident parent has little hope, without the financial means, of ensuring the child's return. By taking the child interstate, the child's rights of contact with the other parent, as upheld by the Court, has been ignored. Retaining contact with the child is made even harder because letters and telephone contact (if the contact parent is provided with these details eventually) are under the whim of the resident parent living with the child interstate.

If the resident parent succeeds in this move it places a further financial burden on the contact parent including air fares and accomodation to enable face to face contact with the child. Possible financial adjustment should be considered to enable the contact parent to visit, thus maintaining and upholding the child's rights of contact with both parents.

Often there is not enough discussion between separated parents regarding important things such as schooling, religion etc. The non-resident parent regularly has to accept decisions made entirely by the resident parent in order to avoid arguments and to prevent the child from witnessing conflict. If the contact parent does disagree, this exposes the child to possible prevention of contact as a form of pressure.

Currently there is a definite bias to the resident parent in the existing formula.
