

I have just emerged from the Family Court with an eleventh hour negotiated settlement in relation to a dispute about contact with my child, now [redacted]. The process has been a extremely traumatic, frustrating, expensive, adversarial, depressing, dis-empowering experience that has been ongoing since my relationship with my child's mother broke down irrevocably a few years ago. I feel confident that if we had in place a sensible balanced approach such as (rebuttable) joint custody, the entire traumatic process we went through could have been avoided and arrangements made in a much more balanced and co-operative manner, respecting the best interests of our child's need to have both her parents involved in her life .

I have since read several excellent books on the subject which I recommend the Committee consider essential evidence in the conduct of this inquiry.

Isolina Ricci's *Mom's House - Dad's House: Making Shared Custody Work* (1980) and Elizabeth Seddon's *Creative Parenting After Separation: A Happier Way Forward* (2003) are both excellent references that contain some particularly relevant and constructive guidelines for separating couples and for those who would seek to legislatively deal with such people.

The following submission is however based on my own personal experiences of the Family Court process following a relationship breakdown and separation, and how it has impacted on my life and that of my child. I am willing to testify and verify and substantiate all the claims I will make and would be happy to do so if required.

I am a [redacted] currently working casually as a [redacted]. I have a [redacted] from my previous relationship who I love dearly and yet am allowed to see only twice a week.

I have been actively involved in her life from the moment of conception onwards; I attended pre-natal classes and workshops, attended and assisted at the birth and spent the first four hours of my daughters life comforting her in a humid crib whilst she was under observation following a minor birthing complication after a Caesarian section. I shared in all the domestic tasks of cooking, cleaning, changing and bathing our child as well as playing with her, comforting and cuddling, reading and singing to her, and most importantly, loving her dearly.

Despite my best efforts and relationship counselling and mediation from four different counsellors and agencies my relationship with the child's mother became increasingly difficult and eventually broke down altogether.

After my Ex left the family home, contact with my child was suddenly turned into a weapon that was used against me. Whereas I had previously spent large parts of each and every day with my daughter I was now "informed" that I could see my daughter "once per week" and that I "didn't have the authority" to do anything other than accept that situation.

Subsequent legal advice confirmed that that was not the case and that I should write to my Ex putting forward a reasonable proposal for a contact three times a week. After no response for three or four months I received notification that my Ex had initiated action in the Family Court that asked that I be excluded from my daughter's life 85% of the time - meaning I would see her one weekend per fortnight!

The worst thing about this process was my Ex manufactured false allegations concerning myself that had no basis in fact. In particular, she accused me of being "extremely violent", having failed to provide for her or our child "in any way financially whatsoever", and alleged I had been diagnosed as mentally ill with "manic depression" and as such was not a fit parent.

In my affidavit I rejected these false and unsubstantiated allegations and provided a psychiatrist's report that completely repudiated them. (Incidentally, I have no criminal convictions for violence (or anything else!), nor have I ever had an AVO brought against me, nor have the Police ever been called to, or involved in any domestic incident ever in any of my relationships). Tellingly, NONE of these serious and substantial allegations in her interim affidavit were repeated in her final affidavit, but by that stage the damage had been done.

The judge made the point that although lacking in any substantiating evidence, she was duty bound to address these concerns. A Family Assessment Report was ordered after which point we could return for Final Orders. In the mean time I was ordered to have contact twice a week from 9-5pm, with overnight contact to depend upon the outcome of the report.

This took longer than six months, with my ex's lawyers rejecting every suggestion we made for a Family Therapist and selecting one (who it seemed had the longest waiting list) only after several letters back and forth urging the process on.

The report was eventually undertaken and completed despite my Ex's and her lawyers' seemingly deliberate procrastination, and in the end I got a glowing reference as to my capacity and fitness to be a parent. Once this was received, my Ex changed her attitude somewhat and agreed to let me have overnight contact once per week, but kept making veiled threats that "things were going to change soon".

It took almost a further six months of stonewalled, fruitless negotiation before my Ex responded in the form a Final

Affidavit. My Ex's final affidavit failed to mention any of the heinous allegations she made initially and requested I only have contact one weekend every fortnight!

I was later assured by my lawyer that this was fairly "typical". My lawyer seemed blasé, but I was outraged that it can be considered "normal" that one parent is legally denied contact with their child(ren) for 85% of the time because the parents' former marital/defacto relationship has broken down.

With only two weeks before the trial, my Ex's lawyers contacted mine suggesting a final attempt at a mediated solution, something I had been pressing for from the start. I agreed and two days before we were due in court we managed to get an appointment for a 1 1/2 hrs (extended to 2 1/2 hrs) mediation session (from an excellent mediator) that was eventually successful in leading to an agreement.

During the mediation the mediator confirmed to us the fact the court often ended up seeing the best interests of the child as being simply reflected in remaining mainly with the primary caregiver. Janet Albrechtson writing in *The Australian* recently confirmed this practice statistically: out of around 13,000 residence orders made in 2000-2001, only 329 were shared. Over 80% of the sole residence orders went to mothers, and then usually by "default". Fathers are a victim of a double standard. Supposed to be the "breadwinners" and maintaining their traditional role, we are also expected and (demand) a role in all the domestic tasks as well. This is fine, until the relationship breaks down when the father's previous domestic input and responsibilities are no longer valid, (nor his financial contributions to the upbringing and welfare of the child) and all authority is deemed (it seems) to revert to the mother. In my situation, my Ex was the primary care-giver, a fact I did not dispute, but this should not mean she should be effectively the ONLY caregiver!

In my situation I was not asking for a 50/50 shared care arrangement (perhaps I should have...) but only 20% of the time with an increase to a third of the time as my daughter got older. This roughly reflected the time I had previously been seeing her immediately after the separation.

I believe it is not coincidental that my Ex's decision to deny me contact with my daughter coincided with her receiving legal advice. I have since been advised by my lawyers that the "status quo" is the second most important factor (after the child's best interests) in the Family Court's decision making. In my case, the circumstances lead me to suspect I was denied contact by my Ex, in the belief that made a stronger case for her to have sole custody and residence at a later date.

I would strongly urge that this enquiry supports the principle of (rebuttable) joint custody and in addition that it initiates reforms that prevent perjury in the Family Court system. (It is my understanding that perjury is NOT an offence in the Family Court!). This would have perhaps reduced the opportunity for my Ex to be quite so "creative" in her affidavit which in turn may have led to a different outcome at the interim order stage.

I strongly believe that the legal fiction that child custody must be treated as a zero-sum or win/lose situation is not in the best interests of the child. I believe that if the laws were changed to put greater emphasis on the responsibilities BOTH parents have and the rights of the child to have contact with BOTH their parents that this might eventually be translated into an attitudinal shift where co-operative parenting may become the norm rather than adversarial conflict.

Undoubtably there may be situations where violence and or alcohol /substance abuse or other factors may mitigate against one (or even both) parent(s) having unsupervised contact or residence, but these situations must surely be in the vast minority. Children in general should not be made to suffer by being denied meaningful contact *en masse* with their non-custodial parents (usually Fathers) just because of the problematic behaviour(s) of a minority.

Another factor that I am concerned about is that my Ex at one time expressed a belief that I only wanted contact with my child to try and reduce my Ex's entitlement to benefits!

It concerns me greatly that the current legal and financial systems of the Family Court may have encouraged my Ex to deny me contact in the belief that doing so would be financially beneficial. She currently receives single Parent pension, Rent Relief, Family Tax A & B and Baby Bonuses as well as Child Support payments from myself. She also qualifies for various other concessions eg transport, electricity, telephone and a Health Care Card.

I have similar overheads to my Ex in respect to providing accommodation, and clothing for our child and am paying half of the fees for her kindergym, swimming lessons, dance and circus classes and yet I don't get any Government benefits, or concessions (I just miss out on qualifying for a Health care card) and still have to pay 18% of my income to my Ex as Child Support. There has got to be a better, fairer system that works with the child's best interests foremost and that doesn't discriminate against non-custodial parents.

(To add insult to injury, my legal fees (about equal to quarter of my yearly income) were covered by taking a lien against my share of the house I live in from Legal Aid, whilst my Ex was able to take advantage of her status to obtain free Legal Aid.)

## CONCLUSION

The current laws and interpretations thereof, are a disaster for children and for families. There is no doubt that the current laws are prejudiced against fathers. It is appalling that "one weekend a fortnight" of residence is considered

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"typical" (and by implication "reasonable" and "in the child's best interests". Such views ignore the rights of the child to have contact with both their parents, and downgrade the meaningful responsibilities of non-custodial parents.

I strongly believe that it is in a child's best interests to have both their parents as fully involved in their lives as they can be. I strongly disagree with the current system that on all counts fails to provide a balanced result that respects both parents' love and desire to be involved with their children. Children should not be (effectively) punished by being denied contact with one parent, just because their parents' relationship has broken down.

Strong evidence exists that the more conflict children witness and experience during a separation the more damaging it is to them. It must be a priority to try and minimise such conflict between parents, and having an equitable arrangement in regard to child rearing is the fundamental starting point. The current adversarial approach inherent in the Family Court system is almost guaranteed to increase and exacerbate conflict, and it is clearly not in children's best interests.

There is a great need for increased support, publicity and funding for relationship counselling and mediation programs and services offered by groups like Relationships Australia and the Family Court's mediation service (which from my personal experience were highly constructive) and they should be the practically compulsory first port of call in the case of a contact/residence dispute.

I have no doubt that a transition towards rebuttable joint custody arrangements will reduce the friction between separating couples, as both will know clearly in advance what the starting point for negotiations will be: 50/50. I am also sure that many fathers will relish the opportunity to be more involved in their children's lives and upbringing. Such a move would have many positive ramifications in reducing the stress placed on non-custodial parents (mainly fathers). It would also reduce the likelihood of tragic situations such as the suicide of non custodial fathers (including one of my friends) and be in the long term best interests of the children involved.

It will not be a magic silver bullet solution -- no such thing exists, but cannot be worse than the current situation where it seems like it is only the lawyers who really win in the long run. Fathers who are denied access to their kids 85% of the time certainly don't; nor do the kids.

Thank you for taking the time to consider my submission as part of your much needed and long overdue inquiry into the overhaul of our Family Court system. As previously stated I am ready and willing to substantiate any or all of my evidence and would be happy to provide further clarification if required.

I look forward to your recommendations and trust they will be enacted upon in the best interests of all parties.

Yours Sincerely  
[REDACTED]