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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

Dear Sir

Thank you for the opportunity to make a submission to this inquiry.

I enclose my submission and hope that it is useful to the Committee. This is a matter of particular concern to me.

I would be delighted to assist the Committee in any way possible.

Yours sincerely


Adrian L. Rumsey
25 July 2003



Inquiry into child custody arrangements in the event of family separation.

Submission to the House of Representatives Standing Committee on Family and Community Affairs

Introduction to Submission

1. Thank you for the opportunity to present a submission to the Standing Committee on this issue which is of vital concern to me and my future and the well being of my children.
2. I am a single father aged 55 years with 50% shared parenting of an 8 year old boy and a 5 year old girl from an 11 year marriage. The children are kept together and spend one week with the mother and one week with the father on a week and week about basis. School vacation periods are also halved with me having the first half of each vacation break in a year ending with an odd number ie. 2003. Temporary variations are agreed between us as needed.
3. The arrangements for the children mostly work reasonably well except for some difficulties that we experience in keeping track of homework during handovers. My main difficulty is in the area of the Child Support Formula which I believe is inequitable and acts as a deterrent to me working and improving our financial position.
4. I see changes in the child support formula and administration of that legislation as the key to creating an environment in which fathers are able to more fully share in the contact with their children. I believe that as a single father currently sharing 50% custody I am well placed to comment on this subject.
5. There is a tendency in a submission of this kind to write from the heart and my submission probably presupposes the situation where a couple separate with one of the parties (whom I probably identify as the father) is the main breadwinner and income earner and the other party (whom I am presumptuously identifying as the mother) earns a low income and focuses on child care. The submission has equal currency for situation where the gender roles are reversed but then so does the Inquiry itself.



Theoretical Perspective

Financial Questions in child support

6. I consider the philosophical questions to be addressed in child support must address the issue as to what extent the main income earner has a duty to support his ex-wife and children and otherwise provide for them. More specifically the issues are:-
 - a. How should matrimonial and/or business assets and liabilities be apportioned between the two separating parties.
 - b. What is income.
 - c. How should the income of each of the parties be apportioned or redistributed between them.
 - d. What outside influences if any should be considered in any apportionments.
 - e. To what extent should Government assistance be provided to each party.

Impact of child support arrangements on parental access

7. It is not possible for both parties separating to retain all of the assets and liabilities that they had during marriage. Inevitably an apportionment must occur leaving at least one of them with less. There will usually be only one matrimonial home and one party may get the home and the other to establish a home.
8. The expense of maintaining two households after separation will inevitably be greater than for the original single household. If the income that was available to the parties when they co-habited remains unchanged then at least one of the separated parties and usually both parties will suffer a decline in living standard due to their inability to continue to fund the same level of expense individually that they enjoyed together.
9. In reality income from employment may reduce. Partners to the marriage will often have focussed on working to achieve family goals and the dissolution of the marriage will result in a loss of motivation and focus on work. Non-custodial parents will often wish to reduce work hours to focus on maintaining relationships with their children while custodial parents may need to harmonise work patterns with single parenting responsibilities.
10. Centrelink payments may supplement the income of the lower income partner however these payments are conditional and the conditions that attach to them are very likely to influence the recipient party to modify their behaviour to meet benefit conditions or qualify for an increased benefit.
11. Although separation should logically involve a re-consideration by each party as to their respective roles as parents and income producers this tends not to occur. The reasons why I think this re-evaluation does not occur are because:-
 - a. I believe the separation causes a degree of confusion for each party and during this initial trauma people try to maintain existing life patterns in the short term as a way of clinging to the life that is perhaps perceived to be falling apart.

- b. Mothers may have strong nurturing instincts and be closer to children and may have been primary care givers especially with younger children.
- c. Fathers are more likely to be the main income earners for their family and most likely to perceive their role as continuing to generate the income at this time when financial pressures are greatest. They may also seek solace from the trauma of family break up in an area where they perceive themselves to be still successful.
- d. Fathers are typically poorly legally advised during the early stages of the separation and are not aware that initial child care patterns establish a legal status quo that is difficult to overturn. (Before they realise it, they may have lost custody and established a pattern of occasional care as the status quo.)
- e. The Child Support Agency typically becomes involved and sets child support payments at levels which inhibit the father from reducing work and making more time for leisure involving his children. Once set the child support pattern is extremely difficult to change and payments are based on the pattern established making change very difficult. Indeed fathers are often compelled to work even longer hours to meet the increased commitments.
- f. People have come to expect fair play from Government bodies that respect people's rights and do not anticipate the Child Support Agency enforcing the status quo as rigidly as is the case. They generally expect the Agency will treat them fairly which is not happening. For many men this may be their first experience of this type of treatment from Government.
- g. Fathers often defer to the mother in allowing the mother to keep the matrimonial home for the children and this may often mean that the father has no suitable place to have the children stay with him. Day access to children, in the absence of a home to take them to may prove cumbersome, difficult and expensive and this may encourage reducing periods of access.
- h. Although children welcome a visit to the father's place, they quickly become bored if the place lacks the amenity they require to have a pleasant and entertaining experience.
- i. The current Child Support formula aims to place children in the same position as they enjoyed prior to the separation. Clearly this objective is mathematically unattainable. The CSA formula bases child support payments on patterns that existed during the marriage which act to force the main income earner to maintain income at previous levels. This economic pressure prevents non-custodial fathers from adjusting to the new situation by changing work patterns to spend increased time with their children. The formula in association with Centrelink criteria also directly encourages the custodial parent to reduce work and focus more on child care, welfare receipt and maximum child support payments.

- j. A father who voluntarily reduces his income to spend more time with his children will be assessed by CSA at previous annual income levels making it financially difficult for him to reduce his hours of work. The process of objection to child support assessments takes the better part of 3 months to determine and in that time child support payments continue to be payable at the increased levels.¹

Background to my shared parenting

Background

12. At the time when my separation occurred I was a self-employed Business Analyst on a high income (\$112k) and at age 53 was close to potential age 55 retirement on a CSS pension from previous public service days. Although not keen to retire at age 55 when my career as a consultant was going so well, I wanted to be heavily involved with my children then aged 3 and 6 and was not happy with my wife's relationship and care of the children.
13. Having studied matrimonial law, I was aware that the early establishment of child care patterns was critical to future custody arrangements and I immediately established a 50% care arrangement taking them all of the weekends when my wife was keen to pursue her romantic interest.
14. My wife may not in the early stages of the separation have wanted much to do with child care but I believe that she soon realised that the key to accessing the Centrelink payments and child support payments she needed to supplement her small income lay in the level of child care that she had. In the event a pattern of 50% care was well established before she sought to challenge it and by then it created a status quo that would have been difficult to overturn. She was effectively forced to abandon her attempt to get substantive care of the children even though this impacted heavily on the benefits that she should could draw from Centrelink to supplement her low income.
15. My full time work ended in 2001 and throughout 2002 I obtained very little work and focussed on child care with my CSS pension commencing on 1 September 2002. During the first 9 months of 2002 I lived on savings and credit card borrowings until my superannuation pension commenced.

¹ For example suppose a father working 100 hours per fortnight during the marriage wanted to reduce his hours to say 76 hours per fortnight after separation and spend that extra time with the children. The CSA would base child support on 100 hours per fortnight. The father could have no certainty of the outcome if he appealed. Appeals take up to 3 months to decide and in the meantime child support must be paid based on 100 hours the father is likely to already have financial difficulties flowing on from the divorce. Essentially the father is forced to continue to work the 100 hours per fortnight which of course undermines the basis of his appeal. The outcome is reduced contact with the children.

24. There are no tests on these payments of the kind that exist for spousal maintenance that would enable issues such as employability and family support to be argued. If she marries a multi-millionaire then that is not a factor that is taken into account in this formula and I would still pay the same amount although in a spouse maintenance case that would be relevant.
25. The child support formula also works against increasing my income and creates the frustrating position where it becomes almost impossible to work my way out of my indebtedness.²
26. The cost of raising children is generally not proportional to income yet the child support formula assumes this relationship very directly.³ Most child raising costs are actual costs and not related to income.
27. Income tax rises dramatically as income increases and household expenditure takes account of the amount that is available for spending rather than the taxable income earned yet the formula is not levied on disposable income but on before tax income.⁴

² If I leave my retirement and get a job paying say \$40,000 per year on top of my \$58,000 superannuation then taxation would take about 48.5% of the additional gross salary and child support 18% of it. This means that I would get \$1 in each \$3 that I earned or about \$13,000 per year or \$250 per week.

For the week that I have the children I would probably spend \$200 in child care to cover the cost of before and after school care and vacation care. If work expenses are estimated at \$50 per week then that week would yield no income at all.

On the week that I do not have child care I would have \$200 in my pocket after paying \$50 for work expenses less of course reductions in means tested family allowance and other expenses such as compulsory superannuation contributions etc. Indeed if it were a public service job then the 5% compulsory superannuation would leave me with a loss. In that week my child support payment would increase from \$276 to \$577.

I would be earning a little over \$2 per hour! My ex-wife's child support rise from \$276 to \$577 is a ridiculous increase of \$300 and vastly in excess of the cost of raising the children.

The week that I have the children I would still have \$130 per week to keep the children and little hope of paying off the mortgage in my lifetime with the \$200 or less earned.

³ My children eat wheatbix and cornflakes for breakfast. They do not eat differently when my income increases. The cost of their breakfast remains unchanged regardless of my income. The cost of school fees are constant regardless of income. School uniforms and medical expenses are not based on income but are fixed costs. Indeed very few costs (except perhaps taxation of income - which is an inverse cost that rises with income) have any relationship to income.

⁴ In order to pay \$10 in child support at high income levels it is necessary to earn almost \$20.

28. I accept that people on high incomes tend to spend money on holidays, more expensive cars, better homes etc. however the impact of child support payments causing a high income earners income to re-distributed to a low income parent does not mean that the low income parent is able to still obtain these things. Certainly these costs were not directly proportional to income.⁵

29. There are other problems with the child support formula. For example:-

- a. Salary sacrifice superannuation is neither included in taxable income nor is it a fringe benefit so it is possible to defeat the child support legislation by diverting income to salary sacrifice superannuation.
- b. In May 2003 I withdrew \$26,000 from my AGEST superannuation account. This money in the accounting sense is not income but merely a withdrawal of a capital sum. Put another way it is just like drawing savings from out of the bank. All of my superannuation was considered in the divorce settlement and therefore my ex-wife has already received a share that took into account this superannuation.

The taxation treatment of this withdrawal treats the money as comprising two separate components. 5% of the pre-1983 component is included in taxable income and income tax is payable upon it. The post 1983 component is entirely included in assessable income and therefore taxable income but no tax is paid on it (provided it is under the ceiling for lump sums.)

So here we have what is essentially a withdrawal of existing savings in a superannuation fund causing taxable income to be artificially inflated by \$12,458 even though no tax is payable on \$11,843 of it.

- c. Army Reserve pay which is exempt income would presumably escape the formula.
- d. Somewhat amazingly the child support formula actually shows that my payments will reduce as my children get older. It reduces by \$3 per week as the children attain particular ages. I don't understand why.⁶ I assume that it is probably to do with the complexities of the payer having a wholly dependant child.

⁵ The most likely probability of the children having access to these things is if the high income earner is left with a substantial part of their high income. The net result in my case is that I can no longer afford to take them overseas and neither can my ex-wife so they are denied holidays on the scale that they previously enjoyed.

⁶ Figures obtained using advanced child support calculator on the CSA website with my circumstances and another dependant child for me that is wholly maintained for a new relationship.

- e. The child support formula does not have regard to dependencies that fall outside of its legal constraints. For example since January 2002 I have undertaken the support of my fiancée and her child in the Philippines but there is no recognition of this situation and the child will not be recognised until she arrives in Australia, has been adopted by me, and even then I understand from the child support agency that I may experience problems having her accepted as my dependant. (A reasonable position would be to recognise her when she arrived in Australia and was dependant with her mother on me.)
30. Given that I am paying more than 100% of the cost of maintaining my children it is unclear to me why I am not entitled to 100% of the family allowance payment. Yet my ex-wife and I each receive 50% of the payment and no allowance is made in the child support for this additional income to her.

Suggested Philosophical Basis for child support

Shared parenting arrangements

31. I support an assumption of shared parenting as the starting point and preferential position for child custody. When two couples separate it should be assumed that they will each have shared custody and also that they will seek over time to move towards shared custody even where this pattern is not initially established.
32. Although mothers may due to child care arrangements that are in place prior to the separation or because of the child being of tender years have an initial claim to substantial custody, it is important that this not establish a status quo preventing the father from later increasing his share of child care when things change. In this regard the child support arrangements are crucial to allowing this to occur.

Ability to change income pattern

33. There needs to be recognition that fathers will want to change their work patterns when separation occurs so that they can devote attention to the children. Fathers may want to reduce excessive hours or change jobs to enable them to focus on child care. An allowance needs to be made for this.
34. The present child support arrangements as administered by the Child Support Agency heavily inhibit fathers from reducing their work hours or changing employment by deeming their income to be the same as their last taxation year. There is little or no recognition that a father separating might want to devote more time to child care at the expense of income. The Child Support Agency effectively treats such people as child support avoiders.⁷

⁷ It has been suggested to me by a senior CSA representative that my own income might be re-assessed at \$96,000 because I could probably fairly easily earn another \$40,000 if I came out of retirement. Clearly the CSA accords too little emphasis on my role as a primary 50% care giver and too much emphasis on me as a payer. Notably the CSA has not suggested to my ex-wife that she pursue additional or replacement employment to increase her income!

35. There is an assumption by the Agency that there is a duty on a payer to maximise their income which I find questionable. For married couples, the main income earner is allowed to make decisions about how much income they will earn and what the balance should be between family leisure time and work why is this denied to payers of child support. Surely the duty should not extend beyond the point where all of the children's costs are being met.
36. There needs to be a better mechanism for having child support adjusted in these circumstances as the present arrangements very effectively enforce the status quo.⁸
37. At present the Child Support Agency requires a payer to establish a pattern of child care before they will recognise the change. This poses a major problem for the payer because child support is payable on the existing basis while the new pattern is established. There needs to be a way of having the formula changed when the pattern changes.⁹

Allowance for divorce settlement

38. The child support formula should, and presumably does, have a component to cover the cost of providing the children with a room to sleep in. In cases where the divorce property settlement is adequate to provide or does provide accommodation for the children then it is unreasonable for the payer to have to pay this component of the child support formula. A similar argument exist for the provision of a car which also has a large capital cost and is probably built into the formula.
39. At present the Child Support Agency says that this a matter for the divorce settlement and that it needs to be expressed to state that the settlement item is in lieu of child support. This is an unreasonable position. For example if a husband and wife couple separated and owned two houses and each received one in the divorce settlement then surely the payer should not be required to pay the same amount of child support as if the wife had received no house. Divorce settlements occur at a time when child care patterns may not have been established and they can change throughout the childhood of the children.

Formula Components

40. It is suggested that a child support formula be developed along the following lines:-

⁸ If a father is assessed on an income of say \$80,000 per year earned by working 100 hours per fortnight but wants to reduce to a 75 hour fortnight with an income of say \$60,000 then CSA is unlikely to agree to this. Under the present arrangements an appeal might take 3 months with no guarantee of success. In the meantime the child support is payable on the \$80,000 thereby putting financial pressure on him to continue at \$80,000 which of course undermines his whole case to be assessed on \$60,000 and that he is in fact increasing his child care.

⁹ If a father wants to move to 50% care but must first establish a pattern of 50% care then this imposes the unreasonable burden that child support is payable at the high level while the new pattern is being established and further inhibits the father from being able to make changes to his employment situation to accommodate the new pattern.

Basic Elements of Formula

41. Income needs to be re-defined to exclude non-income items such as ETP payments and include items such as salary sacrifice superannuation.
42. A "base level" of child support should be determined at which the child is supported. This should be the level of the average child on the lowest award wage. At this level the child would have food, clothing and the basics of life. Payers should be subject to a tapering percentage requirement to pay child support similar to the present system but with payers required to pay the full basic level of child support at the point where they are earning the lowest award wage. At this point there should be recognition that they are meeting the cost of their children's support.

For example, I would expect that \$100 per week would be adequate to feed and cloth my 8 year old and 5 year old daughter. So at the level of say \$30,000 modified taxable income then I would expect to be paying \$100 per week with a lesser amount propped by Government subsidies applying below that income level.

43. A "middle class" level of child support should be determined at which level the child is supported at the one might expect for a child of a parent earning say \$50,000 per annum. A fixed percentage should apply between the lower and higher incomes to achieve this result.

This level for my 5 year old and 8 year old might be say \$150 per week which would be paid when modified taxable income reached \$50,000.

44. Above \$50,000 I consider that only about 2% of additional modified taxable income should be required to be paid in child support leaving the high income earner with maximum incentive to work and the sort of disposable income that will enable the children to be taken on overseas holidays etc.
45. In addition to the percentage formulas and base levels, a housing element and possibly transport element should be developed as add-ons to the level and be paid in situations where the property settlement did not provide these major cost items. Where they have been provided then they should not have to be paid for twice and they should be determined by reference to the settlement following separation and not on an on-going basis.
46. All parenting should be shared and where the payer has 30% custody then he should pay only 70% of the formula and if 50% then pay 50% and if 80% then pay 20% etc.

Spouse Maintenance

47. Child support payments should not include an element for spouse maintenance. If spouse maintenance is required to offset Government outlays then it should be a separate element and be subject to reasonable rules as such.

48. Where a former wife having no income of her own marries a wealthy man then it is not reasonable for the ex-husband and children's father to be paying more than is required to support the children in accordance with his (the ex-husband's circumstances). Also it is not reasonable to tie the support of former spouses to a payers liability to support their children. They may need to be supported for longer or shorter periods.
49. Arguments about whether a wife has suffered economically by staying home and looking after children are already argued in divorce settlements for property settlement arguments or for spousal maintenance arguments and it is not reasonable that they should be hidden within child support formula calculations where there is no ability to advance argument about them.

Family Allowance Anomaly

50. Consideration needs to be given to the Family Allowance. If the father is paying 100% of the cost of maintaining the children then is it really appropriate for this allowance to be paid to the wife.

Luxury living standard

51. There should be no requirement upon any payer to fund a luxury standard of living for the children. In my own case even if I were to earn \$98,000 per year then I would still argue that child support of \$577 for the week that my ex-wife has my 8 year old and 5 year old is absolutely ridiculous. The child support system can never gain the respect of payers whilst it contains these premises.

Relations with previous partner

Creation of new life for payer

52. Too many men have taken their own lives out of despair in relation to the present system. We payers need to have some hope that we can pay our debts and start new lives. We should never be required to pay more than 100% of the cost of maintaining our children. It is not necessarily our fault that our marriages ended.
53. A system that locked costs into 100% of the cost of raising children at the standard in life we attain to is just and leaves us with enough to move on to new our new life. It also removes a major grievance that festers in our minds and inhibits the normalisation of relations with our former partners and impoverishes us in relation to our children.

Conclusion

Financial Questions in child support

54. I commenced this submission by reference to the questions that I saw as needing to be addressed in child support. In summary I see the things as follows:-

- a. I believe that the Family Law Court handles the difficult issue of the separation of matrimonial property in a way that is probably fairly equitable and I would recommend that your Committee not change this at this time. It could be improved but need not be the focus of the Committee's deliberations.
- b. I believe that the present child support formula fails badly to identify what is income because it relies too heavily on the concept of taxation assessable income which is an artificial concept that fails to identify what is really income and what is not. This needs to be modified to at least catch income not included and exclude withdrawals in the form of ETPs from superannuation funds.
- c. The present child support formula gives too much to the recipient for people on middle to high incomes and needs to be changed. This is a serious issue and child support will never be respected by payers until equity is brought to the system. As a basic principle no payer should ever have to pay more than the cost of maintaining the children. Elements of spousal maintenance should not be included in child support. A more complex formula should be introduced which recognises a base low income standard for children and a middle class level rather than a crude formula. The formula needs also to identify a separate element for housing costs for the child and exclude payers from having to pay this where the divorce settlement has already met this cost.
- d. Spousal maintenance should be considered as a separate payment where appropriate. This payment if introduced should be subject to reasonable tests ie whether the spouse can work, whether support is required (involving consideration of other parties supporting the spouse) and the sort of factors currently considered by the family law court. Spousal maintenance should not continue for years and should perhaps have a 3 or 5 year sunset clause.
- e. I have insufficient information available to me to comment on the level of Government assistance that should be provided.

55. I would welcome the opportunity to appear before the Committee and provide evidence of anything contained in this submission or respond to questions.


Adrian L. Rumsey BA CPA
25 July 2003