

House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	1237
Date Received:	18-8-03 <small>amended 2009</small>
Secretary:



Mrs Kay Hull MP
Chairperson
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Mrs Hull,

Submission: Inquiry into Child Custody Arrangements

I am writing, firstly, to congratulate you on this Inquiry into the current arrangement of child custody following separation, and secondly, to put forward my own story and experiences of the current Family Law Court and Child Support systems, namely through marrying a 'non-custodial' father. I wish to voice my support for presumptive, but rebuttable shared parenting following the breakdown of a relationship. I will summarise my own situation as it relates to the Inquiry's terms of reference.

Over the past 10 years I have been party to numerous Family Court appearances because of my husband's ex-wife's refusal to enter into joint living arrangements for their children despite the son's determination to live with his father and the daughter's expressed wish to spend an equal amount of time with her Dad as she spent with her Mum. The mother not only refused to allow this to happen but eventually made the extraordinary declaration that the son could have a 'shared' living arrangement with his father, provided that the father reduced the amount of time he was to spend with his daughter.

As a result, we contested her proposal, incurring a high level of expense and emotional stress. Not only was stress experienced through the court processes, but also I was astonished to find many counsellors treated the idea of a man wanting to be more involved in the lives of his children as some sort of pathology. In the eyes of 'the system' he was the problem. Surely we must work from the premise that most parents are simply ordinary people who love their children. In spite of the setbacks and the system working against promoting a relationship with his children, my husband has spared no expense or time in fighting the odds and today has a strong and healthy relationship with both his children.

During the many years of this 'battle', the support of friends and family was critical. Also important to us were the many people who were in similar situations to our own, whom we met through different organisations. One such organisation was the Non Custodial Parent's Association (which my husband formed together with other Canberrans). Unless you have been in this situation, it is very difficult to comprehend the level of emotion and frustration involved. We soon realised that so many devoted

fathers had few people to turn to who understood their plight – simply wanting to continue being a part of their children's life following separation. While these men separated or divorced from their former spouse, they did not divorce their children.

Many of the (mainly) men had ex-spouses who relocated, sometimes overseas; others had been falsely accused of child abuse to hamper access. On hearing these stories, many times I wondered at human beings' capacity for hurting and revenge. While no legislation will eliminate these human foibles, surely legislation should not support such behaviour, as is currently the case.

As a social worker myself, I am well aware, that tendered to your Committee for the purposes of this Inquiry will be abundant research and statistics, for 'both sides of the fence'. Each will claim it is the "empirical evidence" needed to support their position. Contrary to popular belief, this research will not provide us with all the answers. Rather, this research should ensure that questions are asked – for example, "why is it that the Family Court does not enforce its own access orders?" Many other submissions will not be quoting research - they will be the stories of the heart and not the head. These stories are of equal worth as those submissions put forward by our society's large and powerful 'think tanks'. We cannot 'objectify' the pain and suffering experienced by children, their non-resident parents and grandparents in the way that statistics and academic prowess would like us to.

I have often been astounded at the stereotypes that are perpetuated and surround those parents (usually men) who wish to remain active in the lives of their children following separation and divorce. Often labelled as being "lunatic fringe men's groups", these stereotypes must be strongly rejected. Another stereotype fostered by opponents of joint custody has been the claim that fathers seek joint custody only to avoid child support. Since the corollary of this claim would be that mothers seek sole custody only to obtain child support, the need to identify and reject stereotypes should be self-evident (The District of Columbia's New "Joint Custody of Children Act.")

"After nearly 20 years without revision, the District of Columbia now has a child custody statute that is strongly focused on the child's right to two parents. By discouraging winner/loser contests between mother and father, the statute positions the court to seek the best rather than the worst from each parent. The presumption of shared custody reduces every parent's visceral fear of being shut out of the child's life and allows both the parents and the court to focus on the means of assuring the greatest combined parental contribution to the welfare of the child." (National Men's Council of Ireland, 2003. p.26).

National Men's Council of Ireland (NMCI), 2003. Shared Parenting After Separation and Divorce. A Review of Legislative Developments Worldwide

The winner/loser dichotomy must no longer be the preferred modus operandi adopted by the courts in the case of separating couples. In a society that does not suffer from an excess of parenting, courts and legislatures need urgently to come to realise that the important task is to encourage, promote and preserve maximum two-parent involvement rather than pick a winner and a loser...As between two fit and loving parents, it is difficult to decide which is marginally "better" and there should be no need to try. (NMCI, 2003. p.8) Shared custody shares the burden of child care and allows both parents to follow educational pursuits and have significant workplace participation, thereby increasing total family income.

In conclusion, the words of Presiding Judge Dorothy T. Beasley, Georgia Court of Appeals, "In the Interest of A.R.B., a Child," July 2, 1993 page 5, seem very appropriate;

"Although the dispute is symbolised by a 'versus' which signifies two adverse parties at opposite poles of a line, there is in fact a third party whose interests and rights make of the line a triangle. That person, the child who is not an official party to the lawsuit but whose well-being is in the eye of the controversy, has a right to shared parenting when both are equally suited to provide it. Inherent in the express public policy is a recognition of the child's right to equal access and opportunity with both parents, the right to be guided and nurtured by both parents, the right to have major decisions made by the application of both parents' wisdom, judgment and experience. The child does not forfeit these rights when the parents separation and divorce."

On the issue of Child Support and whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children I make the following comments.

- ✓ Politicians around the country admit the largest number of inquiries and complaints made to their offices relate to the Child Support Agency. The Federal Government 's current review of child support legislation should be commended.
- ✓ Being married to a non-custodial father, my position is similar to the position of many women in second and subsequent relationships, particularly as they are affected by the current child support legislation. Summed up by Jackie Kelly (Member for Lindsay), Ms Kelly accurately stated in Parliament on 3 June 1997, that the issue of child support "is not a male or female issue. Quite frequently these days, the female is the paying parent and, quite frequently, it is the female of a second or third marriage who is wearing the consequences of prior relationships."
- ✓ I am aware of many women who have entered relationships with men who have children from a previous marriage, and who are unable to provide the same level of financial assistance to the children of this second or

- subsequent relationship, as the children of first relationships are treated more favourably under the current child support formula.
- ✓ Under the current formula, the paying parent is somehow meant to be able to support two households (his own, plus his former household) on one salary, whereas prior to separation, it is common that both parents were working, i.e. a two-income family supporting the one household.
 - ✓ Costs of providing for children to ensure that access visits can occur (i.e. renting a three bedroom house vs renting a bed sit, thereby ensuring the children have a room each in which to sleep), are currently not taken into account.
 - ✓ To ensure the compliance with and integrity of child support into the future, the current child support formula must be urgently reviewed. There is no argument that both parents should be equally responsible for providing for their children following separation. However, the current formula needs to be re-visited and the assumptions on which each individual element of the formula have been based, need to be made explicit.

I am enclosing for your consideration several information sheets that provide further references and support for joint custody as well as address issues such as child support, access and extended family contacts. I trust these will be of use to you in your considerations.

I welcome the opportunity to provide a further statement at your public hearings. I can be contacted on [REDACTED] or [REDACTED]. My contact email address is [REDACTED].

Thanking you for your time in reading and considering my submission. I look forward to the committee's final report.

Yours sincerely

[REDACTED]

[REDACTED]

18 August 2002