Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangement Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

BACKGROUND

We are the grandparents of three children involved in a family breakdown. The two elder children, a girl and a boy, are our stepgrandchildren and the youngest is our biological grandaughter. The two elder children have been in our lives since they were approximately three and two years of age respectively. We have always loved them and treated them as our own and the children have responded accordingly. We have given and received much joy and happiness from being part of each others lives. The three children are our only grandchildren.

For two years prior to the marriage breakdown the childrens mother allowed us very little contact with the children, and for the last twelve months before the breakup we were not allowed any contact at all. We were accused of favouring our biological grandaughter over the other two children. This of course is one of the ploys used where step-children are involved. The eldest daughter has now admitted that she is in the habit of lying to her mother because she wants her mothers attention and the boy has stated that he supported his sisters stories because he was afraid of his mother's moods. Even though our daughter-in-law knew for the preceeding twelve months that the elder children had lied, she still would not allow us any contact. We still do not know what explanation was given to the children. Our eldest son had died two years previously and because of our ongoing grief we did not force the issue, as we were so deeply hurt we could not take any more grief.

FACTS

After six years of marriage to our son, the childrens mother moved in with a female friend taking the children with her. She made a unilateral decision that the childrens daddy could no longer see them. She informed our son that he could no longer have contact with the two elder children as they were not his and she would be making all future decisions concerning them, and he could only see his own daughter if the Court ordered. In the meantime she absolutely refused him access to the children, stating

that she did not trust him. This from woman who was quite happy for him to rear and entirely pay the upkeep of "her' children for six years. Our step-grandchildren had not had any contact with their biological father for seven years nor had he paid any child support.

Our introduction to the Family Law Act and the Family Law Court system:

The childrens mother gets taxpayer paid Legal Aid. Our son has to pay exorbitant legal fees to gain access to the children
The Legal Aid Commission does NOT require the mother to undertake any mandatory mediation or conciliation sessions in an attempt to achieve the best possible outcome in the best interest of the children. Our son voluntarily attended counselling sessions however the childrens mother did not turn up for her appointment.
When we requested an explanation from the Legal Aid Commission we were informed that as our son commenced the legal action, she did not have to do anything. Talk about a catch twenty-two situation. The mother will not allow contact with the children forcing the father to request access from the Court. We would like you to explain to us the fairness of allowing this to continue all over our country, day in and day out.

The National Network of Women's Legal Services (NNWLS) quoting in their Briefing Paper on A Legal Presumption of Joint Residence, make the statement "although mothers more often have legal residence of children, most of these orders are made by consent". We suggest the "consent" is made under duress as we would imagine most fathers cannot meet the iniquitous costs involved in trying to gain shared care of their own children.
NNWLS go on to quote Family Court Stats for 2000/2001 show that 70% of residence orders are made in favour of the mother and 20% of orders for residence are made in favour of the father. They also quote less than 4% of parents registered with the Child Support Agency last year had equal (or near equal) care of the children. This document by NNWLS is full of emotive anecdotes and the myths they perpetuate are not evidence based.

A few quotes made to us from the Legal fraternity:

Don't waste your time or money as the father never gets a fair go in the Family Law Courts. The mother would have to be a mass murderer before she would lose custody of the children.

In a conversation with a Law Society solicitor he laughed and commented " the Family Court is not there for the best interest of the children but for the interest of the legal system".

And in Canberra we were advised that there are two judges in the Family Court in Canberra and if you draw the wrong judge you will lose anyway, because one of them is very pro woman.

Our solicitor advised it could cost upwards of $20,000 to continue fighting in Court for our son to gain shared residency of our grandaughter. It has already cost us $17,000 for interim orders for our son to see the children with a possibility of a

further two days in the Magistrates Court and if agreement cannot be reached it will be listed in the Family Court , which has a waiting time of twenty months and we would need to brief a Barrister. As the Court will not agree to the siblings being parted, we also have to ask for residency of our two stepchildren. This creates an additional problem as the mothers argument is that we have no rights to "her" children. Another catch twenty-two situation. No matter what we propose to the childrens mother, she says a flat "NO", "No Michael you know that I am the best parent' and " I intend to make this as hard as I possibly can for you". And still she gets Legal Aid.

And you wonder why fathers and grandparents feel betrayed by the system!!

ARGUMENTS IN FAVOUR OF SHARED RESIDENCY

Response to part (a) i

It would be absolutely more just and more equitable if the premise of parents being equal under the law was the starting point and it was an acknowledged fact that they have joint shared parenting responsibilities instead of the current system where fathers have to PROVE they should have more time with THEIR children. It would also make the mothers think twice before making the unilateral decision that they are the sole arbiters of what is right for the children.

Equal residency would not allow, as the present system does, the custodial parent to have undue control and influence over the children. If both parents started with equal rights then the present system would not be so adversarial.

In our case, we believe shared care is absolutely in the childrens best interest. They become part of their wider family for longer lengths of quality time which weekend residency does not allow. With shared care the children would be exposed to a variety of family conditions, points of view, and ideas which in turn broadens their minds and balances their outlook on life. This would be reinforced over a period of a week rather than two days. Again in our case the childrens mother has no contact with her own family and denies the children the love and care of the maternal grandparents, aunts, uncles and cousins.

Under shared care the children would have most of their old life intact, as our son takes the children to see their maternal family, and their friends, and encourages them to have overnight stays with them. This in turn goes a long way towards filling their emotional needs.

We firmly believe that the present system violates the children's core development needs and in some cases never allows them to reach their full potential which all children have an absolute right to. Our son teaches the girls the piano and his son the guitar, he teaches them computing, and has the ability to ensure intellectual and scholastic outcomes. This would ensure a profound influence on their development and future needs. The present system does not take the holistic approach to the childrens best interests.

A legal presumption of shared care would help to alleviate the very traumatic period that fathers experience when the mother just takes the children and refuses to allow the father to see them, taunting him to take her to Court. In the immediate period after the childrens mother seized the children our son experienced a profound grieving period. The children were told their daddy did not want them. The older children had always been told in their formative years that their biological father did not want them. A presumption of shared care would not allow this to be a tactic used by the mother.

The two youngest children told the Court appointed child psychologist that they wanted to live with their daddy full time and in the last week the eldest daughter said she would like to live in a shared care arrangement with our son. In the report prepared for the Court by the child psychologist, she recommended shared care as being in the best interest of the children. These children love their daddy and they are all suffering emotional damage because they are separated from him. These children have, and should expect, the right to the love and care of both parents. The present system is not meeting the needs of these children and until Chief Justice Alister Nicholson is made to change his mind set, the lives of countless families will continue to be devastated.

Response to part (a) ii - Grandparents

1. Children should, by right, have contact with their grandparents even though one of the parents has a dislike for the grandparents due to an inherent or inbuilt psychological disorder, and refuses to allow the children to have contact with the Grandparents due to this animosity. Grandparents become the childrens mentor. Grandparents have life skills that have been gained from experience that parents usually do not have and probably wont develop for a period of time. Whilst the children will not necessarily accept all that they learn from the Grandparent due to the age difference at that time, they will still retain the knowledge imparted and use it when required, thereby increasing their welfare and development of their human nature. This circumstance will only come about if both parents, have substantial or equal residency.

Additional submissions.

The NNWLS briefing paper stated "a recent study on contact arrangements shows that 25% of MOTHERS "BELIEVED' that there was not enough contact". I ask why didn't those mothers give or offer the fathers more contact without the fathers having to have orders of the Court.
Questions should have been asked what contact did the fathers have, how much more contact would those mothers have given or agreed to what the fathers wanted," or at this point would the old OGRE of money have raised its ugly head" because had the fathers received more residency the mothers would lose child maintenance and this I believe is the answer to most of the questions about contact- mothers don't want to lose money.

Further in this briefing paper it states that Family Court data reveals that the rate at which fathers are awarded residence of their children is increasing, and quotes

statistics to prove that is correct. Surely this should impress on NNWLS that shared residency is the coming criteria for residency of children after separation and that it should be introduced as soon as practicable to lessen the heartbreak on children and families. This in turn will decrease the cost of the Family Court to society.

Again further on the article states "there is to date no Australian research in shared residence arrangements" but further on in the article it states " It ignores the evidence from research that shared residence works for some families. I believe from these statements, which are contradictory, that there is not as much credulence in the article, as the NNWLS would have us believe.

When rebuttable

Starting with a presumption of shared care does not in any way stop the processes now in place.The Court system already has in place ways of dealing with violence, physical abuse, etc. These crimes are already acknowledged by the general public as abhorrent and expectation is that the legal system will deal with these cases to protect the innocent. All serious allegations MUST be proved by the accuser.

Obviously there will be cases where, for a variety of reasons, it will be impossible for shared care to take place. However these would be acknowledged and shared residency decisions made accordingly.

The present system does not have any penalty in place against a spouse who makes a unilateral decision to move to another town to make contact orders impossible. If the Court makes a decision on residency and a spouse deliberately takes steps to make contact orders unworkable then that person must be held in contempt of Court. This would emphasise that the Courts are serious that the best interest of the child are the paramount consideration.

Response to part (b) - Child Support

We have not been involved with the Child Support Agency as clients but have made the following observations:

The current child support payments are worked out on the net amount earned. Surely this is iniquitous and should be on the gross amount. This is blatant double dipping, as the payer is already paying income tax which goes towards the various pensions his wife receives.

The Child Support Agency is in need of a complete overhaul. They are ever ready to enforce their rules about maintenance payments but neither they, nor the Courts are interested enough to enforce contact orders. If the Government is serious about the best interest of the child they would create an Agency with powers to enforce THE BEST INTERESTS OF THE CHILD ,not as it appears at present, in the best interest of the mothers.

The current system penalises hard work and initiative. When the father, through hard work is promoted the Child Support Agency takes another slice of his income. There

appears to no enforcable rule that mothers must return to the workforce when the last child starts school. If they do not, then their entitlements should be reduced. Otherwise we are perpetuating the belief that the taxpayer should go on supporting them.

From our understanding, the current Child Support formula are iniquitous and are in desperate need of revision.

Additional comments as a taxpayer outside the terms of reference

The granting of legal aid must have mandatory requirements before an applicant can be in receipt of taxpayer paid aid. There must be compulsory counselling, mediation sessions, the applicant to prove why they are maintaining that they are the best parent and should be granted residency over the other parent, and must have proof of any accusations made. Witnesses should be called if necessary.. The Legal Aid Commissioner needs to have a serious overhaul of the Legislation to reflect the wishes of the public. We pay his wages and he needs to be reminded that he needs to lift his performance. We suggest that the Family Law Act should be reviewed by the Policy Section of the Attorney General's Department.

We have taken exception to comments allegedly made by our Sex Discrimination Commissioner Pru Goward. We were under the impression that her job is to ensure neither sex is discriminated against. If she cannot be impartial in this enquiry, and not offer biased comments, she should be replaced. We pay her wages and she needs to be reminded to lift her performance.

We would like to see Chief Justice Alister Nicholson comments that the present system is working effectively held up to scrutiny. He really needs to interview the fathers and ask them how effective his system really is and LISTEN to their answers. No, the majority of cases are not resolved by consent, they are the outcome of the advice being offered to fathers not to expect a fair outcome in the Family Court and to just accept what they can get. The cost is prohibitive and most fathers simply cannot afford legal counsel. Again, it should be mandatory for people in his position to attend the Courts incognito and LISTEN. Even though what he hears would be unpalatable to his ideas he would hear the truth. Chief Justice Alister Nicholson needs to ask the bread and butter members of the legal fraternity what advice they are offering to dispossessed fathers trying to gain access to their own children. We would like to be interviewed by Chief Justice Nicholson personally, however we realise that he would not agree to this as he would not like to have his point of view challenged. We pay his wages and we would like to go on record that we are unhappy with his performance.

Chief Justice Nicholson's reported views following the announcement by the Attorney-General of an inquiry into child custody arrangements tries to convince us that the perception that anti-men bias in the Family Court is a hoary chesnut. In our case we had a magistrate, who in her opening address stated to our solicitor " Do not try to convince me that the mother is not the primary carer". " I am here to administer the Law". Beside being stunned, we were left wondering what had happened to Justice. Chief Justice Nicholson also went on to comment that only

5 percent of cases participate in defended hearings and represent the most difficult of parenting disputes. Wrong. We are being forced to continue legal action in the hope that our son and ourselves will be given equal access to the children. This has come about because the childrens mother says a categorical " NO" to every suggestion put forward. We are fighting so that the best interest of the children becomes of paramount consideration.

We wish to take issue with the Family Court on the perception that the mother is the primary carer. It is this perception that leads to the fathers only being granted alternate weekend residency with his children. Do not fathers have to go to work each day? Surely equal credit should be attached to the fathers contribution to the household. Primary carer is a misnomer and should be altered to primary contributor in its wider context. Conversely, when it comes to property the parties start off on an equal footing. The contributions made by the homemaker are considered equal to the financial contributions made by the bread winner.

According to released statistics, there are approximately 55,000 divorces in Australia per year with 53,000 children involved. The women's industry and parts of the media, would have us believe that most of the men are violent, etc ,or avoid their child support payments. We would like to see statistics released on how many constituents approach their elected members believing they have been betrayed by the system.

Another issue we wish to raise is the mis-use of AVO'S and allegations of harassment against fathers. Our grandchildren's biological father explained to us that the reason he gave up claim to his children is because his former wife threatened to take an AVO out against him. It appears if a father is grieving for the loss of his children and gets emotional it becomes an allegation of violence or harassment. We did not allow our daughter-in-law to try this ploy again,as under legal advice, we accompanied our son whenever he had to be in her company. It is also a blatant mis-use of our police resources.