

Body

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SUBMISSION TO:

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION.



Terms of reference:

(a) (i) Given that the best interests of the child are the paramount consideration, what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted.

A presumption that each child spend equal time with each parent after separation is unworkable and cannot be supported.

- Currently 95% of divorces/separations are settled outside the Family Court, with parents coming to arrangements that are suitable to their children's, and parents, needs and situations.
- There have been arguments attempted that some men settle for less than their desirable outcome rather than go to court because of the time and emotional and financial cost of continuing to court. While these constraints are real, they apply equally to women as to men. Women too are settling for outcomes that are not their optimum for the same reasons. It is also probable that mothers are more likely than fathers to settle rather than go to court due to women having fewer financial resources available to them. This is also a direct result of women making the majority of financial sacrifices (short and long term) to bear and raise their children.
- The 5% of divorces/separations that are decided by the Family Court represent those where the two parties have been unable or unwilling to reach agreement about the care of the children through the other avenues available. Frequently this is due to the violence and abuse that has been present in the relationship, with the mother of the children committed to her children's welfare, and recognising that this would not be best served by children having extended or unsupervised contact with a violent or abusive father.
- The figures relating to these 5% of separations reveals that there is an almost even division between custody rulings made in the favour of the mother and the father. The claim that the Family Court is biased against fathers is therefore spurious.
- Enforcing a presumption of children spending equal time with each parent may expose children to further violence or abuse (including the less obvious, but just as insidious and damaging emotional and psychological abuse). This, I am sure, is not the type of "male role model" that is envisaged to ensure our children, boys and girls, develop into healthy, respectful adults.
- Those separating families that have managed to successfully negotiate a 50:50 shared residency arrangement have described the high level of co-operation that is required. Such an arrangement requires that the two households live in close geographic proximity, or spend a lot of time moving the children between households. The latter is not conducive to the child developing and maintaining close connections with school, friends and their local community. With the small percentage of divorces and separations that are decided by the Family Court being the most difficult and

contentious ones, it is unrealistic to think that these parents will suddenly find they are able to negotiate the logistical demands of 50:50 shared custody, let alone the emotional demands.

- I have no doubt that we all want our children to grow up to be happy and well adjusted adults, who have learnt that respectful discussion, compromise and agreement is the way to resolve conflicts. That they are able to take responsibility for their actions, and be aware that they will often have to make compromises in life. A legal system that is directive, makes decisions on a "one size fits all" formula, and is based on the cries of a small but vocal group of disgruntled men (who in my experience have not learnt to take responsibility for their actions) would be providing a framework or model that is contrary to the development of mature adults.
- The best interests of the child are currently enshrined as the foundation of Family Law. This provides a basis to assess each situation separately and to make rulings and arrangements that ensure the well being of the children is, rightfully, the paramount consideration. Any mandated shared custody presumption would be overriding the rights of children to have decisions made in their best interests, with all factors taken into account. Our children are our most important asset, and also our most vulnerable, and their best interests must take precedence.
- Research shows that women are still the primary carers of children in both married and single households, devoting much more time to their children, and taking the bulk of the responsibility for child rearing and decision making. So on a philosophical note, why is it only separated fathers for whom this proposed 50:50 shared custody is proposed? When will married fathers too be expected to take on an even share of responsibilities, and sacrifice the financial and status benefits that accrue from being in the paid workforce for the less tangible parenting benefits?

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

- The child support formula, and the Child Support Agency, were introduced to overcome the problem of non-resident parents (predominantly fathers) refusing to contribute to the raising of their children after separation. Children are a responsibility of both parents, not the possession of one parent or the other. Thus both parents must be meeting this responsibility to contribute to the financial costs of raising of their children. While there are still problems with the system, particularly with fathers minimising income, non-resident parents must recognise that they are still responsible for their children.
- While attempting to encourage both parents to take some degree of financial responsibility for their children, the child support formula does not work fairly for both parents. The non-resident parent is at an advantage, in that their level of payment is assessed on income that from their previous year's tax return. If their income increases, this does not flow on to the other parent until the next assessment, which can be months away. If the paying parent does not lodge a tax return for several years the resident parent could be missing out on substantial contributions to their children's upkeep. There are also the significant problems in terms of the non-payment of child support, and the minimising of income to in turn minimise the level of child support payable.
- In terms of fairness, the child support formula in no way recognises the financial sacrifices the resident parent has made to bring up their children. It in no way

