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PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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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

Dear Sir/Madam

I should like to make a submission to the Committee's Inquiry into Child Custody Arrangements.

Interests of the Child

In addressing the first Term of Reference, namely the interests of the child being paramount, I believe that there are three custody-determining options:

1. A Parenting Agreement endorsed by the Family Court;
2. Shared Parenting;
3. Family Court ordered contact

In considering (1), in an ideal world I believe this would be the best option where the angst, hurt and personal vindictiveness are taken out of the agenda by way of a mutually acceptable agreement. However, there will be circumstances in which one or other of the parents will not cooperate with an agreement or will undertake an agreement which is broken soon after it is endorsed. In that instance, I believe that the only course of action available is for the couple to come before the Family Court for determination.

In considering (2), I have some misgivings with shared parenting because I believe it would only work in a limited number of cases where the parents live in reasonably close proximity. It would not be tolerable for example, if children had to travel midweek or week about from one parent to the other over an unreasonable distance.

There would also be the aspect of the psychological damage to children who could not cope with the frequent changes or a circumstances where one of other of the parent by virtue of transfer or health reasons was relocated a distance that made the arrangement impractical.

In this instance, unless there was very carefully crafted alternative arrangements, the case would probably need to return to the Family Court for determination.

In considering (3) - the circumstances with which we are most familiar - the Court determines the number of weekends and school holiday weeks for which the non-custodial parent will have contact.

Breaches of the above

I see a constant pattern of abuse of (3) especially on the part of the custodial parent. Frequently, vindictive custodial parents will place as many hurdles as possible in the path of the children having contact with the non-custodial parent. For example, 'the child is in the grand finals and shouldn't miss their chance', 'I can't afford the warm clothes needed for your climate' or, 'the child is sick'.

I see many non-custodial parents, deprived of contact with their children, becoming extraordinarily stressed. In many instances they cannot afford legal redress and the custodial parent, for want of a better expression, 'gets away with it'.

When eventually some 9, 12 or 15 months later the non-custodial parent obtains legal aid (most infrequent), or raises the money for a legal action, the custodial parent is invariably given a caution or rap on the knuckles.

Quite frequently there is little the Court can do. Take the case of a defiant custodial mother - what can a court do? Fine her and thus deprive the children? Give her community work when she should be looking after her children? Send her to jail which creates a whole new range of foster parent and expense consequences?

In practice, there is very little room for disciplinary actions against non-complying custodial parents.

Suggested Sanctions

Purists will say the custodial arrangements and financial support arrangements are two totally separate and independent issues, but I do not agree.

I believe that, where a custodial parent without good reason (for example a medical certificate or statement from the school principal) denies contact to the non-custodial parent, then for the number of weeks that this arrangement persists, the non-custodial should be able to apply to the Child Support Agency to pay no financial support.

Purists would argue that this may become unfair on the children. I think not. It is my belief that a custodial parent denying the court-ordered access and by so doing losing, say, $500-$1000, would not do it again.

It is my experience that manipulative custodial parents 'want their cake and eat it too'.

Denied support, their capricious actions lose their attraction.

Equality Before the Law

I find invariably that a custodial parent acting vindictively or capriciously in denying contact to the non-custodial parent generally gets away with it for quite some time.
The reason is that Legal Aid tends to work on the assumption that the custodial parent will generally win and therefore is reluctant to fund the non-custodial parents in a Family Court action.

I admit there are exceptions but they are few and far between. I believe that Legal Aid, paid for Family Court matters, should be differentiated by the Commonwealth as a separate subset in annual allocations to Legal Aid agencies.

A new guideline should be in set in place that says this: Where parents are of equal or near equal means Legal Aid should be given to both parents, or neither.

This would ensure that in most instances the parties in any Family Court action would appear before the Judge, Register or Magistrate on equal terms, and I would respectfully suggest to the Committee that it make such a recommendation to the Attorney General (although it is not strictly within the Terms of Reference for the Inquiry).

Federal Magistracy

I firmly support the concept of a Federal Magistracy and suggest to the Committee that its role be extended, both in the powers of the Magistracy and the number of Magistrates available to go on circuit.

This would allow the Family Court to venture further into provincial and country areas, and allow Magistrates to issue interim orders until more comprehensive matters could be dealt with by the Family Court itself.

Recognition of the Step Parent Role

I accept the principle that the biological parent is responsible for the upkeep of a child that is fathers or mothers, and I do not quibble with that broad concept. In an ideal world, if a marriage breaks up, the non-resident parent pays Child Support to the resident or custodial parent.

However, when the non-custodial parent enters into a new relationship, where his or her new partner bring step-children into the marriage, there is no recognition of those step-children.

The current Child Support doctrine argues that the absent biological parents of those children should be making CSA payments, but in many instances (if not most) it is not happening.

The biological parent may have slipped away overseas, refused to make payment (and continued this by moving around the country out of the clutches of the CSA). They might also be on the Minimum Payment Level as a result of unemployment, being on a pension or having a disability.

It is ludicrous to suggest that these children do not become, in some de-facto way, the responsibility of a non-biological parent. No-one would provide one level of care for their natural children and a lesser level for step-children. I believe there should be some minimum recognition of such step-children.

At present, normal CSA arrangements require a payment (after the 110% unpartnered Centrelink rate) of 18% for one child, 27% for two children, 32% for three children and 34% for four children.

I believe that, where there is no prospect of collection of child support, or where a previous parent can only afford the Minimum Payment Level, the CSA payment should be reduced by two percentage points for each step-child the non-custodial parent has undertaken to care for.

In other words, if there were two step-children (without support) the non-custodial parent would pay to his original family 14% for one child, 23% for two children, 28% for three children and 32% for four children.

This could be approached another way. Under the arrangements, where biological children come into the new relationship, the 110% unpartnered rate is increased from $12,315 to $20,557 for one child, and $22,790 for two children.

Perhaps step-children could be considered in some similar fashion at approximately 50% of the rate applying to a biological child. One way or another, there needs to be a recognition of properly cared for step-children who themselves have no prospect of Child Support Agency support.

I believe many of these suggestions are little more than common sense and could make the quality of life of many affected by family break-up, appreciably better.

Yours sincerely

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