

Submission No **396**
Date Received **4-8-03**
Secretary.

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/Madam,

Inquiry into child custody arrangements in the event of family separation

Please keep my name confidential. The material need not be kept confidential.

In response to the Terms of Reference, I wish to make the following comments:

1. **History:**

1.1 *My children were taken away from me:*

Some 10 years ago, after a marriage of 11 & ¼ years, my then wife left the family home [REDACTED] without any discussion or notice, taking two young children with her (ages 20 months, and 3 yrs & 4 months). I had no indication at all that she was planning this.

1.2 As she later boasted, she had taken advice from a lawyer that the best thing was to hide the children so that I would have no chance of getting them back (she would establish a "new settled living arrangement for them").

1.3 It took me two weeks to find her and the children in [REDACTED] (we were both born there and had gone to university there, and both our parents lived there).

1.4 Initially, she refused access, but a month later, under pressure of legal action, she consented to "supervised" access (from her car, she watched me play with them in a local park for an hour or so a week). After two more months, with additional legal pressure, this was converted into "standard access".

- 1.5 My solicitor (a leader in the Adelaide profession) advised me that I could hope for no more than a weekend a fortnight and a few hours (for a meal) on the alternative fortnight (she described this as “standard access”).

If I wished to contest that in Court (with little chance of success), I would have had to pay (in 1993 money) \$10,000 into the solicitor’s account for her, and the barrister’s fees. Ten years later, with an immense amount of effort and cajoling, I have been able to parlay that access into:

- 1.5.1 One weekend a fortnight;
- 1.5.2 4 hours on the alternative Sunday afternoon (2:00 pm - 6:00 pm) - I do the driving across town;
- 1.5.3 Half the school Holidays; and,
- 1.5.4 An extra dispensation on Father’s Day and on my birthday (part of a day only)

Clearly, possession is 9/10 of the law for mothers - fathers have no negotiating power.

I note that *my arrangements are changed regularly and arbitrarily* by the mother (possession is 9/10s etc). The Sunday afternoon was until a few months ago, a Saturday morning (changed for her convenience), and the School Holiday arrangements are often changed at the last moment, much to the disruption to my work situation. On occasion, she has taken two weekends in a row, and I have had to engage in lengthy correspondence until she agrees to a compensating arrangement.

- 1.6 I have now, and I have always had, *an extremely close, happy, positive and loving relationship with my children*. I have statements of love from my little girl (now 11 & ½) written on my white board at work, and at the bottom of the emails she regularly sends me. Boys (particularly teen age boys) are, of course, more reticent, but the behaviour confirms a similar feeling by him.

- 1.7 My contact with my children is at a tremendous personal cost. I use all my recreation leave and all my long service leave to see my children. Weekends are a full-on event as a single parent (I have never remarried, and will not do so as my main focus is my children).

I have a very difficult and responsible job as a professional person, and I am exhausted by the commitment to being both a parent and having to comply with the accepted “professional culture”, without any recreation time.

Importantly, the relationship of a loving and concerned “access father” with his children is abnormal. Lack of regular contact means that a mutually close and loving relationship is concertinaed into the little time that we have available. Apart from the whole week during the school

holidays, the weekend period is intense, busy, and compresses a week of relationship into a weekend, or a 4 hour period.

1.9 ***I am financially broken:***

While I earn some \$109,000 *pa* in cash (in addition, a car and “defined benefit” employer superannuation taken as a non-cash component), I have only ***\$48-00 per day*** (some \$17,500 *pa, post tax*) as discretionary expenditure.

That amount does *not* include:

- my mortgage (presently \$600 *per fortnight*),
- tax,
- child support,
- medical insurance, which is a payment in lieu of tax,
- a 6% *post-tax* superannuation contribution.

From this \$48-00 *per day* I pay ***everything else***, including: council rates, utilities, medical, food, entertainment (?), clothes, children’s presents, home repairs (I have a home that cost me \$130,000 in 1995), etc, etc.

- 1.10 I have re-mortgaged my house twice, and I am now doing so a third time, in order to pay my daughter’s school fees (\$10,000 *pa*). My mortgage will probably increase to \$700 *per fortnight*.

I am effectively leveraging off my superannuation.

Several years ago my ex-wife promised that if I paid for years 4-6 inclusive at a good private girls school, she would pay years 7-12 thereafter. She also pays out of child support for my son to go to a private boys school (much less expensive, presently under \$8,000 *pa*).

Recently, she said that she would not pay for my daughter to go to a private school, and that if I ceased payments for year 7 (2004), the boy would be pulled out of his school (year 10 in 2004).

This was clearly emotional blackmail - both children are well settled into their schools, are very happy there, and are doing very well, and have good friends there, etc. The recent re-mortgage is to pay for years 7 - 12 for my daughter.

- 1.11 I ask myself, what is the difference between my obligations and commitment to the children, and hers:
- 1.11.1 **Accommodation:** we both provide separate bedrooms, bedding, furniture, linen, etc, for the children. We both provide a house, with kitchen, lounge-room, bathroom, etc
 - 1.11.2 **Food:** I provide just under 25% of their food, she provides just over 75% (they do not eat much yet).
 - 1.11.3 **Clothing:** I provide some 40% of their clothing, she provides 60% (This weekend I spent \$50 for two tops, and 1 whole day going around town clothes-shopping with my daughter). I pay for my daughter's school uniform.
 - 1.11.4 **Sports equipment:** I spend much more on this item - all my son's cricket gear (a \$200 bat, pads, wicket keeping and batting gloves, etc), I bought him \$160 football boots (adult size 10, leather);
 - 1.11.5 **Toys, etc:** I spend *much more* on this item - both children's bikes (the boy \$1200, the girl \$450), Nintendo, lots of books, CDs, and my daughters \$1200 electric keyboard (a Roland Midi - which she keeps at her mother's house in order to practice), a Home Computer so they can do their home work on weekends, skate board, razor-scooter, portable CD player, etc, etc.
 - 1.11.6 **Entertainment:** If they go to a birthday party on my time, I pay for the present for the friend, I pay for cinema trips with friends on holidays and weekends, I provide each with pocket money (\$25 *per term* plus *ad hoc* amounts usually amounting to more than that *per term*). I pay to take them out to a bistro or restaurant every Friday fortnight as a treat, and to teach them how to behave in adult situations and to appreciate different cuisines, etc.

I pay for my daughter's music lessons (approx \$600 *pa*), and her dancing lessons (\$45 *per term*) - both through her school.

1.11.7 **Birthday parties:** I have always arranged and payed for this: this April my son had 13 friends for a BBQ lunch and a sleep-over to follow. Last year, my daughter took 8 friends to the local Chinese, followed by a sleep-over.

1.12 **Given the above, why** do I have to pay her \$27,000 per annum *after tax* (equivalent to her getting a \$35,000 *pa* pre-tax income), so that she can:

- stay at home and not work (she held a job for all of the 11 years that we lived in Canberra, with 10 months only off after each of the children were born - as a senior teacher in a private school, primary level)
- do various university courses (the longest Masters Degree I have ever heard of);
- re-marry and support a low-income husband; and
- have another child, who *I am effectively supporting ??*

1.13 She plays the rules beautifully - she has been fully advised to:

- refuse to allow additional access so that I don't fall into the 103 night-stay rule (pro rata diminution of child support);
- refuse get a full time job so that she would earn an income (apart from some paltry part-time work) in order not get anywhere near the income dollar for dollar diminution threshold (about \$30,000 or so).

1.14 **The pain and depression:**

I could not in a hundred years describe to you the pain, depression, loneliness, the private tears, and the morbid feelings, that a father who loves his children, and sees them infrequently, suffers as a result of the present arrangements.

I cannot even watch a sad movie about the loss of a loved one, or watch Overseas Aid advertisements for abandoned or sick children. I often have waking dreams about my children fighting against a raging river as I try to hold them above the water, or being run over on the way to school, or my trying to hold them back from the edge of a tall building against their unnatural impulse to jump. This is an inward expression of my worries and concern for my children, when I am powerless to help them.

It has never been difficult for me to understand why an access father may choose not to see his children - the pain can be so great that a complete break may be the only answer.

I can understand the factors affecting, *but I would never agree with*, those few fathers that take violent action against their children and ex-wife, and then end their own lives, as a result of their pain and loss and, I

suspect, their resultant severe psychological imbalance. I blame the present Family Law Act *and those who enforce it, and support it*, as much as I do those fathers.

ToR:

(a) given that the best interests of the child are the paramount consideration:

- (i) 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; and
- (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

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

2. *As to (a): There should be a strict rule of 50/50 care arrangements:*

2.1 From my experience, children need both parents, equally. Despite my very adverse views about my ex-wife, I acknowledge that my children need her as much as they need me.

The fact that a child needs both parents equally should be the basis for an *equal care / equal responsibility rule*.

2.2 Thus, the start point must be a *strict rule of 50% care and responsibility, and 50% living arrangement, for each parent*. Living arrangements can be made for either alternative weeks or fortnights, or months - whatever is convenient for each situation, age, etc.

This will prevent gaming, such as parents fleeing and hiding the children to establish a “new settled environment”, as well as ending the influence of Family Court pro-female psychologists, and judges who favour the mother. *They just cannot be trusted to administer anything less than a strict rule*.

2.3 This standard rule should be applied automatically, without the need for litigation. Mediators, etc, will assist separating parents choose a convenient and appropriate arrangement (week, fortnight, month, etc), if they cannot do it themselves.

2.4 A parent, or a concerned person (relative, community worker, etc), should be able to bring an action to *challenge* the standard arrangement.

2.5 The 50/50 rule should be able to be applied to all broken family arrangements, thus ***both prospectively and to existing situations*** - thus, in relation to fathers (mainly) who want to put existing broken family arrangements on this footing.

2.6 If one of the parents moves location, and is living in a different city (interstate, or widely apart), the arrangement should be for a longer period (say 12 months) with each parent, with regular visits in between - say, the school holidays or a weekend a month to stay with the other parent. Then swap around the next year.

Moving town to disadvantage the father (another female strategy), would be discouraged by not rewarding the mother with the present 100% custody.

2.7 If the parents reach their own agreement, that should be respected.

3. ***The Test:***

3.1 A person who seeks to challenge the standard arrangement should have to satisfy the ***onus of proving affirmatively*** that there would be a ***likelihood of "harm" to the child*** if the standard 50/50 arrangement was allowed to apply.

"Harm" means ***actual physical, sexual or psychological abuse*** - not cooked-up, psycho-babble, "best outcomes" arguments. Mere allegations of harm, without proof, should be dismissed.

Legislative Guidelines should produced to guide the Family Court in this assessment when they hear challenges.

I have heard so many divorced men tell of the standard "abuse" allegations, which disappear as soon as they are no longer a useful female strategy. Many of these abuse allegations are used as a threat, and not made public, but have served their purpose if they upset the father and discourage him seeking more than "standard access".

4. ***Relationship of child support to the 50/50 access arrangements:***

4.1 If one parent ***refuses contact*** with the child, or only agrees to limited contact, there should be a ***child support penalty rate*** assessed against him or her, say, the "full rate".

4.2 If the standard 50/50 arrangement applies, child support should be adjusted accordingly. Thus, if the standard cost of supporting a child is assessed as, say, \$27,000 *pa*, both parents should be made to contribute half each, under the present payment arrangements (protected amount, percentage of income to a ceiling, etc. Thus the concept of equal responsibility.

This will have the additional pro-family benefit of ensuring that there is an actual financial disincentive on parents to separate. As I understand it, approximately 80% of divorces are filed for by women. Clearly, they must be, in the clear majority, the initiators of family break-up. Such an arrangement will remove any financial incentive to break-up a family.

- 4.3 It should be *deemed* that a parent previously in employment is capable and should continue that level of employment. If a parent, who was previously in employment, decides to become unemployed, adopt an alternative life-style, go back to university, or just sit on the beach, there should be a presumption that that person is capable of earning their previous income - tests such as the "last three years average salary" are typically used in defined benefit superannuation and other schemes, and information is available from tax records.

5. ***Grandparents:***

- 5.1 I believe, and it is quite apparent from my own children's experience, that on-going contact with grandparents is wanted and is beneficial.

With a 50/50 care arrangement, both parents can arrange for the children to see the *grandparents* (and cousins, etc) on their own time.

- 5.2 However, if one (or more) *parents refuse* to allow grandparents to see the children, the grandparents should have the right to apply for access.

Legislated Guidelines for the Family Court should establish standard grandparents access criteria.

Two separate weeks each year (at a convenient time in school holidays) seems to be to be a good standard minimum arrangement, for grandparents living in distant locations from the grand-children. Otherwise, a day (including overnight stay) each two months for same-city arrangements. The grandparents can make provision for the children seeing their extended family (cousins, uncles, aunts, etc).

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

In my view, the present arrangements represent the assumptions and the prejudices of the group of radical feminists who graduated in the 1970's, and who were in a position of policy power in Canberra in the late 1980s (I happen to know the policy officers in Attorney-General's Family Law Branch responsible for this legislation).

- 6.1 On the information above under *History*, it is quite obvious that the present arrangements are *arbitrary, unfair, and penalise the father*. In many situations, they add insult to pre-existing injury.

6.2 The father has *no rights to see to the attribution of the money* he pays. Child support could be spent by the mother on drinking, drugs, gambling, supporting other children, or just “the good life” - and not on the father’s children, and he can do absolutely nothing about it. That is a disgusting outcome.

6.3 I have suggested alternative arrangements above, as flowing from the joint care / joint responsibility concept.

7. Please make radical changes.

Fathers have suffered enough (14 years now).

Respect the contribution that fathers can make to their children’s lives.

Establish a new paradigm for shared parental care and responsibility. This will encourage those fathers who, often because of the pain of loss, decide to cut all contact, and lessen the on-going pain and trauma of a broken relationship with their children.