

House of Representatives Standing Committee
on Family and Community Affairs

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Secretary:

[REDACTED]

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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
Australia

(and by email)

Dear Madam / Sir,

Re: SUBMISSION:
INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT
OF FAMILY SEPARATION

I think there's a fundamental problem with the legal fraternities predisposition to look for a culprit and a victim, when the interest of the children are so tied in to having strong relationships with both parents maintained.

The Family Courts create conflict by facilitating the exclusion of one of the children's parents. It then justifies the exclusion on the basis of there being conflict between the parties. Worst still solicitors typically exaggerate the existence of conflict to win control for their client. Unfortunately many men take too long to learn that their emotional reaction to being excluded from their children (and associated issues regarding the children's well being) is precisely what is used to justify their further exclusion. Naturally parents become distraught if their children are harmed or distressed. It is this reaction that is so routinely used to exclude fathers.

Allegations of abuse are used to get intervention orders that effectively frustrate the excluded parents opportunity to interact with his (or her) child, applications that men are often advised to consent to, because of the courts stated policy of "erring on the side of caution". Needless to say these tactics are more available for women against men, although there are exceptions.

Abuse is so broadly defined that the women only have to say she feels intimidated for it to be deemed there is "abuse". Once a court is persuaded that there is "abuse" the victim of the allegation is routinely excluded from his children.. Worse still, it is typically assumed that if there is "abuse" then the children too are at risk. The ease at which fathers can be restricted

to fortnightly supervised contact with their children using these methods is frightening. It seems too easy for solicitors to suggest to their female clients that their husbands are abusive. Any articulation of disagreement with what are typically unilateral decisions is too easily framed as abuse. To a distraught and emotionally vulnerable woman this sounds reassuring, it gives them control.

Apparently the Family Court defines "abuse" as physical, emotional or perceived.

Amazingly the opportunity to relieve conflict through shared parenting is completely ignored by the Family Court. The exclusion of one of the parents is quite often the main reason for conflict in the first place. Any excluded parent would be painfully aware of the distress their exclusion causes their children. The more they strive to relieve this distress the more they strengthen the idea that here is conflict. Its a catch 22 situation.

The "dirty pool" of sexual abuse allegations appears to be a horrendous problem, with fathers often being excluded from their kids for years while court appointed psychologists (and lay people) are commissioned to determine whether or not the allegations are true or MAY BE TRUE. Even if there is suspicion the "erring on the side of caution" rule seems to apply. Unfortunately, like the courts, the psychologists (and lay people) are almost always mutually exclusive in their recommendations, and typically reflect the view of the magistrates that have already been expressed in Judgements (and thereby securing ongoing work). If the allegations are general abuse, they will often see their job as determining which party is to blame and therefore who is to be excluded to remove conflict.

I am fortunate I have only had to deal with physical, emotional and perceived abuse allegations, but I understand sexual abuse allegations are very common. I am personally appalled by at the Court ignoring incontrovertible evidence that children are most likely to be sexually abused as a result of losing the care and protection of their fathers. For substantiation of this, one needs only to contemplate the fact that it only 1 percent of the subgroup of society that would (or could) sexually abuse a child are the child's biological fathers. Within this subset of dysfunctional people the main perpetrators are grandfathers and step fathers, other family members, family friends, and others in that order.

I am also appalled by the Court's apparent disregard for the importance of the extended family. My grandmother and cousins seldom see my daughter despite the strong attachment she has for them.

I believe the solutions to these problem could be very simple and include; rebuttable shared parents. Consent between the parents would be the most obvious reason - if for example one parent couldn't share equally in parenting because of distance, work commitments, preference or the perception that the other parent was better suited to the job. Foreseeably a parents time with their children could also be reduced if they were, derelict, incompetent or deranged.

The focus should be on the child's right to know and have the influence and care of both parents whenever possible.

The rules of evidence need to apply to all abuse allegations and allegations generally.

Shared contact should be enforced unless and only after any allegation has been proved and it is clear that the alleged behaviour is in fact directly harmful to the children.

The abuse allegation seems to be the central theme of Family Law. Unfortunately it is all too easy to persuade women who are suffering the emotional distress of separating and divorce that she is abused if her husband doesn't agree with her. It appears to me that this is the main mechanism used by solicitors to "win" custody and power over the children. Given the mutually exclusive custody policy of the courts the prospect of losing custody is possibly even more frightening for a mother (due to the influence of maternal instincts - especially when they are young). Needless to say, shared parenting does not create this fear of exclusion.

Although I appreciate that this parliamentary committee may not want to be burdened with personal details of the damage caused by the Family Court, I believe my experience is so bizarre and such a blatant perversion of human rights and natural justice that it can be used as an example of just how badly the system can be manipulated by lawyers.

Unfortunately my wife is quite wealthy and able to afford the horrendous fees charged by the city law firm she hired.

My Case

It started with my application to share the parenting of my daughter. Like so many others I had no idea that the courts simply did not offer shared parenting as an available solution - that it was only interested in denying shared parenting if it deemed there was conflict and of course there was conflict otherwise you wouldn't be seeking the court intervention.

My wife's legal case was almost entirely made up of allegations that I was abusive. Next came the intervention order applications which I eventually consented to on advice. I ended up with the standard weekend a fortnight night, with every other Tuesday night and half holidays.

The Intervention Orders made it almost impossible to communicate with my wife on anything of importance to our daughter. My attempts to discuss things were frustrated by my wife's newly vindicated attitude that she didn't have to listen to anything I said and that she didn't like what I said I was potentially in breach of the order. If there was ever a hiccup in arrangements my wife would start threatening me with police action and criminal prosecution. The Intervention Orders seemed to empower her to be aggressive.

Despite these frustrations things went reasonably well for a while. After a mix up in arrangements that led to me explaining to one of my wife's staff members that she was obliged to let me know if my daughter was at the premises, my wife abducted our child.

After three months of absolutely no contact, which I was enduring on my then solicitors' advice, I finally applied for contravention orders. What followed then was the most appalling and deliberate frustration of my efforts to see my daughter. There were deliberate deceptions of the court (I was shocked to find out that this was not irregular and that there was nothing I could do about it).

Essentially my wife (her lawyer's) argument was that I was mental, and that was why she

had unilaterally decided that I shouldn't see my daughter. It was then ordered that we had to get a Family Welfare report despite having already had one done previously. I thought the first one was incredibly biased in favour of my wife's claim that I should be excluded (remember I was not trying to exclude her). This one was breathtaking. The consultant [REDACTED] parroted the comments and representations of my wife and Federal Magistrate [REDACTED] (whose is widely regarded by his peers as being very strange indeed) blamed me for everything, and suggested I had mental problems. [REDACTED] supported Magistrates [REDACTED] theme that I "had no insight". The accusation of having no insight was apparently used to justify why I should not be allowed much contact with my child (I understand that the charge of no insight is one that is quite often made by magistrates against distraught fathers).

I got another psychologist to counter the claims of [REDACTED] and at about the same time I had a disagreement with my then solicitor. He was charging an extraordinary amount of money and seemed intent of playing along with the court. He seemed to be unable to grasp the issues. In retrospect I realise that he was probably doing a better job than I thought, given that the best thing any solicitor can do for a father in this situations is be very very submissive.

Contact was gradually increased over time. It started with supervised contact - for no other reason than my wife dictated that I should be supervised. No explanation for this was provided or indeed required. The appointed supervisor, an ex nanny, was not sure why she was to supervised me. She just presumed there was a problem. It started with four hour sessions every two weeks then I progressed to over night and then at last a long weekend was allowed. It was to be the first weekend my daughter and I had been allowed for over six months and I had planned a weekend visiting her grandmother's farm near [REDACTED]. My daughter's cousins were also coming and it seemed that things were at last getting better for [REDACTED]

Two days before I was to collect my daughter at school my wife's solicitor wrote to me to say that I should not collect my daughter (despite the arrangement negotiated between us). I wrote back and advised that I would not agree to the change and so the scene was set for my wife and I to arrive at the same time. I brought all the documentation to prove that it was in fact my weekend. My wife got her solicitors on the phone who told the teachers that it was her that was to be collecting [REDACTED]. The teachers then called the police. Although I decided it was best to give up by this stage I advised the police that they had no jurisdiction in the matter. They just said they would arrest me for trespass if I didn't leave. So I left without my daughter.

At the next hearing (there had been six since abduction) Chief Justice [REDACTED] was presented with a litany of allegations that I had been abusive and had caused everybody terrible distress. My wife's lawyer had persuaded the teachers to all sign affidavits to say I was abusive (despite me getting their acknowledgement at the time that I had not been abusive in any way). They even somehow managed to get the Head Mistress to sign an affidavit saying she thought I should not be allowed to come to the school again. Fortunately she withdrew this assertion by way of a letter (it seems that this remark may have been invented by my wife's lawyers). Unfortunately just when I was about to present this letter to [REDACTED] my wife's lawyer declared that the hearing would have to end immediately to allow my wife to collect our daughter from school. Next day [REDACTED] handed down

her judgement. She was disinterested in hearing my evidence regarding the misrepresentations of the Head Mistress's affidavit. She said that my contact (as little as it was) would be suspended completely for a whole month then followed by 23 hours every fortnight with no contact by phone or otherwise in between times. I protested that this would mean I would miss my daughter's birthday so she agreed to allow me three hours for this occasion, with collection and return of my daughter to be conducted at a police station. She then devised a complex self-effecting warrant for my arrest if I was a moment late returning my daughter. When I complained about the harshness of these determinations and the distress they were going to cause my daughter, she said "Sit down [REDACTED]. Your contact with your daughter will depend on your behaviour" (this remark is documented in the transcript). [REDACTED] also ordered that I should be assessed by a psychiatrist (as requested by my wife's lawyers) and that it should be a [REDACTED] (also requested by my wife's lawyers in cahoots with the Child Representative Solicitor). I complained that she should not have the power to have me forcibly assessed by a psychiatrist, that it was an abuse of process. She said there was some question about whether or not she was empowered to do it, but she was going to anyway.

[REDACTED] then saw me and wrote a disparaging report, quoting a slab of the allegations of my wife, sentiments expressed by FM [REDACTED] and FM [REDACTED] and justifying his view on my unorthodox childhood. I then went to an independent psychiatrist, [REDACTED] (who happened to have taught [REDACTED] at university) and got a clean bill of mental health.

I now have another solicitor and barrister. We've had a couple of hearings fending off my wife's application that I should be stopped from having any contact with my daughter until she was thirteen.

The hearing before FM [REDACTED] caused the penny to drop. Like thousands of other fathers I had been convinced with the idea that the Courts were supposed to be just and at the very least have regards for the well-being of children. As a consequence I am now being very humble, saying nothing, and the barristers have negotiated progressive resumption of a full weekend's contact every fortnight, although I am still restrained from having any phone contact in between times.

For the last year I have had to go to a "Contact Centre" to collect my daughter where I am one of the lucky ones. Other fathers get to spend a couple of hours with their kids on site under supervision of young, sometimes aggressive female staff members who are often empowered to report on their level of co-operation with the process, and attitude.

In return for these improving contact arrangements I had to agree to i) allow my daughter to be "treated" by a psychologist who had previously seen my daughter and assessed her as being normal, ii) agree to doing a parenting course, and agree to be treated by a psychologist but on a non-reportable basis. My barrister explained that this was by far the safest way of securing more contact and that it was also far cheaper.

Child representative Solicitor

Amazingly the Child Representative Solicitor would not consent to the settlement agreed to between my wife and I. He argued for terms that were a little more oppressive on me. This solicitor has always been very opposed to any contact between my daughter and I and has been very hostile towards me when I enquired as to why this was his view (his only explanation

was that he was entitled to have a view). He has never met my daughter.

Given the distress my daughter has endured, much of which has been used to bolster the argument that she should be further prevented from spending time with me, I would have thought it was the Child Rep's obligation to ensure that she was not unfairly deprived of my influence in her life and certainly not subjected to excessive psychological interference, especially when those psychologists that work with the court seem so easily persuaded to favour one parent over the other and to reflect the court views over which parent that should be.

My wife and I were relatively functional as a parenting team before the involvement of lawyers and the Family Courts. We used to even have dinner together sometimes. Now my child is traumatized and subject to psychological treatment to address her impression that her mother is stopping her from seeing me, and my wife has become paranoid depressed and utterly unreasonable to the extent that she is now seeing a psychologist on a voluntary basis.

The fact that my daughter said she loved us both and wanted to spend time with us both was used to support the notion that I am trying to make her hate her mother !!!!

Naturally I have been trying to achieve the opposite knowing as I do that the better my wife's relationship with her daughter is the happier she'll be and the more secure she'll be about letting her spend time with me.

My daughter has now been to five psychologists over the last four years, I've been to seven plus two psychiatrists. Its still going. We all have to go again next month...to the guy that thinks I'm brainwashing my daughter. My daughter now believe that it is not her mother that is restricting her time with me, that it is the Courts. Needless to say I have not countered that view. Obviously her psychologist has convinced her that this is the case, amongst other things.

I sincerely believe that all this could have been avoided with mediation and counselling... I thought the courts were supposed to support mediation but it has been denied time and time again. It seems women are empowered to sever communication, refuse mediation and all this is presented to them as a solution to the distress at having to cooperate with the father of their child.

It is the most destructive process imaginable and the expense is crippling. I have spend tens of thousands of dollars. My wife has spend much more. All because I presumed there would be justice. All because I was hoping to be there for my daughter in her childhood, which is running out fast (she's now 6).

I might say here that one of the big advantages of having both parents in a child's life is so they can learn how to negotiate. Children need to be exposed to differing views and the process of resolving issues by negotiation. If they don't learn those skills their relationships with others can't be as successful or fulfilling..

It is my submission that the Family Court is completely out of control. Due to Section 121's stifling of any reporting on its decisions it is also completely unaccountable. Fathers (and occasionally mothers) that complain of the terrible treatment are portrayed as neuters. And

how could you believe what they say? How could you believe what I have said unless you already knew what is going on? Fathers usually learn sooner or later that any criticism of the courts they make, directly affect the amount of time they will get with their kids. This also acts as a dampen on accountability.

I am very concerned that the enormous (in terms of dollars) industry that parent exclusion has created will be threatened if a rebuttable shared parenting presumption becomes law. Whilst there would still some scope for parents to accuse their ex husbands of abuse they shouldn't be the opportunity to unilaterally excluded him.

I gather all those that are opposed this common sense proposition to restore children's rights either earn their income from the industry directly, represent anti-men groups or are part of the radical gender feminist groups that want to marginalize men wherever possible.

From my extensive investigations there seems to be no credible evidence that the vilification (a seemingly irremovable part of the adversarial legal system) and exclusion of fathers (predominantly) from our children's lives. I am particularly concerns about the known damage this is doing to our future generations and especially my daughter. I understand that the evidence that this process is directly responsible for depression, mental illness, teen pregnancy, under achievement, crime, suicide, relationship problems and poor health is incontrovertible..

I trust that this committee will at last protect our children from what is a terrible legal rort with diabolical consequences for society.