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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



Dear Sirs and Madams,

I am a divorced parent of 4 children and would like to make a submission responding to child custody arrangements in the event of family separation. The present system is often biased, widely perceived as unfair and against the interests of children and society. It encourages a proportion of avaricious divorce, which disadvantages many men, some women, most children and society.

In simplistic terms, both men and women (many advised by lawyers with a vested financial interest in the most extended and profitable conflict) think that what follows is a "what happens scenario". Perception is sometime more important than reality, as it shapes our actions. It is not always so, and sometimes a fair and reasonable outcome, with shared responsibilities results. I finally achieved such a happy outcome.

Under the present system the party who wins the "effective possession" of the children of a matrimonial union, wins almost all.  
Wins the children, most of the house, the money, and 100% of the benefits.  
Almost every "amicable" resolution is made under the shadow of what the Family Court outcome is believed to be.

The looser has debt, no house, and only whatever contact with his children as the ex partner will allow. For an alarming number of men, life is made un-liveable, and they suicide. For a much larger number it is a battle so biased they realise they can never win and just walk away. For a few, it is a sacrifice of years of life, huge sums of money, just to have an ongoing relationship with their beloved children.

In Sydney, a "successful divorce" can be a 75% of a million dollar asset pool, plus cash top ups from benefits and CSA. Women, almost always the "winners", in most cases usually initiate the action. Men usually the losers, their life ended at an ex partners choice.

Astoundingly, after careful consideration, the Family Court usually finds that every second weekend will do for fathers contact. Unless it's not convenient for the mother, in which case take what you get, as the court will not enforce judgements against mothers.

Fathers, who love their children with about the same passion as women, can see what they live for (their life with their children) taken from them.

When the outcome of a war is perceived to be almost certain victory, there is very limited reason not to begin one. This has reshaped our society, and not to children's (or future children's) advantage.

In 1971 36% of 20 to 29 year olds had never married. After only one generation, and the dark shadow of the Family Court, this has risen to 76%. Given extra resources and greater powers, for the present system, I wonder if they could finish the job?

Is this the outcome women, children and society wants?

The best interests of the child are served by two parents with equal rights and responsibilities, sharing separately and (when divorced) at arms length the joys and cares of their children. The child is half of each parent, and though the parents may not get along, they should both love and care for the children equally.

For a child to have two loving parents is most desirable, in the development of the child as a balanced social being. A mature and ongoing relationship with their child should be paramount. Children have rights, women have rights, and men also have rights. They must be balanced; otherwise the one on the bottom of the heap either walks away or never enters into an unbalanced arrangement.

This by its nature involves sacrifices from both separated parents, in the child's interests. Thus neither parent can be a "winners". They are both "losers" of some freedoms due to their ongoing responsibility to their children.

A situation where one side has enforced responsibilities, and the other side enforced rights, is unbalanced. Unbalanced contracts tend in time to be avoided by the party who believes they will be badly done by. Many men are wisely thinking carefully about marriage. They enter into relationships with an emotional and physical condom on.

In practical terms there will be a minority of cases where there is a natural resolution, in favour of one parent or other. These are often not contested. But where there is a strong and ongoing relationship with both parents, this should be encouraged and nurtured by the courts decisions, which must be enforced equally.

The presumption of equal responsibilities for both parents is the ideal, where obvious reasons for a parent having a diminished parental role would be:

- Where one parent choses so freely, as they realise that this would be best;
- Where there are medically identified drug or alcohol problems in one parent;
- Where one party has Professionally diagnosed psychiatric problems;
- Where the new relationships of one party cause reasonable concerns that may endanger the children's welfare;
- Where one party shows a demonstrable inability to cope well with the responsibility of commitment to the child's welfare.

Where one party has maliciously used the children as "hostages" in divorce proceedings:

Or where other physical or emotional harm has been occasioned against the children.

Allegations of child sexual abuse are the one sided nuclear weapon that some women use to win a war. These should be investigated with the greatest speed and vigour, as if true they are a foul abomination. However if false they are a vile perversion of justice and reflect very ill on the parent who would make such a claim. Many men, faced with such claims realise they do not have the resolution to fight them through a biased court and just walk away. It is not that they cannot win; it just may take a decade of fighting to achieve it.

An allegation against a an ex-husband is acted upon very rapidly, and decisively, an allegation against a custodial mother's new boyfriend (probably a greater risk) is very often ignored as long as possible. This is lunacy.

Divorce has the potential to rob grandparents who can be a major influence on and contributor to their grandchildren's welfare. Where there is a role and contribution it should be continued, by order if needed in the interests of the child's and grandparents interest. Grandparents don't always know best, and sometimes are difficult, but they rarely have any but the child's best interests at heart. Grandparents are often the source of capital that was the seed that built the assets that are now to be divided.

Logic suggests that where grandparents ask for enforced access with their grandchildren, they may in return be the subject of orders to restrain them from behaviour detrimental to the relationship they seek with their grandchildren and an ex-in-law they may have strong feelings against. Rights are balanced by responsibilities

I wonder if we might see a modest decline in divorce rates if a fair and balanced system was implemented?

A 50/50 split of parental duties will not be easily negotiated, or implemented when the assets a couple built to care for children are divided in two, and duplicated. It will require two parents, both devoted to their children, (and yet initially pretty angry with the other) to swallow their personal angst for their children's benefit. Both will have to make sacrifices, and both will have significant restrictions on their freedom and mobility.

A model of parent's equal rights, subordinate to equal responsibilities, is in the interest of children, and of our society, and any idea of natural justice.

A model of unequal rights and responsibilities, encourages the destruction of marriages, and discourages their formation in future.

I believe that there are some judicial officers, and culture of "victim-reward" within the present Family Court System who would have difficulties with such an even-handed system. Thus the implementation of the presumption that this inquiry considers may need to examine a system bias in some parts of the system, if it was to be made workable.

Yours truly,

*Alan Tamburson*