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Faculty of Law

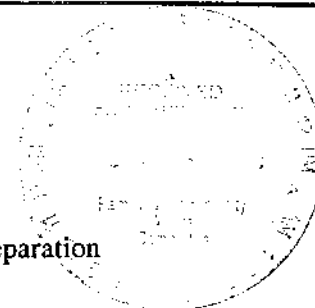


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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

House of Representatives Standing Committee on Family and Community Affairs	
Submission No	510
Date Received	8-8-03
Secretary:	

Inquiry into child custody arrangements in the event of family separation



Please find attached a copy of our recently completed study *Negotiating child residence and contact against a background of domestic violence* as our submission to the current inquiry. We address part (a) (i) of the terms of reference, that is:

- (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.

We do not address part (ii), that is, the circumstances in which a court should order that children of separated parents have contact with other persons, including their grandparents. While our research offers some findings with respect to child support, we do not make any submissions on part (iii) of your inquiry, that is the formula for child support.

It is our submission that many families can and do come to consensual arrangements about parenting post-separation. Some such arrangements will involved shared parenting where circumstances permit that outcome. Whether or not shared parenting can or will involve children spending equal time with each parent will be highly contingent – even in consensual and highly cooperative arrangements equal time may not be feasible. Consensual shared parenting agreements are commonly reached without recourse to the Family Court, and or might be arrived at through primary dispute resolution conducted in accordance with court policies.

However, shared parenting, whether involving equal time with each parent or any other arrangement, requires a high level of co-operation between the parties and flexibility by both parents to adapt to the changing needs and circumstances of the children. Where parties cannot reach amicable agreement about such issues and cannot engage in ongoing negotiation and re-negotiation as required by changing circumstances, the prospects for effective shared parenting will be low and the children's best interests may not be met. Shared parenting may even exacerbate conflict between the parties and expose children to emotional and or physical abuse.

A shift to a presumption of shared parenting would be counter-productive and may compromise the well being of children. The number of cases in which conflicts between parties cannot be resolved and must be determined by judges or registrars of the Family Court is low relative to the number of separating couples with children. However, these cases of ongoing conflict are likely to be poor prospects for shared parenting. Moreover, any decision to impose shared parenting against the wishes of the parties may result in subsequent costs to the parties and demands on court time and resources as parties seek to have unworkable orders varied.


A presumption that children will spend equal time with each parent also ignores the social reality that workplaces and other social institutions are not organised to facilitate parenting of young children. In many circumstances parents will not have an equal capacity to provide care of and time with the children. Any such presumption also risks mistaking time spent with the child as an index of quality of care, or a measure of the relationship between the parent and the child.

Research suggests that domestic violence has occurred in a significant number of cases that come before the Family Court. Our study found inter alia:

- for some mothers who have separated from a partner who has abused them, violence and abuse continues after separation and commonly occurs when parties are arranging contact or when they meet for the handover of children for contact.
- consistent with other studies, we found that children often witnessed violence and abuse and some children were themselves subject to rough handling or violence at contact handover times.
- mothers commonly wanted children to continue to have contact with their fathers post separation but were concerned about the children's safety. Not all fathers had the skills to care adequately for the children and some mothers expressed serious concerns about fathers engaging in unsafe behaviour and or neglecting the needs of the children.
- some children were disturbed as a result of contact with a parent and some children were seriously distressed at being required to have contact with a parent against their express wishes.
- some mothers agreed to parenting arrangements that put their own safety at risk or were not in their children's best interests due to coercion from or fear of the other parent, perceptions of pressure from counsellors or other professionals, or due to a belief that they had no other option. We would caution the committee that imposing a presumption of shared parenting with equal time with each parent may exacerbate the pressures already felt by some mothers to agree to unsafe arrangements.

In summary, we submit that a presumption of shared parenting, with or without the requirement of equal time spent with each parent, seriously risks undermining the principle of the child's best interests. Parents who cannot agree about parenting arrangements for their children are ill-equipped to undertake shared parenting. Moreover, where domestic violence has occurred shared parenting may place the mother and children at serious risk of further violence and abuse. The principle of the child's best interests demands that the circumstances of each child be given due consideration.

Yours sincerely



Julie Stubbs,
on behalf of Miranda Kaye, Julie Stubbs and Julia Tolmie

7/8/03