

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

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 709

Date Received: 14-8-03

Secretary.

Dear Committee,

**Re: Inquiry into child Custody Arrangements in the Event of
Family Separation**

The Coburg-Brunswick Community Legal and Financial Counselling Centre Inc wishes to participate in the Inquiry on the basis of our experience in family law matters over the past twenty-two years.

Coburg -Brunswick is located in the City of Moreland, an area of Melbourne characterised by a low socio-economic demographic. 53% of our clients are recipients of Social security benefits, and 55% of our clients come from Culturally and Linguistically Diverse communities. Family Law is the largest single component of our caseload. Many people come to the Centre simply to find out information about how to proceed with a divorce, and with residence, contact and property matters in the event of separation. They are able to negotiate with their partners a solution to residence/contact issues that suit their families' needs and the reality of economic hardship which results from splitting the families' income to cover the cost of two residences.

Others are not able to negotiate anything. We see families torn apart by domestic violence, child abuse, substance abuse, cross-cultural divisions problem gambling and mental health problems. We see families where one party refuses to accept that the relationship is over and pursues the other party through every means at hand for years. We have seen cases of domestic homicide, of child kidnapping and many, many cases of violence after separation where the "changeover" of child residence has provided the opportunity for violence. We have seen countless cases of emotional, psychological and financial abuse in which children are used as a weapon in the war between the parents.

The questions to answer are:

a) Would the presumption of joint residence alleviate some of these problems and enable more families to enjoy harmonious relations post separation?

On the basis of our experience working with families it is clear that the answer is no. The presumption of joint residence will not provide a solution to many of the problems we see in our Centre. Although we do see joint residence arrangements amongst our clients; successful, long-term joint residence is a rarity, and only works in a small minority of cases.

b) Is this solution, on the basis of all evidence, in the best interests of the child?

We would have to argue that in very few of the cases we see would joint residence be in the best interests of the child.

Joint residence is a laudable ideal and can work well for certain families. However, it does not reflect the realities of the lives of most children in post-separation families.

We suggest that the families who are best able to satisfactorily effect joint residence arrangements are the same families who have no need of Family Court intervention to resolve their disputes.

When both parents are sensible, flexible and genuinely put their child's interests first, they are able, sometimes with legal and/or counselling assistance, to make arrangements which accommodate both the children's needs and the parents' working hours and financial position.

In our experience, such arrangements rarely involve a strict 50/50 allocation of time spent with each parent. Children attend school and sporting and extra-curricular activities. They usually have one set of textbooks, one computer, one cricket bat, one pair of ballet slippers etc. There are few families who can afford to duplicate such items between two separate residences, and it would be unreasonable and unrealistic to expect children to constantly carry clothing, toiletries, educational requirements and other necessities of their day-to-day lives about with them.

Altering the Family Law Act to include a rebuttable presumption will not affect families who are able to reach amicable and reasonable arrangements between themselves.

Conversely, in cases where separated couples are locked in intractable dispute, the insertion of a rebuttable presumption of joint custody into the Family Law Act would make little difference.

CASE EXAMPLES:

- *We currently represent a woman who lives in [REDACTED], close to the former matrimonial home. The woman and her former husband have one eight-year-old son, who attends the local [REDACTED] primary school. The boy's father has moved to [REDACTED] to be near his recently obtained employment. It takes at least one hour to drive from Coburg to Chadstone, more in peak hour traffic. The father has contact with the boy every second weekend. There has been much litigation between the parties, and this father would certainly apply for joint custody if this were the default position. The father works full-time, so if the boy were to divide his time equally between the parents, for each day he was residing at his father's house he would have to spend almost three hours on public transport, simply to attend primary school.*

- The Centre acted for a male client who suffered from mild psychiatric disabilities and who required extensive support and treatment from community and health services. Notwithstanding this, his fervent wish was to maintain a stable relationship with his 4 year old daughter. The Centre represented him in his Family Court application and the Court's assessment was that supervised fortnightly contact visits were in the child's best interests. There is no way that our client would have been able to provide, on his own, the level of care required for joint residence. The process he and his wife would have had to go through in order to rebut joint residence, would have been extremely damaging for our client and would therefore have had a negative impact on his relationship with his daughter. Without doubt, the best interests of the child were served by the intervention of the Family Court and its authority to decide applications on a case-by-case basis.*
- Another woman who has come to the Centre for advice has been to the family court many times, initially for orders as to her daughter's residence and contact with her father, and subsequently to enforce the return of her daughter from weekend contact. The father is employed and has private legal representation. However his income is cash-in-hand and he pays no child support. The mother is dependent on Centrelink payments. The mother has had Legal Aid for the various applications and an independent Child Representative was appointed. The mother's \$10,000.00 maximum Legal Aid grant has now run out. The child has recently returned from weekend contact threatening to commit suicide and telling her mother that the father had made her watch the video of her parents' wedding umpteen times over the course of the weekend. The mother has no resources to make any further court application. If the proposed rebuttable presumption were in place, this child would be spending equal amounts of time with her father despite the apparent damage that this is causing; especially if the presumption was activated without any concomitant increase in legal aid funding.*
- Father filed for joint custody as a means of avoiding child support payments. The father obtained the order, because the children were afraid to tell the father they did not wish to live with him. This has resulted in serious financial problems for the mother and emotional distress for the children.*
- When the parties separated, the children were one and three years old. An order was made for joint custody. Now, the oldest child has started school, but the father recently moved residence from [REDACTED], in [REDACTED], to [REDACTED] an outer southern suburb for work-related reasons. The mother came to the legal centre to have the order changed, since a child cannot attend two different schools. In this, as with many similar situations, joint custody is simply not practical.*

- *One woman client with had experienced domestic violence frequently before leaving her husband. Nonetheless he was granted interim unsupervised contact with the three young children, in the period before the Family court heard the case. During that time, she was experiencing violence at the hands of her ex-husband every time he arrived to pick up the children. She tried to organise family or friends to do the 'handover' but due to his persistent intimidation and abuse, no-one would have anything to do with him. There is no Children's Contact Centre in the area, and so the woman had to drop the children off at the local police station.*
- *█████ got pregnant when she was seventeen. Her twenty –year-old boyfriend took off interstate when she told him the good news. Now the child is three and the father has returned to █████. The mother is happy for the child to get to know her father, but the girl gets hysterical if her mother is not present when he visits. He is demanding fortnightly contact visits, but as far as the child is concerned the man is a stranger and it will take a long time for her to feel comfortable with him. In such a situation, if there were to be rebuttable joint custody, would the mother be forced to take a case to the Family Court to protect the best interests of this child?*

ECONOMIC FACTORS IN REGARD TO JOINT RESIDENCE

In addition to providing a free legal service the Centre also offers a free financial counselling service. 88% of the clients of the financial counselling service last year were recipients of Social Security benefits and 46% were from culturally and linguistically diverse communities. 69% were women, and of the 50% who were sole parents most did not receive any child support from the father of their children.

The proposed joint residency arrangements seem to be based on the assumption that a family will have no more than an average number of children and each parent will be economically able to provide an appropriate residence for the children in the event of family separation. The proposed "one size fits all" approach to child custody arrangements in the event of separation of the family clearly will not be an option for many people who seek financial counselling at this Centre.

Financial counselling casework at this Centre shows that people on low and fixed incomes have limited options as to how they live. Their poor economic circumstances leave them with very few real choices. In the Coburg-Brunswick area there is limited public housing and clients are forced to rent their accommodation in the private market often paying in excess of 50% of their limited income in rent. Many families have more than just one or two children and even finding one residence to accommodate a larger family is extremely difficult.

The cost of renting two suitable residences will be a huge economic barrier and is likely to prevent shared residency from ever being a reality for low income families in the event of separation.

Case Study

█████ has 8 children under 10 and lives with her husband █████. █████ receives the █████ Support Pension and █████ receives Parenting Payment and Family payment from Centrelink. █████ makes no financial contribution at all to household expenses. █████ seeks assistance in making payment arrangements for winter electricity and gas bills, which are in her husband's name but for which she accepts the responsibility to pay. █████ has a black eye, she says she has had enough and is thinking about separating from her husband. █████ is booked into the Legal Service for advice about separation.

Presumption of joint custody after separation, equal care by both parents assumes: two residences large enough for 8 children, basic items such as beds, bedding, clothes and toiletries in two locations, transport to and from both locations for 8 children and their belongings.

Shared custody an economic and practical possibility for this family – Not likely!

CONCLUSION

- We do not support the move to introduce rebuttable joint custody, because the child's best interests must be paramount, and this can only be ascertained by the Family Court examining each case on its merits.
- Children should not be treated as if they are property to be divided up equally, like the household china. Parenting is about equality of love and responsibility by both parents, by putting the children's interests first, regardless of who has more hours of contact.
- Any reassessment of the Child Support formula must bear in mind the real costs of raising a child, which includes on-going expenses such as housing. Any idea that joint residence could lead to reduction of either Child Support or benefits to one or both parties must realise that for our clients the rent still has to be paid each week, and two residences will mean two family homes instead of one.

If you would like to discuss any of the issues raised in this paper, please contact us on 9350 4555.

Yours Sincerely,
Coburg-Brunswick Community Legal & Financial Counselling Centre