

Submission No: 774

Date Received: 7-8-03

Secretary:

TERMS OF REFERENCE [REDACTED]

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

(i) A presumption that children will spend equal time with each parent would depend upon the existence or development of the following factors:-

- Parental desire to share parenting time equally.
- Willingness to build a "business like" co-parenting relationship.
- Willingness to explore the issues involved in making such an arrangement work; both as individuals and together as parents.
- Ability to put aside personal differences; to rise above acrimonious behaviour that often accompanies separation. Ability to "own" and work through personal problems and difficulties (and a willingness to seek counseling or other assistance if necessary) encountered without resorting to projecting onto or blaming the other parent. The Family Law Pathways Advisory Group Report quite rightly identifies parental conflict as having a profound influence on the emotional and psychological development and wellbeing of children and adolescents.
- A need to acknowledge a sharing of parental responsibility and control and implies open and honest communication in regards to issues that affect the children.
- The ability to respect different parenting styles while acknowledging the need for consistency.
- A willingness to access the services of a mediator such as the Contact Orders Program to help solve disputes and to protect children from continued exposure to parental conflict.
- A willingness to seek access to services that provide assistance in conflict resolution in order to preserve litigation (which is expensive and stressful) as a last resort instead of the first "port of call".
- Willingness and ability to meet the costs or personal sacrifices involved of e.g. restructuring of work and social/leisure hours (and possible loss of income) in order to accommodate equal shared parenting. Sharing childcare costs.
- Both parents committed to upholding a parenting agreement to the best of their abilities with some degree of flexibility. Basic "rules" e.g. courtesy of 24 hours notice of change of plans. Not taking the other parent for granted.

Some practical considerations might be as follows:

- Desire and financial ability to live in relatively close proximity in order to minimize disruptions to the children's schooling and extra-curricular activities.
- The health and wellbeing of each parent.
- Involvement of new partners and step/half siblings.
- Last but by no means least: the wishes and desires (depending on age and maturity) of the children themselves, should be taken into account in order to facilitate the best possible outcome for all concerned.

(a)(i) Such a presumption that children will spend equal time with each parent could be rebutted in the following circumstances:

- When one parent takes on a fulltime carer role of children with disabilities and special needs; and has established working relationships with teachers, therapists and medical specialists. Often the other parent cannot be as involved due to work commitments and or an unwillingness to be involved in this side of the parenting/carer role.
- The absence of some or all of the above factors that support the presumption of equal parenting.
- When there is a documented (e.g. doctor's/police reports) history of spousal or child abuse and threatening, bullying behaviour.
- Drug or alcohol use and abuse that endangers the children's safety and welfare.
- A lack of commitment to keeping access times or a demonstrated lack of interest in child's general welfare.
- A continued refusal by either parent to participate in a mediation process.
- A lack of family, community or social support that is isolating for either parent and results in parent choosing to move to an area where these supports are in place.
- Financial considerations – cannot afford to live in former suburb or city due to rental costs/cost of living.
- Unable to relinquish work hours; inability to restructure work hours or to find work that accommodates shared parenting responsibilities/requirements e.g. shift work versus 9.00 am to 5.00 pm.

(a)(ii) In what circumstances should a court order that children have contact with other persons e.g. grandparents:-

- When either parent deliberately or willfully denies or obstructs access to ex-spouses relatives. Could be supported by a diary.

(b) Whether existing child support formula works fairly for both parents in relation to their care and contact with their children:-

This is a very complex issue as there are so many factors involved. There is no denying that some parents are considerably worse off financially post separation. Parental resentment and frustration at having to pay for children they rarely see regardless of the main caregiver's income is understandable. However, it does not excuse a lack of commitment to regular financial contribution to the children's living expenses. Children are not responsible for their parent's financial situations. Both parents have a legal and moral duty to provide financially for their children. My own experience suggests that if these issues had been addressed properly in the beginning, I (we) could have been spared months of extra stress, abuse and worry.

How can financial obligations be made more equitable?

- Compulsory attendance of mediation.
- Both parents to be income tested especially in cases of remarriage/second families.

- Keeping of records of expenses; and diary of time spent with children in order to support claims of being disadvantaged.
- Realistic acknowledgement of living costs and accountability.
- Ongoing accountability of both parents may help prevent either parent feeling disadvantaged.
- Both parents need to be monitored for their financial wellbeing.
- Easy access to lifestyle and money management courses/education if required.
- In the case of ongoing disputes mandatory mediation and the involvement of the CSA in order to protect the rights of the children to be properly and fairly provided for financially by both parents.
- Concessions for contact parents who need to travel at their own expense to see their children.