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Standing Committee on Family and Community Affairs
House of Representatives
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House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	882
Date Received:	8-8-03
Secretary:

Dear Ms Forbes

Re: Submission to 'Inquiry into child custody arrangements in the event of family separation.'

There is no issue that I am a good dad. I have tertiary education, a good job and am otherwise capable. I have 3 children, now aged 10 to 13 inclusive, from a first marriage.

My ex wife and I separated in January 1998 and I lived not further away than about 15 minutes travelling time. The children spent time with me, including sleepovers, 3 times per week (Tuesday, Thursday and the weekend) and half school holidays.

I spend hundreds of hours drafting and re-drafting and negotiating and re-negotiating a 'parenting agreement' with my ex wife. She ultimately agreed to nothing.

In late 1998 my ex wife became incensed at my having commenced 'dating' and threatened repeatedly in front of the children that I would not see the children except as she 'felt like it'. She also did her best to convince the children that I had 'dumped' them and wouldn't see them regularly into the future. To secure some surety for myself and kids, I had no option but to take an application to the FCA. That application resulted in orders confirming the status quo arrangements pending a Final Hearing.

The children's views about contact with both parents were recorded by a FCA Family Counsellor in the course of a 'Family Report' being prepared for the Final Hearing. The children were 6, 8 and 10 at the relevant time. The Report indicated that two of the children wanted to maintain the 3 times per week contact with me and the other child (an 8 year old boy) wanted more contact with me. The Counsellor attended the final hearing and gave that evidence. She also offered her professional opinion that the children were very close to me and needed to spend time with me regularly and at least 5 times per fortnight.

My ex wife lied in her evidence that I was a bully and that I had threatened her. She requested that I only be granted every second weekend plus one (1) hour on a Thursday night once per fortnight (to look at homework), as she got stressed to have any contact with me. She had no corroborating evidence of any harassment. She told the Court that the children did not have any views of their own about contact and were only saying what their father wanted them to say.

In early 2000 the Court cited the evidence of my ex-wife and reduced the amount of contact the children had with me to four nights per fortnight. The Court argued, inter alia, that the best interests of the children would be served by my ex wife not getting too stressed by regular contact with me. What about me and my children? The Court did this despite the fact that the children had seen me 3 times per week for 2 years since separation at that stage. The four nights were Fri and Sat every second weekend and Tues and Wed together fortnightly. This pattern created an eight day (8) block of absence from me, which the children and I had never had to endure before.

I was devastated. My Barrister however was very pleased with the result and assured me that most men get a worse deal from the FCA. He explained that most men settle on every second weekend when it is explained to them that the Court will probably not give them any more than this amount anyway.

My ex wife and I are \$55,000 poorer due to the legal fees associated with only the interim and final hearing proceedings. Our combined worth at the final hearing was only about \$120,000 anyway. The Court divided our property 80% to my ex wife and 20% to me. I had to pay-out my ex wife's interest in my future superannuation in that property settlement, despite the fact that I won't see that superannuation myself for 25 years. I have \$20,000 on credit cards and just can't reduce that balance. Accordingly I am servicing debts with large interest payments because of Legal Fees and because I had to pay my ex wife for my superannuation now. By the time I see that superannuation, the interest I will have paid on the years and years of debt will mean that my super will be worth much less to me than the super recently paid to my ex wife. This is GROSSLY unfair.

The 8 day block was and remains extremely cruel. The children cried a lot for two (2) years and asked their mother repeatedly (hundreds of times) for more time with me. Every request, even for one (1) hour more has been refused. Numerous of those requests have been met with punishment. I live 1.5 kms away but can't have them with me for an eight day period. The children and I remain unhappy with those arrangements. I find them obscenely unnatural and artificial.

My ex wife has subsequently confirmed that she built ambit into her cross-claim on legal advice and that she sought an amount of contact between me and my children which she even thought was unfair.

In approximately August 2000 I had to take an application to the Court so that the children could accompany me and their Grandmother to witness the event of their GreatGrandfather carrying the Olympic Torch down the main street of his home town of [REDACTED]. My ex wife had refused as the children were due to be with her on those days. The Court did make Orders permitting me to take the children to that event but the judge was openly hostile towards me and, on a technicality, ordered I pay about \$1000 Court Costs to my ex wife.

My ex wife maintained her hostility and breached the Contact Orders which provided for telephone contact between me and my children many times in the 12 months

following the Final Orders being made. My ex wife would take the phone off the children, unplug it at the wall, leave it off the hook, tell the children they couldn't speak to me etc every time she was feeling hostile. I took 16 alleged breaches of telephone Orders to the Court in 2001. The Court said on the hearing day words to the effect that they were too busy to deal with all of these and that I had to pick my best 3 and proceed in half an hour. I did this and two of the three charges were found 'proved' following a formal hearing, including cross examination etc. As you may be aware, getting these charges found 'proved' is extremely difficult, as the Act provides in-built defences to breaches of the Court's Orders. More specifically, it is a defence if you can maintain that you either did not fully understand the Order or had a reasonable excuse for breaching it. In finding the charges 'proved' against my ex wife, the Court was apologetic that it had no other choice in the circumstances and punished her only with a warning.

I tried again for fairer contact with a new application in early 2001, but the application was dismissed on the basis that the children's circumstances hadn't changed 'substantially' since the Final Hearing. I appealed that decision and lost the appeal.

I have now brought a further application. As usual, it will take over 12 months to get to a final hearing. I am seeking that the children spend half their time with me. My ex wife just maintains her usual refusal and offers no reasons. The children support my proposed Orders and its very unfair that we have to wait 12 months for a hearing. The children have been appointed a Child Representative for those proceedings and made their views clear to that person. The Legal Aid Commission has formally approached me to pay at least half of those costs. I have no money and a lot of debt. By the time I get to a Final Hearing for this application, the children and I will have been unhappy with the 8 day block for over 4 years. This is unbelievable and sad. Because of a malicious ex wife and a Court biased in favour of mothers, I have missed way too much of my children's childhood.

All of my children were deliberately conceived. No question of my parenting competence has been raised. Except in extreme cases, a parent enjoying a fair amount of his children's childhood should be regarded by our society as a parent's inalienable right. So should the rights of children to a fair amount with both parents be regarded as their inalienable right. Taking too much 'parenting' off a good dad who just wants to help his kids and have some joy from his parenting along the way is a great injustice. I have had huge difficulties coping with this regime. My capacity to work properly or to keep my job (which is in the children's best interests) is impaired. My capacity to maintain other healthy relationships, to resist depression and resist just 'giving up' is threatened. The truth is I just can't take it, its too unfair, so I just have to keep fighting. There are approximately 10 periods in the past where 'suicide' seemed like an option to deal with the pain. By the time I get a fair deal for me and my children, they probably won't be children any more and I'll just be a bitter and twisted person like I never wanted to become.

Presumption as to equal time:

I submit that a legal presumption that the children should spend equal time with both parents would likely have generated a completely different scenario for my children

and I. It would have saved me and my children from four years of varying degrees of emotional torture. It also would have saved a great deal of money for both parties, who no doubt could have benefited their children with it.

In my case, the parenting is already 'shared' to an extent and the relations between the parents are very poor. I submit that poor relations between parents should never result in Orders being made very substantially in favour of one parent. If such a concept were to prevail, one parent would always have an incentive to create such poor relations or at least exaggerate the existence of poor relations for the purpose of advancing their own interests. My ex wife makes many issues very frustrating for me, but the remedy should not be that the children miss one parent.

Put differently. A presumption in favour of equal time should not be able to be rebutted on the basis of poor relations between parents.

Contact with other persons:

My mother is the children's only living grandparent and she is close with them. My mother's time with the children is limited to the times the children are with me. Courts should certainly be able to make Orders in respect of Grandparents and other people with legitimate interest in contact with the child. If I got hit by a bus tomorrow, my mother would be a very important person to my children but would have no rights to see them or even to console them. She of course should be able to approach the Court for some orders.

Child Support Formula:

I pay over \$16,000 net p.a. in CS payments. This amount would be about \$2,500 more if I didn't have the children one-third of the nights in a year. I also have a 2 year old child from a current relationship. I would also pay about \$2,500 more if I didn't have him.

The formula is harsh on the paying parent because:

- * Increased access to the children leads to a disproportionately small decrease in the child support payments made to the payee parent. I have the children with me one-third of the nights in a year and pay \$16k. If I have them half the nights in a year, I will still pay approximately \$14,500. This reduction in CS payments would not reflect the costs I incur in having the children with me for that extra time. It is wrong that extra time with my children would make my financial situation even more untenable. The amount per day for a child should be an amount calculated with reference to cost of living with a factor for payee income. Once calculated it should be applied to each day at the same amount. This would provide reductions in payments properly proportionate to increases in contact.
- * my ex wife does not work and does not seek work as she gets the 'pension' plus CS payments. If she were to work, she says she would be worse off because she would have to make up the pension before getting ahead. It

follows that much of my CS payments go to supporting my ex wife. She could waste it all if she wished. I think CS payments should be spent in favour of the children they are paid for and that payee parents should be forced to demonstrate that they were.

- * The \$2,500 deduction I receive for my additional 2 year old dependant child would not apply if I separated from his mother. At any such point he would not be a 'dependant'. Accordingly my CS payments to my ex wife would increase by \$2,500 pa and I would also be liable for a full amount of CS payments to this last child's mother for him. A burden I couldn't possibly carry without becoming homeless myself. Surely the cost of supporting a child should be a consistent amount across these payments/discounts and circumstances.

Lastly, I request you have regard to the Australian research of Professor Patrick Parkinson which indicates 74% of separated dads are unhappy with the low amount of contact they have with their children.

Thank you for this opportunity to make a submission to the Inquiry. I would be happy to further discuss any issue within this submission.

Yours sincerely

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