

Submission No: 1428

Date Received: 15-9-03

Secretary:

Thursday, 11 September 2003

Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT2600

Dear Sir / Madam

I present my submission to the inquiry into child custody arrangements and child support. This submission is in support of changes to family law and child support, which increase children's time with their father.

Included in this document is a part copy of a letter to the Family Court Counselling supervision team. The document, "A case for Change", written by me is a public document I consider very important, covering the history of laws and children, which I have revised for this submission. Referring to your terms of reference here are my suggestions;

(a) (i) Children have a right to spend equal time with both parents regardless of age, removing a parent without proper reason is an act of cruelty to child and parent and should only be taken in last resort. Age of the child would have a factor in the length of time spent from either parent:

- 0 – 1, half day with both parents,
- 1-3 year olds children day about, one day with dad, one day with mom.
- 3 – 12 year olds, two days with dad, two days with mom.
- 12 – and above, as they have spent time with both parents and are becoming more independent the child should have a gradually increasing say in how they would like to change things.

If one parent wants to deny or reduce the other parent's involvement with their child it should be argued in court.

(ii) It is presumed with equal time spent with both parents', grandparents and other persons would automatically be part of the children's life.

In circumstances where a parent has died, or for other reasons the parent is separated from the child, the grand parent(s), if willing and able should be allowed to take over their child's (Father or Mother's) responsibility and take care of their grandchildren. This is seen as a natural extension of a whole family where grandparents would be involved looking after children at time like during school holidays.

However, if there is a conflict between relatives, and a grandparent(s) is refused contact by a parent with their grandchild, the court would have to consider the views of both the child's parents.

(b) The existing child support formula is one important cause of divorce, it is an unfair and cruel system that overwhelms those paying. It in short it should be scrapped and buried.

Why we need change.

It is not money, as is sometimes said, but the love of money – the excessive, selfish, covetous love of money, that is the root of all evil.

Author unknown.

An analogy of the current family law shows the faults quite clearly;

You are in business with a good friend.

If they know they could get 70% of the assets and leave you paying the lease on the building for the next 15 to 18 years, how big does the argument have to be before your partner kicks you out?

Furthermore, how powerful or powerless would you feel, negotiating or disagreeing with you partner knowing that you could loose you future?

A longer version of this analogy is at the end of the document, "A case for change", included with this submission.

I once drove a young man in my taxi on night in Perth some 15 years ago. What he said chocked me, but I couldn't understand his fear at the time. As we drove into Perth he suddenly burst out: "I'm thinking of having the sip!" I didn't understand him, but saw he needed to talk and encouraged him to explain. He explained to me with fear on his face, he was going to a doctor to be sterilised. He wasn't married, had no girlfriend. He had no children, what he had was a mate, who's future was destroyed by girl. The girl had lied, telling his friend she was on the pill. A baby was born and the CSA demanded child support.

The CSA has the power to drive young men to sterilise them selves before they even think of marriage or children. I now understand his fear as I too contemplate sterilisation, but my fear different. It is the fear of not surviving the loss of another child, emotionally and financially.

Choosing to separate is hard emotionally, but the worst was still to come after the separation realizing how unfair the system was. It nearly killed me, it might still do. You see, when you loose your children, you loose your hope. With hope lost, every day things become difficult as your memory fails, you become forgetful as things once leant are forgotten. My finances are a mess with bills piling up, the CSA wants money, my car needs fixing, and the ex still treats me like the enemy. Court orders aren't followed, and me filing a Contempt of court order as I have done before will change nothing but to increase the hate ~~of~~ my ex. *has for me.*

In reality I would be better off in jail, were I could study in peace and not be tortured by the normal day-to-day goings of society. Being free but not able to be part of society as my wallet is always empty is worse than jail. The constant reminders of all the things I used to be able to afford to do, but no long can, equals psychological torture.

The following pages are part of my personal story.

Your Sincerely /

[Redacted signature]

A Case for Change

Why fathers feel the Family Court is biased and why Family Law is not
in the best interest of children.

“In heaven there will be no law and the lion will lie down with the lamb,

whereas,

in hell there will be nothing but law and due process will be meticulously
observed”

(Gilmore, 1975)

Researched and written

by



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1 Introduction.

Why do fathers feel the Family Court is biased and is the Family Courts perception of "in the best interest of children" in reality the children's best interest? This document is concerned with the practice of the of the Family Court reducing 92 % of fathers to seeing their children two days out of 14 and how the Family Court can view this to be in children’s best interest. Researching the history of laws applying to children and families it becomes clear that fairness has never existed. Laws came about to protect property and the greed and interests of those in power, not children.

Searching for reasons to these inequalities, the horrifying truth of childhood history becomes apparent. Historians and writers give hints, but as it is a sickening and controversial past, few have written the whole truth regarding childhood history, preferring to make excuses or omit an awful past. Lloyd deMause opens his book “The Evolution of Childhood” with these lines:

“The history of childhood is a nightmare from which we have only recently begun to awaken. The further back in history one goes, the lower the level of child care, and the more likely children ore to be killed, abandoned, beaten, terrorized, and sexually abused.”

His description of violence, rape, neglect, infanticide, incest, and the abuse of children by parents and those entrusted to care for them, was the prevailing custom in most societies, with no or few laws protecting children. This abuse and torture, carried out by parents was a continuation of the abuse the parents themselves had suffered as children, growing up as psychologically traumatized humans.

(Lloyd deMause has challenged any historian to find a child mentioned in historical texts, who has not been abused by using today's standards of childcare, to date no one has taken up his challenge.)

The legal procedure, combined with the belief, of the good old days being superior, in many instances holds back the progress of the laws concerning children and their care. To disregard the history of childhood, yet hold on to laws as wisdom from the past, condemns us to repeat mistakes, missing the opportunity to make progress for children and society. To understand our laws we also have to understand the heritage behind a law, the story of how and why it came about and the society who wrote it. To this we should understand human culture is always changing in erratic ways through history. Our laws of today descend from the Roman Empire where we begin.

2 The History of Childhood, and “The best interest of children”

2.1 The Roman Empire

The roots of modern law came with the Roman Empire though the invasion of Europe and England. These ecclesiastical laws, strictly meaning “The law of the church”, received the nickname canon law, meaning measuring rod or ruler, the rule of the church was the norm of the day and the lawyers called canonists. Canon law exercised a wide jurisdiction in both criminal and civil matters throughout Europe.

In divorce under Roman law, the father had an exclusive right to his children, which were viewed as chattel, the property of the father. He had the legal obligation to care, protect and educate his children. He also had the right to put his children to death, sell them or force them into enforced labour. If someone raped his daughter, he might seek punishment in the courts, not because he cared for his daughter but the rape or seduction was without his consent and undermined his authority over his daughter. Roman society openly approved infanticide like most other ancient societies. In response to Christianity, Roman law changed making infanticide a capital offence but no cases of punishment are found for this law in a detailed record of case history from the Roman Empire.

In the Roman household, men and women lived in separate lives, slept in separate areas and ate apart. The custom of sending young children away to wet nurses, foster families and young boys to older men for their apprenticeship was common practice. It was common practice for tutors and teachers used their students sexually, pederasty, the sexual relationship in between a older male and young boy such a common practice, even wives complained of not getting enough sex. The brother of the mother had the nickname the "up bringer". Parents believed other adults with no emotional connection to their children, would be stricter and harsher, working them like slaves, beating them and using them sexually. They in return took in other children in their home, giving the same treatment their children got elsewhere. These customs continued in various forms to modern times in all classes of society, like the English custom of sending children to boarding school were many endured sexual abuse and harsh treatment. Sending children as migrants to Australia was popular between 1618 and 1967, and in Australia the removal of Aboriginal children continued to the 1970's. All of this was somehow done as "for the good of their children."

2.2 English History

The need to ensure the proper passage of property form one generation to the next was one of the main influences giving the father in Roman law and the manor lord in feudal England. During the middle ages, the ownership of property did not strictly rest with the family but with the manor lord who ruled over all his subjects. The manor lord would choose a woman's husband. Her children became the property of the lord, who became his vassals and protecting his wealth.

Childhood as we know today did not exist in Anglo-Saxon society. The considered infanticide a virtue in medieval times, mothers killing their newborn before the first feeding were excused. At the age of ten if a child survived the traumas of growing up he was considered an adult, he could dress as an adult and most importantly, he could work. He however, had no rights or privileges, only duties to fulfil set by those around him.

In the 16th and 17th centuries, the Puritan movement gained political force, Protestants demanded reform to doctrine and worship within the Church of England enforcing stricter religious discipline and laws with minor results. The abuse and mistreatment continued with a religious favour, beating the sense of god into children became the new flavour. These wide spread customs of abuse continued in all social classes as few wanted to interfere with the parents rights over their children.

The first time children were recognised by English law can be put down to 1601, the year Queen Elizabeth I, proclaimed the Second Poor Law. This law puts the duties on parents and their close relatives to maintain children. The driving force behind this law was not driven by child welfare issues, but to reimburse the church and lessen the expenses the church had of operating poorhouses. The courts did not get involved if parents neglected or abused their children unless it lead to death and then perhaps in cases where the parent had abandoned the child with out recourse for the parish church.

In the 19th century the welfare of children had no improvement. It was still common to see dead infants lying in the gutters or dunghills of larger English cities including London. At the end of the 19th century England had seven million children enrolled in "burial insurance societies", for comparison London's population in 1901 was 6.5 million. Parents could easily collect money for killing their children. If parents were offered free medical care for a sick child, they usually refused replying, "No, thank you. He is in two burial societies." At the time, arsenic was the favourite poison to use. Doctors, churches and governments ignored the high rate of child deaths, not caring or wanting to interfere in the private lives of families.

2.3 "The best interest of children" in Australia

Children in Australia also suffered under government prejudices thought be "in the best interest of children" at the time. In Sydney, during the 1850's the policy of placing children in institutions, removing them from their "immoral and incompetent" mothers applied. This policy came to as a result of a population boom, reports say the streets of Sydney were full of roaming unsupervised children. Realizing these children would be the future citizens of Australia, the colonial government commenced polices of segregation an protection, institutionalising children. In some institutions it was reported staff on horseback rounding up children like sheep. In 1863, death rates attributed to neglect, ignorance and maltreatment of children under the age of three years, were 25%. Aboriginal children and families continued to suffer under the policy of assimilation in institutions under the doctrine of "the best interest of children" into the 1970's, long after it was discontinued for white children. This showing the arrogance of English culture prevalent in Australian government, courts and society towards those viewed inferior or unfavourable by custom or law.

3 The slow change for better care of children

Socrates and Plato knew the key to a person's development in their childhood. Major thinkers in the last fifteen centuries have spoken out against the treatment of children, without society or customs changing.

Things started to change during the industrial revolution in the 1850's, which brought astounding changes to society. The advances of science and industry presumably opened people's minds during this time especially Darwin's publication of "The Origin of the Species" in 1859, which the new theory of evolution was explored. This book was widely discussed and debated, questioning customs and religions. Major changes in work patterns during this time forced fathers to work in factories away from home instead of on the farm or in the village. Mothers increasingly stayed at home taking care of children. The division of family responsibilities was the result, the father as wage earner and the mother as homemaker. The nurturing mothers role was established and the "tender years" doctrine (meant for children under six) gradually began replacing the father's absolute power over children. The assumption of mothers being the natural nurturers got support from Freudian psychoanalytic theory in the 1930's. These studies and others focused only on the mother – child relationship, ignoring the role of the fathers in their children's development. The result was an idolising of the mother's role as a homemaker, which simultaneously locked women into the kitchen, this later resulting in women breaking out of this fixed role in the feminist movement beginning in the 1960's.

4 Present Family Law

The legal changes brought in by the Family Law Act of 1975, together with the social acceptance of divorce resulted in steeply increasing rates of families breaking up. Before the social acceptance of divorce as a means of ending an unsatisfying relationship, the main reasons behind divorce in the 1900's were alcoholism, neglect, severe mental illness, or abandonment. Non-custodial parents were expected to cut their ties with their children or have very brief contact under these circumstances. However, the application of this precedent to divorcing parents today is downright cruel towards both children and parent. Women do not have good parenting abilities because they give birth, they only have the means to have a baby. Good parenting is not gender specific, it comes from education and empathy, and men can be as good or better parents given the opportunity. The current norm of the courts to let fathers to see their children two days out of fourteen ensures a high chance of relationship failure between children and their fathers.

The Family Law Act 1975 also established the Institute of Family Studies; one of its principal functions is to promote the family unit, which raises some questions.

1. How does the AIFS and the Family Court measure success and failure?
 - a. Divorce rates?
 - b. Birth rates?
 - c. Female or Male marriage satisfaction?
 - d. Satisfaction of parents and children after divorce 5, 10, 15, 20 years later?
2. Does the Family Court and the AIFS have a bias against men, and if so do they care?
 - a. If no bias, are Australian men just bad fathers?
3. Has the Family Court created a cycle of boys having their fathers removed at a young age and now these boys fathers themselves, just disappearing off the scene when told they are not wanted?
4. As divorce rates increase how long can the Family Court argue it still supports the family unit as the natural and fundamental group unit of society?

It's only when the history of laws and culture governing children and families are studied, the connection seen of how the English legal and cultural heritage has arrived to the bias laws felt by fathers in the Family Court. Any relationship based on two days out of fourteen is bound to fail in the longer term, be it with a lover or child as the time to be together is just not there.

4.1 Avarice and its dirty role.

It is not money, as is sometimes said, but the love of money – the excessive, selfish, covetous love of money, that is the root of all evil.

Author unknown.

All governments and societies have laws regulating human greed. There fairness depends on many factors and interests. To say that greed plays no part in relationships is just false. Greed plays its part when couples meet. An example, most women like and might look for men who have money to spend on them.

Greed also plays its dirty role in divorce. Conflict brings out the worst in humans, why not women. Women favoured by current law in the past 28 years know the financial reward they expect. They now see it as their right. Having near certainty in child proceeding, asset and child

support follow as the reward, making it easy to take revenge on their ex-partner if he doesn't submit.

The first English law concerning children was born together with greed, the church wanting to reduce its costs operating poor houses. In Australia current family law is affected by greed. The government thought they would reduce their social security costs for single parents by claiming child support from the other parent. These laws have now increased divorce and separation rates of families, hurting more children they set out to help.

Greed plays its dirty role in marriages, destroying the basic unit of society with the help of laws that favour the female parent. A succession of governments seems to believe in the dived and rule principal, or is it just buying the female vote? The hypocrisy and greed of the government gets worse, parents who pay child support are treated differently to every other citizen.

1. We have minimum wage standards that apply to single and married, but not to those who pay child support.
2. The unemployment benefit is set as a bare minimum to survive on, but child support wants five dollars.
3. Income deductions claimed under ATO negative gearing is added back on when child support is calculated.

Applying "the greed factor" to a business helps us describe the economic forces that happen, I have applied the finances of a divorce with 2 children to a business.

You had a business (marriage) together with your partner. Times are good the working relationship in great (LOVE). As in any friendship or partnership arguments happen for time to time. In a big argument and your partner refuses to compromise. You believe you are right for the long-term survival of your business (marriage) you take timeout to think the situation over. As you can't settle you decide under large financial and emotional pressure to end the partnership. Your partner has changed the locks on your business premises, she knows that if she can stall you long enough and steal your customers (children) she gets to keep the premises and you are legally bound to pay the lease. You are in shock and by the time you get a court order the court says she has built up a relationship your customers (children) so she gets your assets and the court refuses to disturb this relationship, as a precedent has been set and your customers seem to be happy with the service from your wife. The court deems you still have to pay the lease (maintenance) on the business premises. Your left in shock and you can't get your life together again as your former partner has legal possession of your assets and customers (children). A court order is taken out to stop any communication with your former customers (children). Leaving you hopeless, you watch you

life disappear, all the money you make goes to pay the lease (maintenance) on premises you cant use.

No business partnership would survive under this law, how then can we expect marriages too?

4.2 Marriage: to divorce do us part.

for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, (or to love, cherish and worship) till death us do part.

We say something similar in our marriage vows. Why then allow divorce? And were is the fine print that says you will have to pay child support and only see your children 2 days out of fourteen?

Should there be a contract signed when a couple marries or move in together, which stipulates what happens in case of divorce or separation:

- How assets are dived
 - Assets held by the individuals before marriage.
 - Assets acquired during marriage
- How parents should share in the care for their children.

5 Conclusion

The hierarchy and adversarial nature of the Family Court, connive in making the winning view, the only right view held by the courts. The lower courts in making its rulings have to abide by and apply the higher courts' precedent. As the Family Court does not voluntarily take new knowledge about families, divorced parent dynamics or children and their wellbeing. This makes the inclusion of innovative information about families and children a difficult, costly and a decade long process as it holds on to outdated and aged customs and laws until a case reaches the High court to set a new precedent. For the Family Court to apply outdated laws and precedents set years earlier just denies justice to our children. This delayed justice becomes "justice denied" as the bond is broken in-between a parent and child. The damage is done, and if there is a chance of recovery, it will be a slow and painful process similar to as being witnessed with the English child migrants.

To truly be in the best interest of children, the Family Court should seek out the world's best practise in the understanding of family dynamics and the care of children. To be proactive and experimental in difficult cases and most importantly, be aware the effects its laws have on

society by following up with scientific studies, these forming the base for laws involving families and children.

Families are the base unit of any society and laws supporting families, would strengthen families. Current laws undermine families and weaken society by giving one parent near certainly in child custody proceedings and rewarding her with of favourable asset division and child support from the other parent.

However, a law based on equity favouring neither side brings better justice to all, giving the child and the parents the opportunity to continue their relationship and ensuring the best for all in a bad situation.

Why is the pace of change so slow? Is it the past treatment of children in society, still colouring Australian / English society. Are our present day leaders holding views from the past? Do they hold the thought, "I survived, and turned out all right", which makes the current laws acceptable to them?

6 References

The Universality of Incest, The Journal of Psychohistory, Fall 1991, Vol. 19, No. 2

www.psychohistory.com/ Documents read, "The history of Child Abuse" and "The evolution of Childhood", by Lloyd deMause

Gamble, H (1986) Law for Parents and Children (2nd ed). Sydney: The Law Book Company Limited

Dickey, A (1997) Family Law (3rd ed). Sydney: LBC Information Services