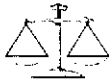


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1 August 2003

THE COMMITTEE SECRETARY
STANDING COMMITTEE ON FAMILY & COMMUNITY AFFAIRS
CHILD CUSTODY ARRANGEMENTS ENQUIRY
DEPARTMENT OF HOUSE OF REPRESENTATIVES
PARLIAMENT HOUSE
CANBERRA ACT 2600

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 899

Date Received: 8-8-03

Secretary:

Dear Sir/Madam,

RE: ENQUIRY INTO "SHARED PARENTING"

I am a solicitor and have been engaged in family law as a majority of my practice since 1978 only three years after the commencement of Family Law Act. Whilst I can make no comment as to the old regime under the Matrimonial Causes Act I certainly consider that I have a wealth of experience in relation to the Family Law Act.

I am a male aged 49 and have been married for over 25 years and have two daughters aged 19 and 16.

I consider that the proposal to have shared parenting is counter-productive for the whole area of family law. The current situation of the Family Court having jurisdiction to determine the residency of children should be encouraged and embellished. The Family Court needs to be properly resourced which is contrary to the current conduct of the Federal Government.

In my practice I have acted for mothers and fathers and have in the past been a child representative but no longer perform this function. I am also an approved mediator and regularly chair legal aid conferences between separated parents to sort out residency and contact issues.

I have been involved in many cases where quite simply the father is using Court cases or dispute resolution to continue his domination of the mother and children and treating them as if they were "his property". Thus one problem with having a shared parenting arrangement is that the father in these circumstances can continue this possession of "his property" by dictating the living conditions, place of residence and other matters that the mother by separation is seeking to gain for herself.

The basic problem is that the parties by the very fact that they have separated are in conflict and the lines of communication are non-existent or at best very strained. Shared parenting depends on a very good level of communication between the parents.

I am at a loss to see how a shared parenting regime would work on a practical level.

One type of sharing arrangement could be that the children remain in the house in which they lived and the parents take week about in caring for the children. The advantage of this is that the children would have the comfort of their own residence but the disadvantage is that the parents would have to locate another residence which they could rent on a joint basis but this raises all sorts of problems for landlords and the parties in this area as one party could use destruction of property to cause problems for the other in the rental property and then where would this leave the parties. The other question raised in this scenario is how the parties would determine where the other rental property would be. The father, who would be working, and the mother, who may not be working, would then have an argument as to what proportion of the rent of this other property the parties would have to pay. If neither party is working this would complicate matters even further as in many cases one or both parents have to live with relatives after separation for varying lengths of time.

Another shared parenting scenario would be where the parents have their own individual residences and the children would move from one residence to the other on a week-about basis. The problems with this is the residences would have to be in close proximity because the children must attend the same school and be accessible to the same friends in the neighbourhood as anything else would be too disruptive for the children's lives.

I have on one occasion as a separate representative been involved in a case where the parents did have a week about regime and in this case the parties lived fairly close to each other but ideally they could have lived closer. In this case the father was of such a personality that he was using the argument about payment of dental treatment for the children and school fees. This schooling was a continuation of the placement of the children whilst the parents were together at a private Catholic school and quite simply the father who was claiming to be unemployed (which was disputed by the mother) was causing all sorts of problems for the mother who had a part-time casual job some distance away and had to basically fund the children's expenses as the father simply refused to do so. The arrangement had been put in place before the involvement in court proceedings between the parties and in any other circumstance I would have not recommended that this continue but given that it had taken place for some time it was more of a negative to stop this than to continue.

One of the problems that you face would be the definition of shared parenting. If this means that the parties have shared responsibility for the upbringing of the children then this is the current position. Although, by necessity, if the children live with one parent then that parent must make decisions based on that parent's current circumstances as to the following matters:

1. Where the children live;
2. Where the children attend school;
3. Day to day health care, medical and dental issues.

Such other issues such as religious observance, major health matters would obviously be by agreement between the parties but where they can not agree then quite frankly the parent with whom the child resides would by necessity have to make this decision if there was any dispute between the parties. If the parties went running off to the courts every time there is a dispute of this kind then the court's list would be lengthened considerably. If the dispute was about religious observance then the Courts could not make any decision nor could any legislation as this would be unconstitutional.

If you consider a fairly standard scenario for separating parents in that the father is working and the mother has devoted herself to the upbringing of the children and thus is she is really unemployable.



If the situation of shared care on a week about basis came about the only people that would win out of the scenario would be the government in that they would then decrease the Supporting Parents Benefit they would have to pay to the mother as she would only have the children for one half of the time. Whilst one would argue that the mother could obtain a job this would not be possible given that she would then have the children for half of the time and who would want to employ her on a week about basis.

The converse of this is that the father would have the children for one half of the time and quite frankly his employment would not stand such a strain.

A third possibility is that the caring for children is split on a daily basis whereby the children are looked after the mother during the work hours of the father and he looks after the children for the balance of the time. The impracticality of this would soon consign this to the delete basket in any computer. Don't forget in all this we have parties who are in many cases "at war" or at best engaged in guerrilla tactics against each other. Constant coming and going from a residence by one or more parties would be fraught with possible dangers for either or both of them and just add to the confusion and stress of the children that they are already under given the parents separation.

I might want to do a Jonathan Swift on this whole scenario and propose 2 radical solutions.

One suggestion might be the children are immediately taken from the parents to be brought up in a government institution where they are provided for with standard education, standard food, standard discipline and the standard sexual practices of the types of persons who seem to end up running these institutions.

This way parents would not be left to fight about children and everybody would be much happier in that they could procreate to their own content without the inhibitions of having to deal with their progeny.

Another suggestion is that the Family Law Act be amended such that mothers have the full parental responsibilities for the children both during the marriage and during any subsequent separation. The father's rights to contact are then defined with the actual contact details set forth in the legislation depending on the age of the children.

I can not help but wonder as to the reason why the government is trying to initiate this shared parenting suggestion. My submission is to leave well enough alone or else we will again find the Family Court clogged up with more cases with fathers who think that they will do better because they think they have been granted more "rights" by the legislation as occurred after previous amendments in the Family Law Act as concerns children.

It was my experience that this "granting of rights" exacerbated the problems and did not cure any. Again the only way the government could hope to sort out problems in this area is properly fund the Family Court and not go on criticising this area of law.

I have asked many parents what they think of shared parenting. They are in favour of it but when pressed for the details about what it means and how it would work practicably, they cannot detail what they really understand or envisage and on my assessment their ideas are fraught with dangers especially with domestic violence situations and impinge on the other party's desire for some peace and quiet.

The government might also be better served with pointing out to parents that they have no rights only responsibilities. The children have the rights and they are all well documented. I feel that the emphasis should be that the children live with one party and the children have contact with the other party. All too often I see orders and agreements that specify that the children reside with one party and the other party



have contact with the children at specified times. Whilst one might think there is not much difference in such wording, I have found that it is easier for parents to accept.

Another suggestion is that there be more use of residency/residency orders or agreement where children live with both parties but have different periods with the parents similar to the residency/contact regime. This way fathers will feel that they aren't losing their "rights"

It should not be forgotten that, in suitable cases, the Courts can order or the parties can agree to a shared parenting regime with or without involvement of the Courts.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Walsh', written over a horizontal line.

PETER WALSH