

Submission No: 997

Date Received: 9-8-03

Secretary:

David Honeycombe
PO Box 798
PENNANT HILLS NSW 1715
PH: [REDACTED]
Email: [REDACTED]
Friday 8th August 2003-08-07

Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of House of Representatives
Parliament House
Canberra ACT 2600

Fax:(02) 6277 4844

Dear Sir/Madam,

I am a divorced father of a 6-year-old boy named [REDACTED] and I wholeheartedly support a presumption of equal shared parenting for children of separated parents. I make the following comments from my own experience and observations with reference to some of the terms of reference as set out for the inquiry.

A) Given that the best interest of the child are the paramount consideration:

- (i) What other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted;***

I believe that the starting point of "Residence" and "Contact" issues should be an equal one between the father and mother. Children have a right to be an integral part of both parent's lives, and not just an every second weekend visitor with a non custodial parent. Whilst the personal relationship between the parents has dissolved, it must be assumed that the relationship between each parent and the child/children has not. There must not be an assumption that one parent automatically has a right to "ownership of the child".

From the child's perspective his/her best interests are best served by growing up in a loving caring and safe home with both parents together as a family under the one roof. Unfortunately for the child the "both parents under the one roof" part is no longer an option. It is a fact that the system, as it is, assumes that the mother is automatically considered to be the primary care giver and that "contact" with the father should be on a basis of every second weekend and half of the school holidays. From the child's perspective this does not allow an intimate relationship with the father to continue and be developed further.

It must be assumed that the starting point is that both parents have an opportunity to be **equally** involved in all the usual parenting activities and duties.

The best interests of the child are also best served by the following:

- Not being exposed to conflict between the parents;
- Both parents having a working joint parenting relationship;
- Consistency of parents on parenting issues;
- The child having a caring, loving and safe home life with each parent;
- Each parent not “putting down” the other parent to the child, i.e. calling them names, talking badly of them;
- Effective communication channels between the parents on parenting issues.

Essentially the parents need to have an effective “business” working relationship.

Two of the most common reasons for conflict between separated parents are money and custody issues. The system as it is has a presumption that the child will reside with the mother and therefore the father will compensate the mother both in the property settlement and in ongoing child support. There is no presumption that a father may be able to equally parent the child. If the father wants to equally parent the child he is left with an extremely steep uphill battle. Also the child’s relationship with the father is restricted. If the mother does not agree on a presumption of equal parenting the only way forward is conflict on the issue of custody and therefore money. This conflict is the very source of so much turmoil between the parents and this in turn can severely affect their working relationship. In Michael Green’s book “Fathers after Divorce” there are many examples of fathers who have fought the hard fight to have more custody of their children only to simply give up in the end because the emotional, financial and health costs to themselves have been too much.

I believe that if there is a clear legal presumption of equal shared parenting as a starting point then this presumed “ownership” of the child by a mother will be cast aside and the parents can then get on with addressing the logistical issues facing them to work out the best “share of care” arrangements for their given circumstances. The conflict will be reduced and a platform for a better working relationship will be established.

A presumption of equal shared parenting does not mean that this will practically work for all situations. The ratio of time for the child between the two homes will depend upon many factors.

It must also be made clear that when criminal issues such as child abuse, violence or drug abuse are relevant then a presumption of equal shared parenting would be put aside. The safety of the child must be the primary consideration.

Other factors to be taken into account in determining the ratio of time between each parent include:

- The distance and time taken to travel between each parent’s home of the parents and or school. Parent may live interstate or a considerable a distance from each other, even if in the same city;

- The work commitments of each parent;
- The commitment each parent is able to and prepared to put into a shared parenting arrangement;
- There may be reasons such as other family commitments, which may influence a parent's ability to share 50/50 parenting.

In generations gone by the father has been the traditional income earner and the mother has been the parent to stay at home and raise the children. The family law system and social thinking has adapted accordingly and financially provided for a mother to raise the kids whilst the father earns the income. This traditional family arrangement is no longer the norm however the family law system has not caught up with current reality. Women are now much more involved in the work force and the work place is much more flexible and tolerant of variable working arrangements to cater for working parents. Employees' industrial agreements often include provision for flexible working hours such as, carers working hours, part time employment, leave without pay, job sharing, and rostered days off.

The resources are available for both parents to be actively involved in raising their children. The problem is that if the mother does not agree, the current system does not support a father trying to more equally share parenting their children.

B) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with their children.

1. The issue of a shared parenting presumption is intrinsically linked to a fair child support system. As the family law system is biased towards a custodial mother, a mother has more power to dictate the residence arrangements and therefore the financial support received through child support. The system as it is allows a mother to use a child as a means of furthering her own financial gain. Perfectly legal but morally wrong. A presumption of equal shared parenting will put a stop to this abuse of the system.
2. The child support assessment structure currently looks at the first 12 months of a given 15-month period. Within this period it looks at *a) the number of nights a child is in the care of each parent* and *b) the taxable income of each parent*. It then uses this information for future assessments. **A problem arises in that an income assessment can be used retrospectively but the number of nights in the care of each parent cannot.**

I'll explain further. If at the beginning of a given period the agency is advised that a certain share of care will take place and there is no disagreement between the parents (or if there is a disagreement and there is a court order or registered parenting agreement) then this will be used to up date the child support obligation. The problem arises when it is not known what the share of care will be for the next 365-day period until this period has occurred. The current formula will only update an assessment from the "date of notice" that a certain share of care has occurred. In other words a parent

may have had care of the child for a number of nights that would otherwise have reduced their child support obligation.

Example: Parent "X" currently pays child support based on less than 110 nights of the year. If at the end of the next 365 day period the child has been in the care of parent "X" more than 110 nights, an amended assessment will only take place from the date of notice that this has occurred and not from the beginning of the period that this change took place.

An assessment of child support obligation using the "number of nights" should be similar to that of the tax system in that what has actually occurred, is used to calculate both *retrospective* as well as future child support obligations. A tax assessment is made at the end of each financial year based on the facts that occurred during that year. The child support assessment does not allow the actual share of care to be taken into account unless it is an agreed known quantity at the commencement of the 365-day period. This needs to be changed to reflect what has actually occurred.

3. There is also no accountability of where child support money is spent. In any other business arrangement there is provision for documented accountability of where the money goes. If the money is meant to be for the benefit of the child then there should be a record of what the money is actually used for. The system as it is at the moment is wide open to abuse by the parent receiving a child support income.

I appreciate the opportunity to be able to put forward my points of view. I sincerely hope that a presumption of equal shared parenting gains the momentum it needs to actually become law. I believe that everyone stands to benefit, especially our kids.

Yours faithfully,

David Honeycombe