

SUBMISSION

TO

The Secretary,
Standing Committee on Family & Community Affairs,
Child Custody Arrangements Inquiry,
House of Representatives,
Parliament House,
CANBERRA, A.C.T. 2600

FROM



House of Representatives Standing Committee
on Family and Community Affairs

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Secretary: _____

INTRODUCTION

I am a qualified accountant and have been retired for some years.

During the period 1999-2002, I assisted a man caught up in a Family Law matter. He had built up a business valued in 1999 at about \$700000. He also owned a house, a beach unit, two motor vehicles and furniture, valued at \$160000 after deducting debt. He had worked hard for twenty years to obtain these assets.

The marriage lasted a little over four years and ended in 1999. There were three children - twin girls and a boy.

The wife made no financial contribution to the marriage and at the time of marriage owned only a car valued at \$5000.

The husband did not want to leave the marriage, but the wife seemed to have a complete plan to leave with the children to join her sister who was doing the same thing after an even shorter marriage.

Unlike the husband, the wife had no qualifications and little work experience, but would rely on the children to provide her government meal ticket. There was no infidelity on the part of the husband or the wife.

Domestic Violence Orders

The husband spent valuable time and money proving there was no substance to a number of DVOs sought by the wife. The wife demonstrated her tendency to lie in these matters. The husband successfully brought a DVO application against the wife - he carried a bruised arm for 12 months. The bruises were inflicted while he was driving a car and consequently was unable to defend himself from the assault.

Child Abuse

The wife tried the child abuse claim, but was unable to substantiate her allegations. A Family Court report found it strange she would make the claim and yet agree to equal residence for the children. She was unable to give an explanation.

A Family Court report found the children were happy with both parents and found no problem with the husband.

Lawyers

The wife was hostile and would not negotiate on issues.

Her lawyers would write at every opportunity about children's issues without anything being achieved.

When matters finally went to the Family Court, the wife's lawyers were granted an adjournment which wasted the \$40000 demanded by the husband's lawyers. The husband's legal costs totalled \$118000. This included some accountant's costs.

FAMILY COURT

Family laws should promote:-

- (1) Enhancement of the welfare of children;
- (2) Fairness to the father and mother.

Government intervention invariably distorts market and other forces including the forces of nature.

Government intervention should generally be confined to seeing fair play, whether it be in disputes between employer and employee, husband and wife, or other matters.

The Family Law, notwithstanding its original object, has finished up discriminating against men in many cases and many aspects. The law has also caused problems for children and has increased the rate of divorce in Australia.

In most cases marriage is the best arrangement for parents and children.

There should be no government incentives which encourage a marriage to fail. Governments should promote and encourage marriage to survive.

The matter in which I am concerned finally got to the Family Court and a court order was signed in March 2002.

Property

In the settlement the husband retained the business while the wife got the other assets.

By this time the financial position of the husband's business had been eroded.

While loss of time at court and lawyers' conferences had badly damaged his business, he had suffered greatly by the loss of his children and back-up at home; this further damaged his business.

The business was insolvent and could not be refinanced because of the loss of the husband's other assets to the wife.

In April 2003 the husband was declared bankrupt.

Observations

I would make the following observations:-

- (1) The present Family Law brought about the bankruptcy of the husband - he is now unemployed and is living on welfare. From being a very well-off businessman, he now has no children, home or motor vehicle and other assets.
- (2) Often lawyers from both sides negotiated for agreement and reported back to clients. It was evident that lawyers don't necessarily have negotiating skills and do not have the understanding needed in respect of financial matters. Lawyers' participation should be scaled back.
- (3) The Family Court should only deal with major property estates - say those valued at over \$10 million.
- (4) Property under \$10 million should be dealt with by a committee comprising a magistrate, an accountant, and a representative of the business community.
- (5) The marital residence or business should not be taken from the husband in the case of a marriage under 10 years.

It should be compulsory for marriages of over 10 years' duration for property agreements to be executed. If there is disagreement the disposition in the property agreement should be by way of a formula.

CHILD SUPPORT ARRANGEMENTS

In the case to which I refer there was no infidelity or assault by the husband. He worked seven days a week, was there for breakfast and dinner each day. The only breaks he had were spent with his family. He provided the family with an almost luxury living standard.

The scheming wife, using the Family Law, has destroyed the husband, and now lives with her sister in a house purchased from the husband's resources.

The children are being reared, not by the wife, but by the wife and her sister and other people. The children are denied their biological father as a role model.

It is almost as if the wife has stolen the husband's family genes and carried them off with the children. The interaction with the husband's family has been virtually extinguished.

In seeking to find a solution to the fair sharing of custody of the children, frivolous exits from marriage by mothers of the father's children should not be encouraged by the law.

I believe statistics show that wives leave their husbands and take the children with them in many more instances than those who leave their husbands and children behind. It should be that children are not almost automatically given to the mother - only where the father is known to behave detrimentally to his children should that occur.

If mothers with designs on leaving a marriage were not certain of obtaining a high percentage of a husband's property, all of his children, and of being able to evict him

from a home he has provided as a base for his family and his work, there would be fewer divorces therefore fewer problems for society.

If a father has been providing a home, income and a safe environment for the children, it is abuse of the children to take them out of that environment and put them under the control of strangers. This includes the army of counsellors, women's support groups, male friends who surface opportunely on the breakup of a marriage, and relatives who may have agendas that do not include the father of the children.

If a mother wants to leave a marriage with children, she should not be certain that she will have custody of the children.

In yesterday's world fewer women left the bread and butter provided by a father, knowing that the welfare of their children was at stake. In that case, women put the children first, not their own agendas.

In today's world, where women are well educated and have the opportunity to find paid employment, there should not be the onus on the deserted father to continue to provide sustenance. The Family Law should observe fairness.

In leaving a husband, a woman, who refuses to accept what he offers as a settlement, can force the involvement of lawyers and Family Court delays because of her intransigence and refusal to accept a sensible settlement. This ensures that whatever the settlement it will be diminished considerably due to legal costs.

In the case in which I am concerned the Family Law caused the breakdown of the business that had supplied the home and kept the family in comfort, even luxury. The husband is now unable to work because of severe depression. The loss of a stay-at-home carer of his children, the loss of his children to a wife who makes it difficult for him to see them, adds to the marginalisation of deserted fathers.

The loss of the marital home by the husband means that he has to now provide another home for the visits of his children. In effect, the present laws say that fathers who want to look after their children must be in a position to provide two homes for them - one for the mother who might desert him, and one for him so that the stable home life they had may continue. In fact, many fathers have no choice but to abandon the attempts to see their children, because they have to continue to work to support a family that is not present as an incentive for this continued enslavement.

The law should make it harder for wives to leave husbands who are doing their duty fiscally by the family.

Where fathers are looking after their family, and the only reason a wife wants to leave is to go to grasses supposedly greener, or because fathers are working so hard they get not much time with the family, there is no valid reason to abuse the children by separating them from the source of their income and fatherly protection.

The abuse of fathers by the present system has not been the subject of much debate as far as I know, but it is real, and a corollary of that is the subjection of the paternal grandparents to constant distress at the plight of the deserted father who is their son, and the uncomfortable relationship of grandchildren who are living separately to the father.

There is apparently a "no blame" situation in matters where Family Court intervention is involved in marital divorce. Unfortunately even though there is no blame, there is a real sentence imposed on a father who loses his home, his children, his helpmate. It is even more cruel when the marriage has been of short

duration and the children's young years are stolen from him by the actions of a greedy and determined female parent.

Where the father has no assistance offered to him in such a situation, it becomes a burden, often for a lifetime, with little relief and very few rewards. Having seen the results of such a situation, I am now completely disillusioned as to the fairness of the Family Court system.

I had disbelieved the advice of a lawyer who said, "He won't get custody", and, "He will be obliged to pay 80 per cent of assets to the wife". This is what happened. It seems to me to be a travesty of justice that laws exist to impoverish a hard-working man while denying him the family life he sought, which was to justify and enhance his working life.

Child Support Agency

The Child Support Agency has a formula to assess support to be paid by the husband to the wife for the children. Unfortunately there is no guarantee that the money is spent on the children.

The formula, in the case of the wife and three children, and the husband with no other dependants, is based on 32 per cent of the husband's gross earnings (before tax), less a small amount of exempt income.

In the case of interest to me, this formula ensures the husband has no incentive to work and no life, and it contributes to the high suicide rate in Australia. The husband who has lost his "bricks and mortar" assets has almost no possibility of ever again owning this type of security.

The business of the husband, in the case being reviewed, from the year 2001 was becoming insolvent. His tax assessments showed Nil assessable income. The Child Support Agency "deemed" he was an employee in the industry and taxed him as if he was earning a salary as defined in an Award. This was done in the face of undeniable evidence that he was going bankrupt. "Deeming" was favoured over reality.

If the interests of the children are most important in the case of marital breakup, surely the powers-that-be must take a broad view and realise that fathers should not be denied the ability to be rehabilitated from the situation of loss and anguish. It is not likely to be aided by the present onerous formula.

Observations

Government intervention should be at a minimum as interference in any market or situation interferes with normal market forces.

The husband should be treated fairly by the law. This may be achieved as follows:-

- (1) The marital home should remain with the husband in marriages of less than 10 years' duration.
- (2) If necessary the husband should be provided with a domestic or nanny by way of government assistance, where he has the custody of the children in full or in part.
- (3) If the wife takes the children, the husband should not have to provide child support. Where else do you pay for something and not receive full value?
- (4) The fixed formula approach by CSA should be abandoned.

_____ 26 August 2003