



SPARK

RESOURCE CENTRE INC.

House of Representatives Standing Committee
on Family and Community Affairs

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

8 August 2003

Dear Committee

I have been requested by the board of SPARK Resource Centre Inc. to strongly respond **against** the concept of 50:50 shared care. SPARK Resource Centre is an agency dedicated to the self-empowerment, well-being and education of sole parent families. For over a quarter of a century SPARK Resource Centre has provided counselling, education, advocacy, policy and research information to sole parent families. Annually we have contact with over 2,000 clients: this ranges from intensive long-term involvement to over-the-counter help.

For the past 15 years we have surveyed our clients re domestic violence and consistently 72% of our clients have experienced violence from their partners. The Australian Bureau of Statistics (1996) shows that single women (post partnership) have a high risk of assault – 42% reporting violence during the relationship.

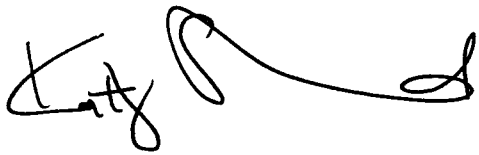
In 2000, The Australian Institute of Family Studies clearly indicated that 66% of marital breakdown involved violence and 33% of this violence was deemed “serious”.

This level of violence is duplicated with our own clients – including post-separation violence. It is in this context that aiming for 50:50 arrangements would be totally paradoxical. For the safety and long-term well being of children it is crucial that courts make it their core business to REALLY acknowledge and take in the realities of the genuine need for child protection. Only 5% of separating parents resort to court (trials) but most of these cases involve multiple form of child abuse.

I was asked to write this submission not only because I am the director of SPARK Resource Centre, but also because I have a personal interest in protecting the rights of children. I have written numerous articles and two (parenting) books: 'Peace or Pieces?' (1987, reprinted 1989) and 'Under One Roof' (2000) which are both dedicated to non-violent parenting and educational practices. I have also attached a few case studies, taken from (but changed to maintain confidentiality) SPARK clients' experiences.

I have deliberately chosen the 'norm' rather than the most traumatic case studies to further explore the inadvisability of the concept that presumes shared custody is a viable option for all, or even most children. Each child is unique and needs to be treated as an individual with unique needs, not in a simplistic, formulised fashion.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Kathy Silard', with a large, stylized flourish extending from the end of the name.

Kathy Silard OAM BA SRN PRN
Director
Senior Counsellor / Adult Educator

Terms of Reference

- (a) Given that the best interests of the child are paramount consideration
- (i) What other factors should be taken into account in deciding the respectable 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; and
 - (ii) In what circumstances a court should order that children of separated parents have contact with other persons including their grandparents.

Rebuttal Presumptions

- **Prior Family History**

In most two parent families, the mother is fully responsible for upbringing of the children. To ASSUME that both parents have had equal (50:50) contact, responsibilities, closeness and awareness of their child's needs is unrealistic. It is also unfair and negates the REAL needs of children. For most children their mother is their primary carer and this is the parent they turn to for support, boundaries and confide in.

Summary: Only where both parents have been **PREVIOUSLY** involved with their children as equal parents can this be a possible solution.

- **Prior Marital History**

Any evidence of violence (physical, sexual, financial or emotional) towards their ex-partner or children needs to be taken into consideration. Parents, who are aggressive and violent, rarely have an awareness of their children's needs. Parents rarely part amicably: to anticipate 50:50 parenting to occur with warring partners is idealistic, not realistic and can make their children's lives a nightmare when they become a "pawn".

Summary: Protecting children from adult's anger, violence, abuse and manipulation is a crucial role for courts. Pretending that all parents care equally for their children is not useful; unrealistic and 50:50 arrangements would cause even more trauma to already traumatised children.

- **Age Of Child – Young Children**

It is crucial for babies, toddlers and pre-school children to form safe, predictable bonds with their parents. Some of this bond (which includes

physical health) is breast-feeding. 50:50 care would TOTALLY interrupt this crucial bonding process. Children learn to speak, form bonds, socialise and play through games, activities and consistent parenting. 50:50 shared care arrangements would interrupt this process of learning.

Not only would it confuse young children, unless the parents respected each other's methodology (e.g. discipline styles, games, etc.) a young child would become highly traumatised by the 50:50 concept – separation would interrupt the bonding process and promote anxiety, depression (John Bowlby's 1945> research).

Summary: Young children (especially babies) need a consistent primary carer. Breast-feeding is a crucial and highly recommended process (both physically and emotionally). Being regularly separated from their primary carer would implicitly confuse, traumatise and eventually impair learning, trust and confidence in both their parents and society.

- **Older Children**

Children over 12 years of age are not only entering puberty, but are also commencing high school. Education, peer groups, sports, hobbies, clubs and self development are crucial for this age group. Living in two homes – 50:50 shared care arrangements can be traumatic, totally interrupt homework schedules, sports and activities at a time when adolescents need to be totally focussed on their own learning. Moving between two sets of homes and rules could become an explosive situation causing adolescents to escape into alcohol, drugs and alienation.

Summary: Adolescents need the security of having their own niche in ONE home to be able to fully develop their educational and personal potential.

- **Disabled/Seriously ill Children**

Children with special needs or critical illnesses often are ignored – their special needs means they are needing closer attention, awareness and “special handling” as one sole parent put it. She (and others) have found themselves painfully alone – their ex-husbands were prepared to see “the normal kids” on the weekends.

These children especially need to have their unique needs considered individually. Each parent's ability to offer and appropriately caretake for their child needs to be included in the 50:50 parenting concept. The impact of having only the “normal kids”, but not the “sick or disabled” (same sole parent quoted) is “horrible for all of us and hurts them both, not just me”. Quite often these children need 24 hour (active) care and special equipment – shared care would mean both families live in poverty and the children could be exposed to neglect and abuse.

Summary: Love and care could not be enforced by 50:50 parenting laws. Each child needs to have their situation seen as unique – already many parents don't take access when they could (36%). Prescription laws don't work.

- **Legal History**

At the present time NOTHING prevents separating parents making any sort of arrangements between themselves.

At the present time only 5% of all separating parents seek court help. In a 1997 study (Brown, et al) found that over 50% (of the 5%) are in reality child abuse cases: with multiple types of abuse.

At the present time the Family Courts cannot help abused children keep safe:

- Allegations of abuse are taken to the criminal court and can't be raised in the Family Court.
- Child protection fails of the warring parents are in Family Court (an assumption is made that the child / parent is lying and there is no follow through.
- Allegations of abuse (even medical evidence) is consistently ignored in the present Family Court set up.

At the present time decisions made about contact are based on the concept that children have the right to have contact with both their parents... yet violence (even profound violence) is ignored. Pursuit of this trend IGNORES not only the rights of children to have a safe, loving home life but also their best interests. Their best interests are negated, ignored and the children are forced into situations where they are both powerless and also abused.

We need more laws to protect children's safety NOT expose them to more potential abuse.

Parents need a history of providing aware, loving, safety for their children before they are given automatic contact... for too long the abuse of children has been ignored to protect adults.

Summary: Assuming that ALL parents have their children's best interests at heart is dangerous (for the children) having profound consequences for the children and eventually society.

- **Economical Factors**

Most female sole parents live in poverty. 36% of biological fathers make a decision NOT to make time to see their children. Male parents rarely interrupt their careers to parent their children – often they believe their wages “belong to them” and resent providing money to support

their children in the same way they find spending time parenting “boring”. To anticipate 50:50 parenting will mean children no longer experience poverty is extremely unlikely – rather the pressure will increase on children as they live in two households of disparate incomes. It is highly unlikely that male parents will give up career opportunities (looking at historical evidence) and it is more likely that children will be left with professional caretakers (rather than parents). Again this will leave children with confused loyalties, confusing lifestyles and parents who resent supporting their children will be even less willing to provide for them.

- **Other People including Grandparents’ Contact**

Previous history is crucial in making this assessment and that includes the history and contacts with the child prior to the parents’ separation. It is essential to assess the potential impact of the contact on a child. e.g. if the grandparents are actually already alienated from their own adult child and despise both parents then it is not useful to presume regular contact is in the best interests of the child. Each grandparent (and others) wanting contact with a child needs to be looked at individually and holistically.

IN CONCLUSION:

Each child needs and deserves the right to have their experience and needs viewed with compassion. They need to be viewed as individuals with unique needs.

The 50:50 parenting experiment may seem to streamline the legal process, but all evidence (from overseas) indicates that 50:50 parenting gives rise to serious difficulties for children and families.

At the present time 95% of families avoid the legal system and I am deeply concerned automatic 50:50 parenting will cause more legal battles at the expenses of children.

RECOMMENDATIONS

- Closer examination of the impact of domestic violence on children
- Closer examination of post-abusive behaviour (especially during contact and hand-over) and its impact on children.
- More emphasis put on projects such as the Magellan Project
- More emphasis on the real needs for children for safety
- Closer examination and education for ‘warring’ adults to support them in understanding their children’s REAL needs

Comments on Terms of Reference

(b) "Whether the existing child support formula works fairly for both parents in relationship to their care of and contact with, their children."

Briefly: "NO". It doesn't work fairly for sole parents who receive the sole parent benefit because of the type of taxing; the lack of financial support. If it was fair then no child would live in poverty, because the government would accept some parents can't (or won't) give child support and the government has a genuine moral and ethical responsibility to help children and their parents who live in poverty. It also has a moral responsibility to protect vulnerable children and their parents from violence, homelessness and to provide them with free, accessible education.

If you should need more information please contact me at SPARK.

CASE STUDY A

(names and some details have been changed)

Melanie Brown (37 yrs) was referred to SPARK Resource Centre by a C.A.M.H.S. (Child, Adolescent Mental Health Service) psychologist in 1996. The psychologist was no longer prepared to work with this family because of the ongoing abuse during the fortnightly weekend access. He felt he was becoming part of "an abusive system".

At the initial interview, Melanie was very neatly dressed, but in tears as she described her situation with her 3 sons (12 yrs, 10 yrs and 5 yrs). She stated, "I am at my wit's end... maybe I should just give up and let him have them."

I took her history – she had married her "childhood sweetheart", they had both gone to teacher's college, graduated, then married. Melanie and her husband worked at different schools, but were "really close, until I got pregnant with Brad". Her ex-husband became agitated and aggressive during the pregnancy. He "kicked and punched me, but was really sorry afterwards".

She "tried harder", not wanting to "aggravate him", but the stress of their baby son meant he was "frequently, really upset". Again, she became pregnant, accidentally, but this time he withdrew..."he did a lot of coaching and even personal tutoring". "He wasn't home much, but to tell the truth I was relieved." After the birth of her second son, she took time out to stay with her parents, "to sort herself out". Her ex-husband became worried and "wooed me". Melanie returned to him with her six week old baby and 23 months old toddler son. When she returned home, he beat her so badly that she was left unconscious and he was "forced to stay with the babies". She became "too frightened" to contemplate leaving him or disobeying him. She was 27 years old.

Melanie was treated for depression at this point and "was forbidden to stay with my family".

Her sister visited her secretly during the day and encouraged her to leave. Often her husband would become irrationally enraged with their sons, particularly the younger boy, comparing him unfavourably with his older brother. Melanie decided to leave him after he "viciously assaulted me... you know, sexually".

She finally left when she found out she was again pregnant. Initially, she moved in with her sister and her sister's husband. However, her ex-husband stalked her, chased her in his car and "generally terrified us all". "I went into a women's shelter. He took me to court and got alternate weekends and half holidays."

The two older boys came home from access highly agitated and began wetting their beds, refusing to go to school and quite angry with her. The school reported the boys to F.A.Y.S. (they had gone to school with visible bruises and complaining about their father's temper). However, the boys' complaints were largely dismissed as their father was a teacher and "presented well".

Melanie felt the situation deteriorated when "the baby started to go to access". He was then "two years old and toilet trained". Their oldest son became suicidal because he "couldn't protect his little brothers" and his mother "made them go to Dad's." All the boys regressed during this period.

Melanie tried to seek help for them. It took 7 months before the boys were assessed. The older two boys began having therapy and were joined by their little brother after 3 months. The counselling stopped when their father was transferred to the country for a year and their behaviour improved.

On his return their behaviour again deteriorated and again she sought counselling for them. Melanie also joined a "support group for survivors of domestic violence". As well Melanie did a refresher course and wanted to do relief teaching, but felt, "I'm too agitated to teach". I met her sons and found them subdued, uninterested in doing anything but watching videos. They had an air of resigned sadness. I negotiated with C.A.M.H.S. for more sessions (I felt the boys were deeply depressed) and closer work with F.A.Y.S. I continued to work with Melanie for another two years – her two older boys were both refusing to attend school and had jointly attempted suicide. At this point the two boys finally received some meaningful help and their father decided to take another position in the country.

Melanie also decided to move away, "put more distance between us". She was working – not as a teacher – and found a position in the country. She felt her younger sons would be better off in a smaller town. Her oldest son chose to stay in Adelaide with his grandparents.

This family was devastated, not only by their father's violence, but also by the refusal of the legal system to acknowledge their abuse or their individual needs for safety. 50:50 care would have decimated these children further...

CASE STUDY B

(names and some details have been changed)

Jane Smith (28 yrs) was referred to SPARK Resource Centre by her mother, a nurse. In 2000, we had done a workshop in a local hospital about the special needs of sole parents with sick children. Jane was the mother of 5-year-old twin girls. Her husband had left her "when his mistress got pregnant". They were living in rented accommodation.

Jane was exceedingly angry. The twins wanted to see their father, but "he's lost interest". Jane wanted to let him have access – he had taken "the girls out for a few hours after he left, THREE times " and then he said, "It was too hard." Both sets of grandparents had the girls over night once a week. Jane moved to a cheaper house.

When his new daughter was born, he had stopped child support. However, he began seeing his daughters again – arranging to see them once a month. He also fought with his parents, because they "couldn't accept his new girlfriend and baby".

I encouraged Jane to go to both Mediation and the Child Support Agency and also helped her with housing and parenting issues. I had intensive contact with Jane for 11 months, then less contact for another 12 months. At the time of writing, Jane is receiving intermittent financial support and her ex-husband has stopped seeing the twins. He wants her to divorce him. Jane will do this, but she says, she is "worn down by the girls and studying".

Not all men want contact with their children (36% of men have NO contact with their children 12 months after separation). How would 50:50 parenting impact on Parents (over 1/3) who want No contact with their children?

CASE STUDY C

(names and some details have been changed)

Maria (33 yrs) had married at 19 yrs of age and divorced at 26. She was at that time the mother of a 3-year-old boy. The separation, whilst unpleasant, was civil. Maria and her ex-husband made their own arrangements. They had an arrangement which meant their son spent meaningful time with them both – they lived in adjoining suburbs. Within 2 years they had repartnered. Maria was referred to SPARK (2001) by her local neighbourhood house director. She had burst into tears during an adult education class.

Maria was pregnant. She had chosen to continue with her pregnancy, but this had meant the end of her 22 month old de facto relationship. She was still working part time, but would soon be forced to stop. Her ex-partner wanted “some contact” with her son. Her ex-husband (father of said son) was equally adamant he “didn’t want that man to have any contact”. Maria was torn but didn’t have to resolve this conflict, because her ex-partner “disappeared from my life...” He re-appeared” when their baby was 5 months old.

Maria was confused by his re-appearance. Her ex-husband was forming a bond with her new baby, because he felt their son needed to see his acceptance of the little girl.

I helped facilitate supervised access of the baby girl by her biological father. Her father’s interest waned again and he slipped out of their life, Maria was devastated by his “on / off stuff”.

His family showed no interest – Maria had written to let them know they were grandparents.

Often the situation SPARK clients (and others) find themselves in is not open to a simple legal formula.

CASE STUDY D

(names and some details have been changed)

Irene (42 yrs) was referred to SPARK Resource Centre in 2000, by a women's shelter. She is the mother of 2 daughters: then aged 8 and 13 respectively. Both girls were "acting out", fighting with each other and their mother when Irene came to SPARK. They were seeing their father on alternate weekends, the fights were worse after access.

After Xmas 2000, Irene came to the agency devastated. She had noticed that her younger daughter had a vaginal discharge. Her doctor told her that her daughter had a sexually transmitted disease and genital herpes. She had her other daughter tested – she also had genital herpes and the same sexually transmitted disease. The girls admitted their father had been "sexing them" (younger daughter's words for the alleged abuse) for some time.

She applied for and received Legal Aid. In late 2001 it went to trial. Access was suspended until an independent psychological assessment was made – both girls had indicated clearly they did not want access with their father.

In 2002 the court ignored their requests and the younger child was found to be "flirtatious". They were ordered to recommence the visits; not have counselling and not to raise the issue of abuse as it would "damage the reputation" of their father.

The older girl feels obligated to go to access to protect her little sister (now 11) but both girls refuse to stay overnight, unless they can take a friend with them. Their mother had a "breakdown" prior to the trial and her "seeking emotional support went against" her. She is still receiving help and is unable to work – she feels "terrible, because I married him".

The interests of these girls (and many other children) are not seen to be paramount. 50:50 parenting would have further decimated this family.