

Individual Submission to the Standing Committee on Family and Community Affairs.

'INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION'

House of Representatives Standing Committee  
Family and Community Affairs

Submission No: 1437

Date Received: 7-8-03

Secretary:

Personal Introduction:

I was brought up to believe in truth and honesty and justice in the legal system.

I am [redacted] old, divorced in [redacted] and all meaningful contact with my high-school-aged younger daughter ceased at the end of [redacted]

My property settlement not only removed me from my home, but also removed me from my business premises, and also took away my workers compensation settlement resulting in me becoming dependent on social security payments at continual cost to the tax-payers.

I was also astonished to find that the Judge's written judgment contained a significant number of factual errors - ie more than fifty (or one in every second paragraph or so). If the government expects the Family Court to be respected by the community then it needs to ensure that the Judges are able to justify their decisions on a factual basis. [Start by removing most of the secrecy provisions.]

My ex-wife was also given an extensive property adjustment because of the child, but then also applied to the CSA for support without telling the Family Court of her intention.

My experiences in the Family Court have not been very helpful. I finally got an order on [redacted] saying that I was entitled to copies of School Reports - but the Judge would not make any order as to how they were to be supplied - this is very frustrating and time consuming to have to go back to Court for even simple things. Also it is wasteful of Judicial time in the Court.

I have also had the experience of being penalised for complying with what appeared to be lawful and legitimate judicial orders from the Family Court. More worrying is that I am also being penalised and disadvantaged for the ex-wife failing to comply with Court orders and directives.

Prior to the end of [redacted] I had the full parental responsible for my daughter's well-being until her mother arrived home late at night. There were no problems between myself and my daughter.

Since [redacted] I have been very concerned about my daughter's education (as I was earlier) because although she is very intelligent she is also lazy, and as far as I know will not be eligible for University entrance next year. The elder daughter has done very well at University, probably because I was able to assist her with Maths and Science whilst at school.

My Submissions (not necessarily in any order of importance):

1. The Federal Laws (and State Laws if necessary) should be amended so that the default situation is that both parents will automatically be required to provide equal custody for any children. Registered private agreements endorsed by a magistrate or judge could provide for alterations if agreed by both parents.
2. It is my belief that children of both sexes need the contact and cultural environment that can only be supplied by spending equal time with both parents. [My ex-wife grew up as an only child where her father was working as a truck driver and hence seldom home and has ended up being very impractical in many domestic situations. Maybe her female-only Catholic country boarding school also contributed.]
3. I do not envisage a requirement that children need to swap homes every week or every fortnight, but one where equal time is organised so that there are minimal disruptions to schooling, sport, etc. It might be that the children stay in the family home and the parents move in and out at defined/agreed intervals. The home could remain in joint ownership if that was the case prior to separation.
4. I note that the terms of reference include "(a) given that the best interests of the child are the paramount consideration:", I would submit that the current situation with regard to publicly

reported judgments of the Family Court are frequently not in the 'best interests' given the number of suicides reported amongst separated/divorced fathers and the number of fathers whose living arrangements (and finances) are severely disrupted and upset by the Family Court and CSA. Having studied some (but not extensive) [REDACTED], I believe that all children need significant contact with all their relatives in order to understand their cultural heritage and ancestry, and to enable them to fit into a balanced society when they grow up. [This assumes that the Government feels that marriage will be common or desirable in the future. See also recent statements by the Prime Minister re marriage.]

5. It is my belief that children are often a lot more resilient than the court counsellors and Judges imagine. This is based on personal experience where the parents are often more upset than the children when a family pet dies or is lost.
6. I believe that the default situation of equal custody would result in significant savings in the Judicial system through (a) reduced Family Court hearings, (b) reduced AVO application to Police and Local Courts, (c) much fewer cases being handled by the Child Support Agency. The AVO legislation needs to be updated to require some medical or physical proof of harm so that fathers are not falsely accused (and have AVOs granted against them) in order for mothers to obtain an unfair advantage in the Family Court.
7. With regard to (ii) 'contact with other persons' - the Courts should not need to make orders in most cases - the default should be that 'equal time' should be defined as 'equal time with both families/sides of the marriage'. Contact with extended families should be considered the normal situation rather than something abnormal that can only be permitted with a specific court order.
8. With regard to (b) - the existing child support formula is not tied to child raising costs. There needs to be proper fiscal accountability for payments received if the Government plans to continue with the CSA system. The most practical (and economical for the country as well as the parents) would be to abolish the CSA with the introduction of equal custody.
9. Along with the 'equal time' default there would need to be some allowances for sport and schooling and time with friends. I think that the joint guardianship principals/responsibilities should be extended automatically down to most day-to-day activities.
10. My belief is that once the 'equal time' default is established from the time of separation there should be a smooth continuation after divorce with a consequential savings to both the parents and the Government in Court time and expenses.
11. Another problem that needs to be sorted out with regard to the CSA and the Family Court is the situation where one parent (usually the mother) stands up in the Court and gives evidence to the effect that they are the only one who can supply all the parenting requirements for a child and is subsequently awarded custody, but who then goes to the CSA and claims that they cannot provide for the child without extra funds.
12. I have seen numerous references to academic research pointing out the need for all children to have the necessary adult role models of both father and mother (ie. male and female role models).
13. In conclusion - whilst joint guardianship remains the norm, and where fathers are required to contribute to the upbringing of a child, that contribution should be in the form of equal residency, effective immediately and automatically upon separation without any need for Court orders.