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on Family and Community Affairs

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**Parliament of Australia
House of Representatives
Standing Committee on Family and Community Affairs
Inquiry into child custody arrangements in the event of family separation**

**By
The son of divorce parents
who is now a divorced father of two children
and happily involved in a same sex relationship**

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1. Who is a Parent?

In this day and age this is far from an easy question to answer. In order to try and be concise in my submission I will try to define a few parenting terms.

For the purposes of simplicity I will refer to the source of the sperm or ovum that together formed the zygote from which a child develops as a biological parent. Recent advancements in medical technology now make it possible for only one (cloning) or two people of the same sex to be the source of a zygote.

The woman who gestates the child and gives birth to the child will be referred to as the birth mother.

Individuals who have a legally recognised role as a parent will be termed legal parents (such as those who adopt) whilst those involved in a parental role in relation to a child (be it legally recognised or not) will be simply called parents.

In many cultures there have always been more than two individuals who have a parenting role. In modern day western society this is frequently becoming the case with families seeking assistance from within or employing specialist individuals to undertake the parenting role often due to career choices or economic imperatives that result in a biological or legal parent being unable to undertake the role of parent alone.

In considering the question of who is a parent to the child it is also necessary to consider how many individuals are in parenting roles and what are their relative importance and significance to the child. If this is not properly addressed then it is not possible to consider the best interest of the child in relation to contact with those individuals who have had parenting roles and subsequently consider the custody arrangements that serve to support those best interests.

2. What is a Family?

Though this seems a simple question, modern life is making it extremely difficult to answer. Before considering what happens in the event of family separation it is important to first identify what constitutes a family.

A family is not an eternal structure. It may grow and change and it may cease to exist. This may be due to the arrival or departure of either children or parents or others in supporting roles. The family one is born into may not be the family one grows up in as parents divorce and remarry. The age difference between siblings may be very great and children raised in the same family unit may not be biologically related at all.

When considering the best interest of the child it may be necessary to consider more than one family unit. Or to consider the family unit as more than just the two individuals in parental roles that are currently in the process of separation.

The traditional nuclear family unit of a biological mother and biological father raising their own issue is what fits into the current definition of a family. Children legally adopted into this family unit also seem well catered for in the existing perceptions. But there are many other combinations these days that I believe need to be considered when defining what constitutes a family and where a parent-child relationship exists. If the best interests of the child are to be held paramount then these existing parent-child relationships need to be recognised and

taken into consideration when considering child custody arrangements in the event of family separation.

There are families where someone other than the biological parents was involved in the birth of the child such as surrogacy of the zygote of the biological parents due to the inability of the mother to carry a pregnancy to term.

There are families where either or both of the biological parents are not involved in the raising of the child:

- This may be due to anonymous or conscious donation of sperm or ovum for use where one or both parents is infertile;
- It may also be due to surrogacy where someone other than the mother of the family bore the child. That person may also be the biological mother of the child;
- It may be from a cultural viewpoint where it is common for members of the extended family (often a grandparent or uncle and aunt) to care for and raise the child;
- It may be a family that sought the conscious assistance of a donor to provide sperm or bear a child, where for whatever reason the donor or mother may not be involved in the raising of the child;
- It may be just where one or both of the child's biological parents are not involved in the raising of the child by choice or circumstance such as death or being physically, mentally or emotional incapable or unfit to raise the child;
- The biological mother chose not to inform the biological father of the child of her pregnancy or the birth of their child and therefore he may not be aware of the existence of the child, whether the mother raises the child herself or not.

There are also many instances where a person other than a biological parent (be they legally recognised as taking on a parental role or not) has a significant involvement in the raising of a child include where:

- The family unit consists of other than the biological parents due to death, remarriage, adoption, fostering, or other 'conventional' reasons;
- The family unit may be a same-sex couple where the new partner of a biological parent has taken an active role in the raising of the child, whether or not the child's other biological or legal parent is also involved in the raising of the child;
- It may be a same-sex couple that have adopted or fostered a child in a country other than Australia and subsequently migrated to Australia;
- The father of the child is unaware that he is not the biological parent of the child
- It may be from a cultural viewpoint where it is common for members of the extended family (often a grandparent or uncle and aunt) to care for the child

In some of these circumstances another person has taken on a legally identified role as a parent by means of fostering, adoption or similar means. In others there are individuals who have taken on the social, emotional, and economic role of parent without having that role legally recognised or ratified. If the best interests of the child are to be held paramount then the system of Family Law should facilitate and recognise these parental roles as far as possible and seek to maintain the contact that previously existed in the family structure that the child is familiar with.

It is not adequate to consider only those families constituted by marriage and parental roles ratified by law but rather to consider the widest possible range of family situations to consider who is involved in and has a relationship with the child.

There may be many reasons why an individual believes that they have a familial responsibility for a child even though they may not have a legal one, just as there may be circumstances where an individual may be unaware that they have a responsibility for a child even in those situations where they are aware that the child is their issue.

If one of these modern family units breaks down how are the best interests of the child held paramount? What mechanisms exist to recognise the relationships that exist between the child and those in the parental roles, particularly if those parental figures are not the biological or legal parents of the child?

3. How is a Family Managed?

In much of the media coverage I have seen, and in the public views I have heard expressed, this question seems to have been the most ignored. I believe that this is a fundamental key to considering the starting point for custody arrangements.

The parental roles adopted in a family are not immutable nor are they pre-determined. Rather they are decided jointly between the parents and discussed constantly whilst the family remains together. Indeed it is often when the views of the two parents differ as to what their respective parental roles should be, that the family unit often breaks down.

Is it fair then to suggest that because it was agreed between the parents that one would pursue a career and the other take the primary carer role that these roles must be maintained in the same way following family separation? Is it fair to ignore the role that other parental members of the family, not being the father or mother, such as grandparents, stepparents or partners of the father or mother have played in the life of the child?

4. The Presumption of Equal Time

I would contest that if a parent does not want significant involvement with the children of the family unit following family separation then they would not seek custody or would propose less than equal custody. It then seems obvious to suggest that a parent who wants to be involved with their children following family separation would seek at least equal custody. Why should it be presumed that one parent is more entitled to custody than the other?

My experience of the Family Courts and the practitioners who specialise in Family Law is that there is a presumed starting point that the previous primary care giver is entitled to a greater proportion of the future custody of the child than the previous primary "breadwinner". This is regardless of whether the individuals have an expectation or desire to change their role post family separation. It seems to me that the institution seeks to enforce the previous roles regardless of the fact that the family unit, which formed the basis for the allocation of those roles, no longer exists.

Indeed the child support arrangements actively discourage the changing of these previously mutually agreed roles by providing that at the request of the recipient parent, the Child Support Agency (CSA) may deem an income other than the actual current income when determining the child support liability of the paying parent. The previously primary breadwinning parent may well wish to change their career path to allow for the changes brought on by the family separation. They may wish to reduce working time and as a result their income level to have more time available for their children. The previously primary care giver is unlikely to want to have to commence or recommence a career or in any way change

their career path such that it takes away from the time they can spend with their children. Rather they would seek to have the primary breadwinner maintain the level of income and support they provided whilst within the previous family unit.

It is far from easy to balance the desired post family separation roles that each parent wishes to pursue, particularly when they are likely to be conflicting. To have any other presumption, all other things being equal, than that the child has a right to spend an equal amount of time with each parent and that each parent has the right to modify their life to provide for the child appropriately is to ignore the joint role each parent had in deciding their respective roles whilst the family was together and to deny them the right to choose to change their role in order to best provide for the child following family separation.

5. Other Parental Roles

The complexity of the situation is amplified when there are more than two individuals in recognisable parental roles (be they legally ratified or not). Consideration should be given to the development of guidelines in how parental roles are to be identified and recognised particularly in circumstances where there is no current legal recognition.

Surely a parent-child relationship will develop between a stepparent and child particularly if the relationship commences when the child is very young. If this new family unit subsequently separates after many years how is this relationship recognised to ensure that the best interests of the child are held paramount when considering custody arrangements? Should the child be denied the right to maintain the parent-child relationship with the stepparent because the stepparent has ceased to be married to a biological or legal parent? Should this be any different if someone other than a stepparent has an established parental role with the child that may not be able to be continued without the intervention of the Family Court?

In many families, grandparents in particular are involved in raising the children. Indeed in some cultures that have a role that has greater involvement with the children than the father. Uncles and Aunts too, especially when they also have children of a similar age, may be involved in parenting roles. Consideration should be given where these existing relationships are in jeopardy following family separation if the rights of the child are to be held paramount.

Again I would suggest that proper regard needs to be given to identifying the established relationships that existed prior to separation and the relative importance of maintaining those relationships post separation if the rights of the child are to be held paramount.

In my own circumstances the failure to acknowledge these roles resulted in my children missing out.

Firstly my ex-wife was insistent that as the Residence/Residence Orders of the Court only identified the mother and father, she was not prepared to allow anyone other than myself to collect the children nor would she leave the children in the care of anyone other than me. This included individuals well known to my ex-wife who have had sole care of the children in the past such as my parents. This meant that in those instances where I was unable to be available to take the children she either refused to allow someone else to come and collect them or remained with the children at my parents home until I arrived. This meant that the children waited until such time as I could come in person and were thus disturbed from their normal patterns due to my work or other unavoidable delays and (as the relationship between my family and my ex-wife are not good) were subjected to considerable tension in their caring environment.

This seemed completely unreasonable considering that I could immediately upon taking responsibility for the children, place them in the care of someone else and return to my other responsibilities. I was told that legally my ex-wife was correct and that I was unlikely to get the Court to approve Orders that specifically permitted me to nominate individuals, known to the children and identified to my ex-wife in advance, to collect or have the children taken to. Should I have employed a nanny, despite the fact that the person was specifically employed to care for the children, they would not have been able to start that care until such time as I was present.

Secondly my work took me overseas for an extended time, which meant that I was unable to exercise my residence periods. Despite the children having a very good relationship with (and often having been left in the sole care of) their grandparents prior to our separation, my ex-wife refused to permit anyone else to exercise my residence in my absence. Whilst she offered that others may visit the children at her home, the reality of the situation meant that due to the animosity between my ex-wife and members of my family only my father was willing to do so.

When I took my ex-wife to Court to obtain Orders that would permit me to have the children come and visit me during school holidays whilst I was overseas, I was advised by my legal representative that to seek to also include in those orders provision for the children to spend some time resident with their grandparents was unlikely to succeed in any way other than to increase my costs.

If the Family Law made provision for individuals who have other than legally identified parental roles to have their parental role recognised by the Court in the event of family separation then this would at least allow those interested parties to request their role be considered when considering the rights of the child.

Further this preparedness of the Court to consider these other roles needs to be publicised so that individuals are aware of their ability to seek to have their position considered. I do not believe that there is any such perception of preparedness even just with regards to grandparents.

6. What Other Factors?

When considering specific instances and whether the default position of equal custody should apply in that instance there are of course many other factors that should be considered.

At the most simple level the physical, mental and emotional ability and fitness of each parent to raise the child needs to be considered.

I would therefore suggest that there are many factors that need to be considered when evaluating whether, in a particular case, it should be presumed that parents have equal time. The physical, mental and emotional ability and fitness of each parent and their willingness to act in the best interests of the child is a good starting point.

When there is animosity between the parents that also affects the children then the situation becomes much more difficult. Some years ago one recently separated father related to me how his 8-year-old daughter had asked him "Daddy, why didn't you ever love mommy?" This could hardly have been generated by any other means than the mother expressing such an opinion to the child in the first place. Such emotional blackmail is as bad if not worse than parents who seek to outdo each other with treats and presents and thereby buy the child's affections.

The actions and attitude of the parents should be judged not only initially but whenever the Court is asked to question custody arrangements. And in some instances the Court should require that custody arrangements be reviewed after a trial period. I would suggest that the court consider always that equal time be the starting point and question whether the current circumstances warrant deviation from that position and if there has been any change in the circumstances of the parents that might warrant a different result from previously considered outcomes. In my opinion the Court should be seeking as far as practical for the custody to tend towards equal share over time when there are reasons for it to commence on other than an equal basis.

In my last appearance before the Family Court on matters of Residence (as custody is called these days) we were extremely fortunate to be directed by the Court to mediation, which was conducted by a very capable person. Her perseverance and suggested solutions provided the means to what resulted in Orders by consent. How much this was due to my ex-wife and I finally representing ourselves rather than having legal representation and how much due to the skills of the mediator, I can only speculate.

What did result however was a suggested course of action as a trial together with an agreed revision of the revised orders after a reasonable lapse of time. I would commend to the Court that where there is an undertaking by either party to change their behaviour or there is a change in arrangements that a formal review be included in the resultant orders to ensure that such changes are in fact taking place and that they are proving to be in the best interests of the child.

7. Alternative Presumptions to Equal Time

There will always be circumstances where there should be an alternative presumption to equal time. These include:

- Where there has been a history of violence by either or both parent, particularly towards the child.
- Where the parent has a criminal record and the crimes are against children.
- Other circumstance that would mean that the child is at risk
- Where the child is of an age to express a considered and reasonable opinion of how they wish to reside with each parent

There will also be circumstances where it is impractical or impossible to maintain equal time. This might be where the parents live too far apart for the children to be able to attend the same school from either home. This has certainly been the case in my experience and it was compounded by my ex-wife not wanting to give up any of her weekend custody with the children as compensation for it no longer being practical for them to have mid-week residence with me.

Where there are more than two parenting roles to be considered there will need to be a balancing of the relative merits and benefits to the child of spending time with each of the interested parties. One such instance where this complexity may exist in the future, if not already is where a same-sex couple who have involved the biological father in the raising of their child separate and both members of the separated couple want to maintain their parenting role along with the biological father. There can be little doubt that all three individual have established parenting roles particularly if the family unit had existed in its form for many years. What is difficult to determine is what are the proportions of custody for each parent that represent the best interest of the child going forward?

8. Time With a Parent

One of the experiences of growing up in Australia is participation in weekend group sporting activities. When a child spends some weekends with each parent and the parents are a reasonable distance apart this means that the opportunity is much more limited for the child. There seems to be a reluctance to consider as reasonable that all weekends outside of school holiday periods should be considered together just as school days are considered collectively.

Of particular issue is when one parent moves away from the other such that the existing custody arrangements can no longer be performed. How then should the arrangements change? If the best interests of the child are indeed considered paramount then the circumstances of the new and existing locations should be compared rather than immediately assuming that either the parent with more time gets more, or that staying in their existing neighbourhood is more desirable.

It may not always be possible for a parent to be able to spend time with their child at the predetermined custody times. Work or other commitments may make it impractical or impossible for the parent to be available to assume their parental role. I believe that there should be more consideration given within the Family Law as to how these circumstances should be dealt with. This could be one area where the rights of grandparents and other members of the custodial parent's family are recognised by permitting those other family members to exercise the custody where the custodial parent is not available and has given their consent.

As the child grows and the parents' other responsibilities change it is likely that it is in the best interest of the child for the times spent with each parent to change. How this is facilitated is less than ideal in those circumstances where the parents are not on amicable terms. The Court should seek to provide greater support services and to publicise such services that assist in parents recognising the best interest of the child in the establishing of new arrangements.

9. Parental Relations Following Family Separation

It is not enough for the Court to consider and make Orders that it considers to be in the best interest of the child but that there should be more effort and support put into ensuring that the implications of the Orders are understood and that they are both capable of being fulfilled by each parent and that each parent maintains the agreed arrangements.

I have seen many instances where the intent behind the parent seeking the Orders has not been achieved in the actual wording of the Orders, or that it is interpreted differently by the other party in such a way as to negate the original intent or some other aspect of the Orders. Often the process in obtaining the Orders has been long and arduous and usually expensive and there is little desire or ability to have the Orders clarified or altered. It is a sad comment on the quality of the legal representatives to consider the frequency that this occurs in practise.

If it is considered in the best interest of the child that the child maintains a relationship with each parent and that each parent has some right or responsibility to the ongoing care and development of the child, then this will mean that there will be some communication required and sharing of information between the parents. There does not seem to be adequate provision or promotion of services that seek to assist in the reestablishment of communication between the parents.

In my opinion there would be far more positive outcomes at far less cost if the Court put more emphasis of the use of mediation and counselling services and other services that sought to emphasise the best interests of the child in the establishing and maintaining of proper communication between the parents.

10. The Child Support Formula

I can talk about the Child Support Formula and the workings of CSA with some authority as my particular history has seen our files travel from Sydney office to Hobart and Parramatta and most recently to Wollongong as a result of my spending time as a non-resident and my wife relocating. We have had many different case managers each of which has expressed considerable surprise at the thickness and complexity of our case.

Since the commencement of child support, I have spent time overseas as a non-resident parent that therefore falls outside of the CSA's authority and my ex-wife has requested reviews on two occasions. There has been a constant series of errors and omissions, which has taken a great deal of time and effort to understand and unravel.

If I was not a numerate person I am sure that I would have no chance in understanding how the system worked and even so it has taken many hours for me to develop a model to reproduce the calculations done within CSA in order to show them their errors. Indeed the

CSA have been unable to correct an error in their reporting of amendments to my account, which is only in the way it is reported and not in the actual amendment.

In my opinion the biggest flaw in the existing child support formula, which means that it does not act fairly for both parents but rather creates incentives to seek to avoid liability and disincentive to earn income, is that the ASSESSMENT of the liability is on a PRE TAX basis but that the PAYMENT is on a POST TAX basis.

If the amount deducted from the paying parent was deducted on a pre-tax basis, such that the payment was a tax-deductible expense in much the same was a superannuation contributions are, then there would be considerably less incentive to seek to minimise taxable income. Indeed for many individuals sitting only just above the threshold for the top marginal tax rate there would be an incentive to earn additional income, as they would retain a greater proportion of the additional amount earned than they do with the current operation of the formula.

For the recipient parent the amount paid is not considered taxable income, unlike other sources of income support such as pensions or annuities. The effect of this when the amount paid is significant is a considerable disincentive to earn other income as the impact of earning above a certain amount is to lose both net income and a proportion of earned income in tax.

In my circumstance I pay 22% as I have substantial contact with my children. Given my income this is assessed at the maximum payable under the Act or about \$24,000 per annum. For my ex-wife to earn a similar income net of tax she would need to be on a gross income approaching \$50,000. This means that there is even more disincentive to earn supplemental income than for those individuals receiving pensions.

To counter the impact of having the amounts considered pre tax adjustments could be made to the amount of income exempt from the formulae resulting in a similar net value transfer of purchasing power but with positive tax treatment for the payer and transfer of the tax liability to the individual who has the beneficial use of the funds.

In my opinion there should be far better communication as to how and why adjustments have occurred and how they have been calculated. If I hadn't taken an active interest in my child support liability and how it is determined I would have been accused of underpayment and then overcharged all as a result of the automatic review of liability on assessment of my annual tax returns.

When it comes to reviews I believe that those individuals conducting the reviews (at least in one instance) do not have adequate skills or experience and do not give adequate regard to the statute they are seeking to enforce. There is neither sufficient consideration as to what the particular circumstances are, adequate reasoning provided for the decisions reached nor a clear enumeration of the facts on which they rely.

In my case this meant that the first review did not recognise that the Court Orders provided for me to have substantial contact (in terms of the Act) with the children nor did it acknowledge the date on which I departed Australia to work overseas (and hence cease to be covered by the Act).

I have heard many stories from individuals, particular the payer that recount hostility and bias amongst the staff of CSA against the payer. In my own circumstances I have had frequently to seek to communicate with a supervisor either due to the attitude or lack of understanding of the first line staff I spoke to. I must also acknowledge that if it weren't for a particular member of the Hobart team (who unfortunately departed CSA not long after assisting me to resolve

many issues) I would not have gained the understanding of the application of the formula and the workings of the CSA that I have.

I don't think that many people understand that there are two distinct internal divisions to the CSA, one dealing with reviews and the other with administrative matters and where a case involves both these two divisions do not deal with each other internally but rather the affected individual has to communicate separately with each area and know what matters should be addressed to each division. When the outcome of some issues is dependant on the other division this makes the management of the problem very difficult.

I also believe that there are inadequate controls in place to prevent avoidance of liability by those with sufficient funds to suitably organise their affairs in such a way as to generate a low taxable income. I am aware of instances where individuals who clearly have the capacity to pay have little or no liability due to the way they have structured their business affairs. This system therefore penalises those who seek to pay fairly, provides disincentives for individuals to earn income by leaving them with often less than 25 cents after tax for every additional dollar they earn and allows those with the means to do so to rot the system

The paying parent also has no control over how the funds are spent. Once the funds have been paid they are beyond the control of the paying parent and there is no way for the paying parent to be sure that the support provided is properly used for the care of the child or spent in a frivolous manner.

There are no clear guidelines on what is expected to be an appropriate manner to apportion costs between parents for large expenses or where both parents share the benefit of the expenditure.

Despite paying the maximum under the Act as child support to my ex-wife she has over the last 5 years spent all the property settlement and support and during a recent period when I was unemployed and therefore not liable to pay more than a minimal amount, she was unable to meet her expenses. She expects that if the children are to attend private school for their secondary schooling that I should meet this expense in addition to the child support I now provide. In my opinion the money that I am providing for the care of the children is being spent to support her interests and enabling her to exist without earning an income.

11. Other Matters

A. Inherently an Adversarial System

In my experience the statement that the Family Court is not an adversarial environment is a myth. Legal representatives have a financial incentive to draw out the matter and also an obligation to act in accordance with their client's wishes. If the legal representative is seeking to promote their clients position how then can they be expected to encourage mediation and resolution of matters? I strongly believe that the situation has developed to the point where the only winners are the lawyers and it is only once the parties have exhausted their available funds that they truly enter into mediation and compromise, which is far from in the best interest of the child.

I would strongly support a more towards greater use of Court ordered mediation and counselling, attendance at appropriate courses and a refocus on the best interests of the child. I would commend Court imposed limitations to fees and expenses charged in the course of proceedings and in the development of more time and cost efficient means of

conducting interim hearings as a way of ensuring that family separation does not mean economic suicide for those involved.

More attention should be given to identifying where there is excessive adversarial behaviour by the parties and permitting the court to impose requirement that seek to remove such behaviour before the matter is resolved.

I believe that there is a place for greater emphasis on there being a separate representative for the child who seeks to consider the child's best interest rather than for this to be down only at the final stage when the matter is put before the court.

B. Governed by Preconceptions and Outdated Ideals

I also consider that there is significant institutionalisation of perceptions and views of appropriate and acceptable arrangements amongst the legal fraternity that seeks to perpetuate outmoded ideas and reject modern realities.

This includes but is not limited to reactions to sexual preferences and expectations as to what the Court will consider acceptable custody arrangements.

Individuals approach the Court and recognised Family Law Specialists in an attempt to achieve what they believe to be fair and equitable (and hopefully also in the best interests of the child). They are met with attitudes and beliefs that establish expectations of outcomes even before the individual facts of the case are known.

Regardless of who left who and what the cause of the separation was an expectation is set that the breadwinner cannot expect other than to, in the words of another divorced father "bend over and take it like a man". So long as these perceptions are perpetuated cases will not reach hearing in the hope of obtaining a fair and equitable outcome that places the best interests of the child as paramount but rather that the father will be taken to the cleaners and the mother will "get it all". To the extent that the circumstances deviate from the traditionally accepted structure of the family, the less acceptable party can be expected to be even harder done by.

Until such time as the Family Court makes clear and comprehensive statements about changes in attitude and policy that deviate from existing precedents and widely held beliefs it cannot be expected that outcomes of custody hearings will differ greatly from those in the past. If we are to change to a better and fairer system then we must first bury the past and accept the errors made. This of course will have implications for those who feel unfairly treated under that historical standard and may result in litigation or reopening of recent findings.

C. Custody Determines More Than Just Shared Time

Whether it is in fact true or not, the perception is custody is a crucial factor in determining how the property of the family is divided. This may mean that whilst parties purport to be arguing about the best interests of the child and the appropriate custody arrangements they may in fact be more interested in maintaining their share in the assets of the family.

There needs to be established far more clear and differentiating guidelines as to how custody and property arrangements should be determined independently or a recognition that they are inextricably intertwined and considered more appropriately in determining the vested interests of the parties.

What happens with property when custody arrangements change or when one or both parties do not fulfil the custody arrangements? What if the other person gave concessions or had expectations about property or maintenance in return for custody, which ends up not happening? What happens when the children are of an age to be involved in the decision of how they reside with their parents?

Where changes in custody occur, if custody has an impact on property, should there be changes in the property settlement?

Should it be the length of the marriage, the number of years until the child reaches majority, the past roles of the parents, their future earning capacity or some combination of these and other measures that determines property settlement? How should custody interact with these other factors?

The interaction of custody, property settlement and child support has a compounding effect on the payer. It is well recognised that it costs more to support two individuals than one couple (as can be evidenced by the marriage pension rate being less than twice the individual rate). So it can be reasonably argued that the costs of maintaining a family post family separation are higher than pre separation.

At this time of increased cost the breadwinner is faced with the compounding effect of the requirement to pay child support (the increased cost), a significant reduction in their assets (as the majority of assets have historically been given to the primary care giver to support greater share of custody) and a desire to reduce their workload in order to spend more time with the child which results in a reduction in income.

Thus at a time of incurring the costs of seeking a custody arrangements, and a significant reduction in the assets available to support increased costs, the breadwinner is confronted with the costs of paying child support and the conflicting need to maintain income to support these higher costs and the desire to maximise the quality time spent with the child. Is it any wonder then that suicide rates amongst such individuals are high?

Is it fair that an asset rich, income poor person should be more entitled to an income (child support) because they have children? Other income benefits are means tested to ensure that the asset levels are also considered so that equity is maintained. Should it be acceptable for a person to arrange their affairs in such a way to minimise their taxable income as a means to minimise or maximise their child support position? How can you adequately account for the many different circumstances confronting this situation? Clearly there is no single easy way to ensure the fair distribution of the assets of the marriage, the level of child support and the custody arrangements that hold the best interests of the child as paramount.

D. Interactions with other Departments

As another example of how my ex-wife manipulated the system, I would like to recount some of the events surrounding our separation.

For some time my ex-wife and I had been having relationship problems, arguing and sleeping in separate beds. After a time, whilst still residing together, I was served at home with papers that indicated that my wife had filed for an AVO in the Ryde Local Court. A friend of ours had intimated that such a course of action was possible so it was not a complete surprise.

I discussed the papers with my ex-wife and asked why she wanted an AVO. Her claims was that, following recent recollection of having been interfered with by her uncle when she was young, she felt that she needed the AVO to feel safe. Wanting to do my best to accommodate

her needs and desires I indicated that I was prepared to consider the application. Even when appearing in the Local Court my wife indicated to the court her desire to continue to live together and resolve our differences, the papers being filed at Court showing her address as the matrimonial home. I saw no reason to do other than grant the AVO without admission as a gesture of good faith towards my wife.

Upon departing the Court however I was approached by an individual who had been sitting in the Court all morning, witnessing our proceedings as well as many others. This individual served me with papers from the Family Court indicating not only that my wife had filed for divorce but that the address she had used on those forms, filed several days earlier, was other than the matrimonial home.

This clearly was a calculated act on her behalf to have me enter divorce proceedings with an AVO against me in an attempt to bolster her relative position in the seeking of custody of the children.

Her ability to manipulate the Court system in this way, just as with the earlier example of her involvement of the DoCS and the CPA at times that impacted on the proceedings of the Family Court are indications of the failure of the system to consider the case as a whole in a co-ordinated fashion. The ability to work the system to impact the outcome can only be prevented if there is instituted a process whereby all departments and services cross reference their actions and consider the impact of their actions on other areas.

E. Accessing Remedies and Enforcement of Arrangements

The current process provides little alternative than to return to Court if one of the parties fails to follow the custody arrangements or where the parties to the agreement interpret the arrangements differently. Given that this is most often the case in circumstances where there is considerable animosity between the parties and thus little prospect for mutual agreement and that it most often occurs within a short time of appearing in Court to obtain the agreement there is little desire (or economic capacity) for many individuals to return to Court to have the problems resolved.

Those individuals most interested in acting in the best interest of the child are also likely to be those least willing to return to the Courts as this is more likely to generate further animosity between the parties. Often it is the case that the more obstinate party ends up behaving exactly as they want and the other party being unwilling or unable to seek remedies or enforcement of the arrangements as they hold the child's best interest as being preventing further animosity between the parties.

The current system does not seem to provide any simple, affordable staged process that enables parties to an agreement to voice their concerns and have then addressed in a non-confrontational manner with the other party. The only solution to seeking enforcement or agreement on the intent of the orders in situations where there is not good lines of communication between the parties is to take the ultimate adversarial approach and summon them back to Court.

There needs to be more attention on assisting parties to custody arrangements following family separation to reach a practical and workable arrangement that represents a reasonable compromise to the parties and that is truly in the best interests of the child. The development of appropriate enforcement and remedial options from simple communication to requiring mediation is essential to ensuring that parties to an arrangement can ensure that the arrangement will be adhered to.

F. Responsibilities of Professionals and Parental Rights

Finally I would ask that consideration be given to the development of standards and guidelines for the benefit of professionals and specialists that may be employed by one of the parties following separation. It has too often been assumed by many of the professionals I have come in contact with that their only obligation is to the person who engages their services.

Where more than one party is involved in the ongoing care and development of a child there is no existing requirements to ensure that each party is kept informed about factors that may influence that child. Indeed many practitioners have no regard for the possibility that they may be more than one individual involved.

Before a practitioner becomes involved with a child (except in emergency situations) I would have thought it would be in the best interests of the child for that practitioner to ascertain whether there is more than one individual or family unit that has a responsibility for the care and development of that child. Where it is clear that more than one individual is involved, or there is evidence of poor communication between the individuals involved that practitioner should be required to at least inform each party of their involvement. There should be some means by which the practitioner can establish whether court orders exist in relation to the care and protection of the child and whether anyone other than the initial contact has a right to know about their involvement with the child.

From a Privacy point of view there needs to be recognition that individuals with custody rights also have rights to the information about the child if they are to be able to act in the child's best interest.

In my personal experience I learnt by accident that my wife had engaged a child psychologist to counsel my daughter when at the age of 7 she one day pointed out to me the location where her "secret friends" are. She subsequently burst into tears and it took me sometime to determine that she had accidentally let slip a secrete that her mother insisted that she keep from me and was frightened how her mother would react when she learnt that I had been told.

When I approached the child psychologist in question she refused to see me without me paying for a formal appointment and then refused to discuss my daughter with me in any way. The psychologist did not believe that she had any responsibility to discover whether there were written Court Orders about the custody of the child, nor that the fact that the Orders were in fact Residence/ Residence orders that provide that both parents had responsibility for the care, protection and development of the child.

My ex-wife's refusal to communicate to me anything about any external professionals (be they schools, psychologists, doctors or others) who took on a role with our children made it very difficult for me to understand what was happening in my children's lives whilst they were not in my care. In no instance did she ever inform the external professional of the existence of the Court Orders nor did she provide my contact details when enrolling the children at school, but instead nominated her sister as the other point of contact in case of emergency.

If the best interest of the child are to be held paramount then there needs to be a more formalised guideline and infrastructure put in place that allows for the identification of children where there are custody arrangements in place following family separation and an identification of the obligations of external service providers to be aware of the contents of those arrangements. Further the rights and responsibilities of the parties to the custody arrangements in relation to information about the child, particularly to do with privacy and communicating to existence of arrangements needs to be clarified.