

Saturday 26<sup>th</sup> July 2003

Committee Secretary  
Standing Committee on Family and Community Affairs  
Child Custody Arrangements Inquiry  
Department of the House of Representatives  
Parliament House  
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Australia  
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House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	154
Date Received:	28-7-03
Secretary:	

Dear Committee

This letter is a submission to the Committee's inquiry into the following terms of reference.

- (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; and
  - (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- (b) whether the existing child support formula works fairly for both parents in relations to their care of, and contact with, their children.
- (c) with the committee to report to the Parliament by 31 December 2003.

The best interests of the child can only be paramount when each child is entitled to unique consideration of its interests and circumstances, rather than any presumed model of parental division of the child. I am therefore opposed to any presumed division of children of separated parents. Children are not possessions to be allocated.

The government should establish a national child protection service for the family law system to assist the courts in the investigation safety issues where violence or abuse is alleged. Where violence is established on the balance of probabilities, there should be a rebuttable presumption of 'no contact' with the violent party which would require the person who has used violence to demonstrate how contact would not pose a threat to the safety of the child, or other family members. The service should also be able to investigate and review the outcomes for children following orders which expose the child to risk of violence, abuse or other harm arising from the orders.

### **My Own Story**

My former partner has alcohol, drug and psychiatric issues. I was living in an emotionally draining and at times physically threatening environment. The "father" did not want, nor was he ready to be a father. He often accused me of "railroading" him into having a child. Our daughter was 7 months old when I finally left with her.

After I left, the Child Support Agency made an assessment of 'the father's' income based on his most recent tax return (1999) 18% of his taxable income. As he is self employed he was able to reduce his income to such a degree that his assessment was approximately \$20.00 per month.

For a period of 7 months following that assessment, the father contributed \$250.00 per month directly to me in cash, which I in turn declared with the CSA. This declaration put the father in credit with the agency for approximately 6 years.

The "father" resented contributing child support and said things such as "I never wanted any of this, anything you get from me is a bonus". "My taxes pay for your single mothers pension". Finally he insisted that I grant him shared care "so I don't have to pay child support". The fathers contact with his daughter had always been sporadic. Arrangements were often ignored. For example, when I was living with the father and our daughter he went out with us on one family outing. For 13 consecutive weekends prior to giving birth he did not come home at all. The night I was due to give birth he went to the pub.

The very day he demanded shared-care he threatened me with lawyers and being tied up in court and then picked up our daughter and ran off with her. She was 15 months old. She was screaming for her mother and as I tried to get my daughter off him, he shoved her into his truck and hit her head on the inside roof of his car. I eventually got to her and got her away from him. He then rang the police, accused me of assaulting him and taking our daughter out of the car and bashing her head on the roof of his car in anger. He then contacted Child Protection Services and told them the same. He then took out an intervention order against me. He then filed for full-custody and sole guardianship in the Family Court. From that day he ceased contributing child support and as he was in credit with the agency I had to make an application to the CSA for a reassessment.

I waited four months for an appointment. The "father" simply ignored requests for financials and so they eventually came up with a median figure of \$145.00 per month. The "father" is a builder and in this climate the average earnings of a builder listed at the CSA is \$50,000.00 per year. The CSA simply chose not to apply that assessment even though they had the capacity to do so. The CSA refused to backdate the new assessment to the beginning of our association even though their original assessment was undeniably incorrect. The father had proven from day 1 that he had capacity to pay at least \$250.00 per month. The father has verbally and in affidavit form told the Family Court repeatedly that he is a working builder. That evidence was also presented to the CSA. The CSA's new assessment did not come into effect until September of last year as the credit the father was in held it off for that long. I received absolutely no Child Support for our daughter for a period of 9 months. I objected to the CSA assessment and they said it would not be fair or equitable to change it.

To who would it not be fair and equitable is my question? And the answer is obviously to the "father".

The father spends \$70 a week on cigarettes and \$35 per week for our daughter. The father lives in his own home with a \$50,000.00 mortgage. I rent a property for \$185.00 per week. Because we were not married I cannot have a property settlement heard in the Family Court. The Family Court would take into account the future needs of our daughter. A Civil Court will not. I contributed to the "fathers" mortgage when we were living together. I have no way of retrieving that money because it would cost me more to take it to a Civil Court than what I would get back. The Civil Court will not take into account the future needs of our daughter.

The father currently contributes sporadically and is usually in debt for about \$300.00. His payments are getting more regular as a Trial date draws near.

I am still awaiting a Trial Listing in the Family Court some 17 months after the original application. I have interim residence of our daughter and she has contact with her father weekly with fortnightly overnight stays. The "father" has filed numerous affidavits in the Family Court making further allegations of child abuse. The father has already committed perjury regularly.

The "father" is still pushing for more contact and recently put forward a proposal that he would withdraw his application for full custody and sole guardianship if I agreed to a whole lot more contact. He wants a week every school holidays and some, even though my daughter is under 3. There is no doubt in my mind whatsoever that the father is pushing for more contact so that he can then claim part thereof of my Family Tax Benefit Part B. Even though the father pays minimal child support, when he does pay. In fact his Family Tax Benefit payment would I believe be almost equal to what he pays in child support currently.

I do not believe that the father has the best interests of our daughter at heart and is all consumed with revenge and malice towards me. His actions and serial lying have confirmed that to me consistently for the past two years.

My experience I believe highlights some very glaring inadequacies within the Child Support Agency and a very strong argument as to why a rebuttable shared-care system would be a disaster.

#### **The Child Support Agency.**

1. The 18% of taxable income formulae does not reflect the actual cost of raising children. For Single Parents those costs are even more than coupled as one party is contributing for mortgages, rent, food clothing etc. The % should be raised considerably.
2. In the case of self-employed persons, as my situation demonstrates, if the payer does not think it is their responsibility then the system simply allows them to shirk it. If a payer refuses to cooperate with the CSA then a maximum assessment should be applied. Then it would be the responsibility of the payer to prove that they cannot pay rather than the onus put onto the payee to prove that they can. Short of hiring a private detective this is near impossible under the current legislation governing the CSA.
3. A minimum amount of child support should be payed before any Family Tax Benefit is split. If the payer does not contribute a fair & equitable amount, and this should be in line with the real cost of raising children, then the FTB should be withheld for the payee.
4. CSA "clients" should be required to lodge tax returns yearly, on time.

#### **Presumption of rebuttable shared-care:**

As my case clearly demonstrates:

1. Children would be forced to live with parents who don't really want them shared-care but who will use the system to reduce child support payments and for revenge.

2. I have waited nearly two years to have any evidence tested in the Family court. In the situation where domestic violence is an issue children would be forced to have contact with perpetrators of that violence while a Trial was waited on. That wait would possibly be much longer given the amount of extra applications that will be made to the Court should a presumption of rebuttable shared-care be up.
3. Dramatically increase poverty.
4. I waited 2 years to get Child Care in the Maribyrnong District. The waiting lists have since been closed. Also in Caroline Springs so I believe. There are no more child care places. Both parties would be forced to stay at home to care for their children as 1. There is no child care and 2. Who could afford it if you even got it. Remember, we'd all be living on NEWSTART.
5. Gainfully employed persons would be forced out of work or
6. Children would be forced into full-time care. There have already been many studies done that show full-time child-care is detrimental to children.
7. Children would be forced to live out of suitcases and never have the experience of a stable home environment.
8. 5% of cases end in the Family court currently. Of that, fathers are awarded residence 40% of the time. The court already has the power to award whatever it deems to be in the best interest of the child.
9. Of those 5% of cases I believe these are the cases that are fraught with domestic violence. These are the really difficult situations. And these are the very people who would be most disadvantaged by presumption of shared-care.
10. If 95% of people can already work it out why don't we just let them.
11. If people in that 95% bracket are unhappy with their situations then they already have the right to apply for a hearing in the Family court.
12. I believe, had my daughter been forced to live shared-care straight up following our separation that she would have been severely traumatised. She barely knew who her father was, even though we lived together. He deliberately ignored her on many occasions. I would still now be in the Court trying to get her back into a stable loving home environment. It is my experience that the Family Court appears to hold the view that everyone in the court is lying and they make contact arrangements regardless of allegations without testing any evidence straight up. I believe that if they had bothered to test the evidence that "the father" has put in that they would have been able to throw out his application nearly two years ago. They would have saved the Government thousands in legal aid, and months and months of anxiety and grief.
13. Research shows that unless the parties involved in a shared-care arrangement have a mutually respectful relationship then it doesn't work. I do not even speak to my former partner as I find him threatening and unpredictable.

14. It is simply not in the best interests of the child. The Family Court operates I believe on the proviso that the interests of the child are paramount and I believe rightly so.
15. Grandparents already have legal rights within Family Law.
16. It is my observation that the majority of fathers do not share the care 50/50 of their children even in a partnered relationship. Often because they don't want to.
17. The presumption of share-care devalues, once again, the importance and sacredness of mothering.

**Any Father is NOT better than no Father**

My daughter's father is in my experience a perpetrator of domestic violence. Physically threatening under the influence. Emotional, psychological, maternal alienation and financial domination are his trademarks.

His father deserted him when he was 3 and did not see him again until he was 16. His father was a paranoid schizophrenic who believed everyone, especially women were out to get him. He left his mother because he believed she had tricked him into having another baby. His mother re-partnered a physically abusive alcoholic who abused his mother and his step children, himself and his siblings.

These were his male role-models. Any father is not better than no father. Surely we devalue fatherhood when we reduce it to these levels.

The abuse I have experienced since becoming involved with our daughter's father I believe is as a direct result of the legacy his male role-models left him with.