

**SUBMISSION TO THE PARLIAMENTARY INQUIRY INTO FAMILY LAW IN
RELATION TO CHILDREN**

Submission No. **641**

Date Received: **8-8-03**

Secretary:

Background

I have three children, the older two are from my first marriage and are aged X and X years, and the youngest is X years old. I separated from my former partner in early 2002.

My former partner and I attended mediation with a private counsellor shortly after separation to attempt to come to agreement on contact issues and the property settlement. We managed to make short-term contact arrangements but my ex-partner lost his temper and refused to discuss any further issues. Two weeks later, I received the first letter from his solicitors. They threatened to issue in the Family Court if I did not agree to all of their demands. I was unrepresented at the time. I asked for my ex-partner's agreement to attend counselling/mediation to resolve the child and property issues but he refused. I attempted to negotiate with his solicitors but they refused.

In late June 2002 my ex-partner applied to the Family Court. Since July 2002, I have engaged solicitors to represent me. My solicitors have attempted to negotiate on all issues and have made further offers on my behalf to organise mediation to resolve all issues. My ex-partner has consistently refused.

A Case Conference was held at the Family Court on XX 2002. On that day my ex-partner, accompanied by his solicitor and his barrister, agreed to accept my proposal for phased-in contact arrangements but only until the end of 2002, with no agreement on holiday or Christmas contact. The matter was listed for trial but with no date. Early this year the matter was transferred to the Federal Magistrates Court. My solicitors advised me that the matter would be dealt with more quickly and more cheaply. A hearing date was finally set for XX 2003. At that time my solicitors asked the Court to order compulsory mediation. The Court did not order mediation on the grounds that the hearing would be held in XX and there would not be time for mediation (because the waiting lists are so long). Less than two weeks before the hearing date, the hearing was postponed again. On XX the hearing date was again postponed, this time until January 2004. If it is heard then, it will be more than one and a half years from the date my ex-partner applied to the Family Court.

Shared Care

There are three issues I wish to comment on in relation to shared care.

1. Benefits and Costs to Children

For most children, particularly younger children, shared care would involve enormous adjustments in addition to the adjustments required as a result of the separation. Many fathers are not significantly involved in the care of their children prior to separation — a decision by the fathers that often contributes to the failure of the relationship. In my case, my ex-partner's decision to pursue his career and financial advantage led to him leaving home between 6.30 and 7 am each weekday morning and returning home between 7.30 and 9.30 pm, usually around 8 pm. He would go for days without seeing our child at all. Even when she was awake when he arrived home, he would refuse to interact with her or to take over the bedtime ritual because he wanted to have his dinner and watch TV. He told me that he had a very responsible and stressful job and he needed to 'veg out' at home.

On weekends, he went into work many Sundays. He slept late every Saturday and Sunday and he 'vegged out' the rest of the time. After the first week following our child's birth, he did not get up during the night to her. He told me that he should not change nappies or feed our child because he did not know how to do it correctly and I could do it 'better', being an experienced mother.

Our child is having contact with her father every Wednesday evening until the commencement of kindergarten on Thursday mornings, every alternate weekend from Friday afternoon until Sunday evening, and half of school holidays. The contact was phased in, despite his opposition to any phasing-in, in order to assist with our child's adjustment. However, the adjustment required of her has still been very substantial. On her first school holiday contact with her father, he rang me every day because she was upset and wanted to speak to me. (Despite this, he placed limits on how long she could speak to me — one day, he decided contact should be for 'one minute only'.)

She complains on almost every contact occasion that she does not want to go. While she is happy to see her father, she says she wants to go 'next day' and asks that I ring him to ask that she go another day. Of course, this is not possible. There continue to be frequent telephone calls when she is with her father. I am usually not home when these calls are made and on my return home, I find messages on my answering machine recording her moaning and crying. There are significant costs to our child from the level of contact required of her now. The costs would be even greater if shared care was mandatory.

In 2002, overnight contact began and the father began to collect our child from crèche, which she attended for a total of 12 hours per week spread over three days. I had deliberately limited the hours my child spent in crèche. The father and I had agreed that, although he insisted that I work in order to pay for the expenses of my two older children (who he refused to support because he is not their father), I would work part-time only in order to limit the amount of time our child was in care. We agreed that it was in her interests to spend most of her time with me prior to school entry. However, he decided to collect her much later on Wednesday afternoons and to drop her off at crèche when it opened on Thursday mornings. His decision increased her hours in crèche by 3 hours a week, an increase of 25 per cent.

Shared care would only cause our child to spend longer hours in childcare instead of with her family. I have arranged my working hours to ensure that I am available to care for my children outside of school hours. Moreover, I work during school hours on three days a week only — at a substantial financial cost to me — so that I can spend two full days a week with my youngest child before she goes to school next year. I use these two days to take my child to swimming lessons, to storytime at the local library, and to the shops with me, and to invite kindergarten friends over for a play at our home. I also use the time to give her a 'rest day' when she is tired. Shared care would prevent her from benefiting from many of these activities because there would not be time. Her father continues to work full-time even though he is self-employed and has discretion to arrange his working hours as he chooses.

The Prime Minister has expressed a strong view that children in intact families should be cared for by a parent, specifically their mother. He has referred to studies showing that young children benefit from spending time with their mothers and studies showing that children who spend long hours in childcare suffer adverse consequences. A presumption of shared care would deny children from separated families the opportunity to spend significant time with their mothers and require that they be treated less favourably than

children in intact families. Children from separated families suffer already due to the failure of their parents' relationship. It would be a double blow to discriminate further against them.

The contact arrangements should reflect the relative involvement in childcare responsibilities by the parents prior to separation. This would be much fairer to the children than shared care in all cases.

2. Cooperation between Parents

Studies of shared care arrangements suggest that such arrangements are only successful when there is good communication and cooperation between the parents. The studies also show that such parents are able by themselves to come to shared care arrangements tailored to their own particular circumstances, including the needs and wishes of the children.

The cases that reach the Family Court or Federal Magistrates Court do not involve parents who are able to communicate or cooperate effectively. In these cases, one or both parents is usually attempting to use the arrangements for the children to get revenge on, or power over, their former partner. My first husband and I negotiated contact arrangements for our two children through mediation conducted by Relationships Australia and we have modified these arrangements over the past seven years by agreement between us. We have never used lawyers or made application to the Family Court.

As I stated in the 'Background' section above, my ex-partner has refused all my requests to reach agreement through negotiation or mediation. Over the past 18 months since separation, my ex-partner has failed to comply with agreements on contact, he returned our daughter to me five hours late at Easter, and he refused to return our daughter for Mother's Day contact. He has refused to permit our child to have telephone contact with my two older children when they are with their father. He terminates holiday telephone contact with me after a brief period. He continues to make numerous false allegations of 'denigration' and 'alienation' in lengthy letters to me (up to ten pages long) and in letters and faxes sent by his solicitors to my solicitors, even though there is no evidence at all to support any of his claims.

Since April 2002 he has refused to speak to me and insisted that all issues are discussed through our solicitors. Getting his agreement that our daughter could complete the scheduled immunisations required this year took numerous letters between solicitors over a period of 3 months. He even wanted me to inform him through the solicitors when she had head lice! He is now refusing to agree that our daughter can be enrolled for school next year. If she is not enrolled soon, she will not be included in transition activities for next year's Prep children. There is no way that shared care could operate successfully in these circumstances.

3. Contact with Siblings

Shared care would adversely affect the development of relationships between siblings in blended families. Contact arrangements must take into account the benefits to the children of fostering relationships between siblings as well as between children and parents. Sibling relationships are just as important, particularly as the children grow older.

My ex-partner has always downgraded the relationship between our daughter and her siblings because her siblings are not his children. He has always discouraged the development of a good relationship between the three children — which was a major

cause of the breakdown of our relationship — and has continued to deny contact between the children as much as possible. I have attempted to align the contact arrangements for the three children so that they can spend as much time together as possible. My ex-partner has opposed this. Shared care would reduce even further the contact between the children.

Legal Costs

Up to the end of May this year, I had incurred legal costs of almost \$18,000 — which I am trying to pay by instalments. Since May 2003, my solicitors have devoted a large amount of time to preparing all of the documents required for the XX hearing, which has now been postponed. These documents will have to be substantially re-written in five months' time, at more expense to me.

I am on a part Parenting Payment and I receive income from part-time employment, giving me a total taxable income last year of \$16,800. My legal fees are already more than one full year's income. I cannot afford to pay any more large legal fees. I have tried everything in my power to resolve the matter through negotiation and mediation but my ex-partner has refused. The extremely long delays in obtaining a judgement increase the legal costs immensely. My ex-partner is a barrister and has very substantial financial and professional resources to conduct a lengthy and highly expensive legal battle against me. My ex-partner's taxable income exceeds \$250,000 a year.

The Family Court should award costs in such cases, particularly where the financial resources of the parties are very unequal and the party with more resources is refusing to attend mediation. Even if my ex-partner loses the case, when if it is eventually heard, he will still have achieved one of his objectives — to impose significant financial cost on me in order to punish me for leaving the relationship. These legal costs will, of course, impose costs on my children. I will be unable to afford many of their needs.

Time Delays

As stated above, I have been waiting for more than one year for the case started by my ex-partner to be heard and final orders to be made. The long delays have increased my costs enormously. All arrangements in place have required lengthy negotiations between solicitors — with no guarantee that the agreements will be honoured — and attendances at Court to respond to my ex-partner's frequent applications for interim orders, mainly relating to telephone and holiday contact. In each interim hearing, my ex-partner has finally accepted my proposal for contact. I have incurred additional costs because he has refused to agree outside of Court. I have incurred further costs as a result of his refusal to honour some of these agreements.

I have not even been able to obtain Court-ordered counselling/mediation because the waiting lists are so long.

I cannot enrol my child for school next year because her father will not respond to my solicitor's letters and I cannot get a Court Order before January 2004. My child is becoming anxious about school now because I cannot tell her where she will go to school.

The Family Court and its counselling services need a substantial increase in resourcing to ensure that counselling/mediation is available within a reasonable time frame and that decisions are made by the Court where the parties cannot reach agreement through counselling.

Adversarial System

The adversarial approach adopted by the Family Court and Federal Magistrates Court treat the children as objects to be fought over. The parent with more financial resources 'wins'. They permit vengeful people to harass their ex-partners through the Courts, using their children as the tools. This approach imposes major costs, including psychological damage, on the children. If nothing else, it distracts the parents from parenting their children and offering their children the support they need following a relationship breakdown.

The system should be changed to an inquisitorial system. The Court should focus on ascertaining the facts and determining what is in the best interests of the children.