

Submission No. 995
Date Received: 7-8-03

Secretary

From: Committee (REPS)
Sent: Thursday, 7 August 2003 10:12 AM
To: Committee, FCA (REPS)
Subject: FW: Inquiry re Child Custody from Family Separation

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From: [REDACTED]
Sent: Tuesday, 5 August 2003 2:48 AM
To: Committee (REPS)
Subject: Inquiry re Child Custody from Family Separation

7 AUG 2003

Committee Secretary
Child Custody Arrangements Inquiry
House of Representatives, Parliament House
Canberra

As a non-custodial father who has faithfully paid child support for the past 16 years for a daughter who is now estranged from him and known by my ex-wife's maiden name without my consent or a court order, I feel that I qualify to comment on this subject.

To relate all the issues I have experienced, it would simply take me a few hours typing it all out. As there was very little notice of this inquiry for the public, I will provide a brief background raising some relevant issues.

I am a 'Stage 1' payer (there's not many of us left) who separated in 1987. I contested custody of my nine-month old daughter at the time but conceded the financial burden was simply demoralising. It felt like back then I was trying to justify with money my status as a father that should be recognised. Consequently, my ex-wife who did not work was 'by default' (or should that be routinely?) granted custody of our daughter. I was granted the usual 'every second weekend' access rights but this was invariably denied on selective occasions when it suited my ex-wife. This would often occur as my ex-wife and I did not agree on a number of issues.

ISSUE 1: *if matters are contested in court, why does one parent (generally custodial) have virtually unlimited funds through Legal Aid - as she is deemed to be non-working - yet the other full time working non-custodial parent is forced to pay full-price for the same representation, therefore depleting their finances substantially more than the other party? I accept that the non-working parent would have insufficient funds to pay for representation but it is discriminatory against the full-time worker. If one parent has free or subsidised representation, then it should also equally apply to the other party. These matters should be contested in a mediation forum where the arguments are debated and then the issues presented to a magistrate for a determination that is sanctioned by the court and enforced, not reliant upon finances - period!!*

ISSUE 2: *Where court orders are in place and where disputes arise over access/visitation rights, alleged breaches are to be lodged in a mediation forum and the issues resolved by an independent arbitrator. Ideally this should be before the next access.*

TERMS OF REFERENCE

a) For children to spend time with either parent then it is obvious that they would need to live within a reasonable distance of each other, in fact for that matter, they would need to live within a short distance of any of the facilities that the child does, would or may regularly attend. This would include school and any after school/weekend activities (dancing, sport, etc) that the child attends. This would be a necessity if parents decided on equal time with the child.

It would be impracticable to assume that each parent would spend equal time with their child post

separation. The logistics would not be feasible and I cannot envisage this happening except in a minority of cases. Further I would tend to think that this may create instability for the child trying to live in 'two families', particularly where step-children or half brothers/sisters are concerned from one or both families who wish to include the child in their activities which may conflict with the other parent's plans.

a)ii) The courts should only be concerned in those cases where legal intervention is necessary. Otherwise, it should simply be expected that a child has a right to contact their grandparents, just as they have a right to contact their non-custodial parent, and vice versa. Other relatives should also have the right to contact the child however where this is continually denied, mediation should be implemented as an ongoing process and if necessary legal determination should be made.

b) I believe and agree the Child Support Agency was a necessary step the Government had to introduce to secure maintenance for those children concerned. However, I don't believe there will ever be an easy solution regarding the Child Support formula being administered fairly for both parents in relation to caring and visiting their children. Where access is denied to the non-custodial parent, the custodial parent should be made accountable for their actions. One parent should not be denied access through the perceived control of the other parent.

The issue of child support should be related in certain circumstances and dependant upon the care and contact with the child. Where parents share an equal amount of time with the child, the cost of upbringing should be 50/50. However, lesser contact and care by the non-custodial parent would increase their financial contribution. If this contact is denied by the custodial parent in order to gain a greater financial contribution then a compulsory mediation process must take place where this is alleged to have occurred or in circumstances similar to what I have experienced.

In my situation, my ex-wife moved nearly 600 kilometres away making it impossible to exercise my access rights. This was done without notification and at the time I was somewhat naive in not being aware of my rights.

My ex-wife has also enrolled our daughter in High School under her maiden name without seeking my permission. As I was unable to obtain school reports, this went on for more than eighteen months before I found out by which time I would have then been deemed to be unreasonable to apply to have her proper surname reinstated as it would not be seen to be 'in the child's interest'. Situations like this do occur - I should know - but for me to correct it would simply require more finances again for something of which I had no knowledge of and I would not be able to seek compensation from my non-working ex-wife (as far as the tax office is concerned), as Legal Aid would no doubt be representing her.

This is about my third attempt at typing this out simply because it is emotionally upsetting to try and cover a variety of issues here and relating it to the Terms of Reference. There are numerous other issues I would like to discuss and I sincerely hope I haven't gone down too many different tangents, but as I am typing this in the small hours of the morning prior to being sent to work in the country, I simply wish to state that I was certainly made to feel somewhat disadvantaged right throughout the past 16 years so far.

I remarried in 1993 and my wife now and I have two young daughters that we need to provide for. The Child Support formula in my view does not provide an adequate allowance for my two daughters with me but rather 'thrusts' the priority of maintenance for my eldest daughter as the State's ONLY concern. To this end, I am virtually supporting TWO families!!

I kept the peace in order that I could go forward with my life and my new family, to the detriment of my relationship with my eldest daughter. But I know that to assert my rights I was going to disadvantage my current family. Better to let I go than to lose 4, eh?

To work all my life and have no say in my eldest daughter's upbringing but rather made to pay for it no matter what happens smacks of sheer arrogance and contempt in ignoring a father's rights.

Thanking you for the opportunity to have my say.