

Submission No: 1105

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Secretary:

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Via email to fca.reps@aph.gov.au

Committee Secretary
Standing Committee on Family and
Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600

Re: Public Submission – Child Custody

Dear Sir:

When I read recently that Prime Minister Howard was considering introducing a “rebuttable presumption of joint custody”, I was immediately alarmed. To do so will create more problems than will be solved. I hereby submit my thoughts regarding same which are based on my personal experience as the child of divorced parents, five years professional experience as a family law paralegal, and, most recently, finding myself facing life as a single parent and grappling with these issues.

The concept of “joint custody”, or children spending equal time with each parent post-separation, is for the most part impractical. It can and does work but only in exceptional circumstances and requires a high level of communication and cooperation from the parties, most likely more so than during the marriage. If they could not communicate well enough to remain married, there is limited scope for communication improving after separation or divorce. Invariably in the breakdown of a relationship, there is one party that is substantially hurt by the other. To require that party to then launch into a new and demanding working relationship with the cause of that hurt is unduly burdensome and lead to increased feelings of resentment. These feelings will be intuited by the children, adding to their insecurity and/or confusion.

Such an “equal time” situation would not be the status quo for the majority of children. In most nuclear families there is one parent who is the primary caregiver, usually the mother, who is at home full-time or more of the time than the other parent. This person is the one with whom the children are used to spending more time and the one who performs the majority of the home duties including such things as homework supervision, co-ordinating activities and social events, and meal preparation. The child is accustomed to having this level of involvement and amount of time from this parent. To suddenly thrust them into a life where they lose a portion of this time in

favour of the other parent would greatly upset the balance, especially in the younger child. I have witnessed this firsthand with my own daughter.

For the first 2 ½ years of her life, I was her primary caregiver 98% of the time. Her father would play with her for perhaps half an hour in the evenings but rarely did things like bathtime or bedtime and never spent one-on-one time with her without me. Now that we are separated, she spends the whole day with him on Sunday which she enjoys because never before has she had this much of his attention. Yet, at the same time, a part of her realises that she is “losing” mummy-time and she desperately attempts to compensate for this the following day by not allowing me out of her sight and behaving in a very obstreperous manner. If it were legislated that she spend half her time with her father, the results would be devastating to her and me, as it would be impossible for her to “recoup” that amount of lost time with me and the resulting behavioural problems would soon stretch my tolerances.

Furthermore, children thrive on routine and consistency. As my step-brother (age 25 years whose parents separated when he was a toddler and whose father was essentially absent from his life thereafter) recently stated, kids like to know where they stand. In fact, he reports that he was grateful that he did not have to do the “every other weekend thing” that other kids in his class endured. In the traditional live-with-one-parent, visit-the-other scenario, the child has his/her own house, room, and routine. They know the rules and what is expected of them. They have consistency and relative simplicity in their lives.

In Mr. Howard’s “equal time” scenario, the children would have to be constantly adapting and altering their routine and behaviour to suit the parent they are with at a given time. The families I have met professionally who have attempted this type of shared arrangement (either on a week-on, week-off basis or a four-days/three-days split) have all commented that the changeover day is invariably unsettled for the children as they attempt to adjust to the other parent’s routine. Some parents have reported that the adjustment process takes several days and usually just when the children are settling, it is time to switch again. They are in a constant state of flux and would surely suffer from same.

The financial impact of such an arrangement must also be considered. Governmental support systems are not set up to complement such a sharing of time. Even for married couples the structure of the family tax benefit scheme is not conducive to the idea of couples sharing the burden of work and child rearing. The plan is designed to support families where one partner works full-time and the other works minimally or single parent families. In order for Mr. Howard’s “equal time” concept to work effectively, ideally both parties would need to work less than full-time, thereby reducing their earning ability, yet neither party would benefit from the existing social support system. Neither party would be earning a full wage nor would it be likely either would be receiving any financial assistance from the government. Yet both parties would need to maintain residences suitable for the children to have their own rooms thus increasing costs. If one parent did continue to work full-time, the result would be children in daycare or afterschool care programs during their custodial time with that parent. This again leads to increased costs and, more importantly, does nothing to further the goal of having children spend equal time with

their parents. Instead of spending a larger portion of time with one parent vs. the other, they are now spending less time with that parent, no more time with the other, and more time with strangers.

Such a scenario also hampers the ability of either party to move forward with their life. If they have to live in proximity in order to facilitate the shared time arrangement, neither parent can realistically move towns or interstate to pursue career prospects or new relationships. While the child's need to have contact with both parents is important, so too is the need for the parents to be able to fulfil their own dreams and/or goals so long as to do so is not detrimental to the children. The Terms of Reference for this inquiry state that "the best interests of the child are the paramount consideration". In the Courts before which I have appeared professionally, it is widely held that the best interests of the child are served in part by having happy, fulfilled parents.

To enact the "equal time" concept would create more problems than it solves. There is currently nothing to prevent families from utilising a shared time schedule where same suits everyone involved and the parties have the ability to communicate effectively to do so. However, to impose such a regime on everyone will only lead to more stress for the parties and their children from which no-one will benefit. If joint custody is the starting point for contact and access agreements, I believe an increased number of families will find themselves seeking the assistance of solicitors and the family court to overrule same.

If Mr. Howard enacts the "equal time" proposal, I believe the impact on children will be vastly more negative than positive, will place undue burden on the personal resources of the parents, and will result in an increased burden on the family court system.

I appreciate the opportunity to submit my thoughts on this issue and would be happy to expand on same if called upon to do so.

Sincerely,

[Redacted Signature]