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Secretary: .....

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

7 August 2003

Dear Sir/Madam,

As a second wife to a very capable and caring man who has 2 children to a previous relationship I would like to put my views to the committee. There are 3 main issues of concern to me.

**1. The CSA Formula is inequitable. Rights, duties, responsibilities.**

Having watched many of my women friends live in poverty with their children because the fathers of the children were unwilling to help support them, I understand the need for a system that obliges non-custodial parents to make a viable financial contribution to their children. The fathers of my friends' children often hid their wealth in their companies. The CSA has done nothing to address this situation and many wealthy men are still able to abandon their ex-partners and children leaving them to live in hardship.

On the other hand, it seems to me that the CSA formula has swung the pendulum far too far the other way for PAYE earners. We now see ex-wives choosing not to do paid work at all or to choose to work part time whilst experiencing a very enviable quality of life while their ex-partners (and their new partners) work full time jobs to make ends meet. If no paid work was the expectation prior to marriage and children, then maybe its reasonable, however, I don't know of any intact couples in Sydney with school aged children who can afford the luxury of the mother not being in some form of paid employment. Why then, after divorce is the father expected to fully support his children and his ex-wife? Surely the liability should be limited to the children and a 50% share of that – not the entire cost of the children. The formula is flawed. A flat percentage formula, applied to all income levels and all ages is unreasonable. Any mathematician will tell you that the higher the income the less of a percentage of that income is spent on an individual item including in this case, the children. Wealthier parents may well spend more on their children, but not 5 times more.

An additional sting from the current formula is that my partner pays \$500 per week that's 27% of my husband's gross income to his ex-wife out of post tax dollars, yet she claims family benefits tax rebate and other tax advantages. This is the equivalent of at least \$38,000 gross per annum. Very nice thank you! Of course she chooses not to do paid work. Further, we have the children for some 96 nights each year. We are required to pay the full 27% during that time as well. To my reasoning, if it costs \$500 per week to support two children then that means that we are doubling our payments for 14 weeks at \$500 per week. The result equals an effective \$625 per week that we contribute towards the children's keep. This is an awful lot of money considering the NATSEM (National Centre for Social and Economic Modelling) paper presented to the Australian Institute of Family Studies Conference on 13 February 2003 estimates the average cost of two children for a middle income family at \$295 per week. They were a middle income family.

In order to see his children and build a meaningful relationship with them my husband firstly had to spend a significant amount of money to gain access rights although he had been a fine father. The ex-wife then took out a spurious domestic violence order to (successfully) gain control of the matrimonial home. He had never been violent.

In order to use the granted access visits he has to provide accommodation for the children's visits. This means a house big enough to accommodate them every second weekend and half the school

holidays. We live in Sydney and as we all know, housing is not cheap in this city. My husband and I grew up in the area we live in and both lived here before we married. We managed to buy an unrenovated semi-detached house on a busy road in our area.

We took out the mortgage based on the commitments agreed to in a Child Support Agreement my husband and his ex wife had in place, which she initiated and he more than honored. The agreements are not worth the paper they are written on from the payers point of view. The payee just has to want more and they get it. No equity here. Overnight we find ourselves struggling to have a satisfactory lifestyle commensurate with the 60 hours per week we both work.

To add insult to injury, should we decide to make a lifestyle decision to move to less stressful jobs or a less expensive area (as many people do as they get older) and not earn as much as he does now, a CSA Review Officer can use my husband's previously higher income to change the amount he must pay. Imagine earning \$35,000 yet being ordered to pay on an old income from better times of \$60,000. Payment should be based on a capacity to pay, not a capacity to earn.

The CSA has no ability, nor is there any requirement to investigate thoroughly the circumstances of the payer and payee. They take a simplistic view that if a person earned more in previous years or if they resign from a job and take a lower paying job they have a capacity to earn the higher income. This amounts to peonage – involuntary servitude & peonage - a condition of compulsory service or labour performed by one person, against his will, for the benefit of another person due to force, threats, intimidation or other similar means of coercion and compulsion directed against him. CSA actions collection via a series of threats followed by court recovery action when they will force the sale of the payer's home if they have no money left to satisfy the debt.

We are not alone I am sure. PAYE fathers seem to have no rights but plenty of duties and responsibilities whilst the mother has only rights.

## **2. No incentive to strive to do well for separated fathers.**

I understand that the Agency has more than 600,000 payers – mostly men and it impacts on more than 1 million children. The system is not working. Of these payers 39% are on the dole which is more than 6 times the national average of unemployment. 45% of CSA payers earn half or less than half of average weekly earnings. Why? Because the system is so severe that it discourages them to strive for anything. For example a person earning \$35,000 per annum with two children to support has as much left over after working at least 40 hours a week as he would on the dole. On the dole, he avoids the stress of full time work and work related expenses. For low income earners, and those on an average wage, its not a matter of fathers not wanting to support their children, although I admit some do not, rather they are unable to support their children while being able to maintain a reasonable standard of living for themselves.

In the process the children lose contact with their fathers. What a pity for our society where it is well researched that children are far better off with two parents. Many fathers commit suicide in sheer desperation.

My husband and I had decided to have a nest egg for his children once they turned 18 to help them on their way into adulthood. Due to the onerous amount of child support required by the formula, we will not even have our own mortgage paid off by the time we retire and will have to use our superannuation to own our home. Meanwhile, I sit and watch his ex-wife live a blessed life. She does not have to do paid work as she gets so much from her ex that she owns her own home and has bought an investment property in Coogee. Unbelievable when my husband and I both work full time jobs (60 plus hours per week) and never envisage having an investment property to supplement our retirement.

### **3. The Child Support Agency, new partners and privacy.**

As an independent woman with a full time job, I contacted the Child Support Agency to ascertain the liability of a second wife for the financial support of a new partner's children to a previous relationship.

I was surprised to find that the answer was that there is no answer. In fact there were several answers depending on who one spoke to in the Child Support Agency!

The first person I spoke to at the CSA told me that a new partner's income would be very likely to be used to support the children and the ex-wife. I was told that at any time, the children's mother could decide that her ex-partner's financial status had improved and ask for more money. Remember that we are both PAYE tax payers – there's no hidden income. There does not appear to be a cut off as the CSA representative mentioned in the example he used a new partner earning \$500,000 per annum the income would be assessable. There is no way that a new partner can safeguard their income from this assessment, which I find totally unacceptable. I asked about perhaps a pre-nuptial agreement to protect assets, which the new person brings to the relationship and the CSA representative suggested there was nothing that could be done. I assume this also means that any inheritance is up for grabs.

I rang again to ascertain how the income of the new partner would be assessed, through subpoena of group certificates or whatever, and was told by this second person that there was no way the CSA would use the income of the new partner to assess child support payments.

I am amazed and appalled that there is neither protection nor adequate advice available from the CSA.

The Child Support Agency CSA says in its charter that it wants to help separated parents meet their child support responsibilities and that they will be objective and unbiased. They also claim they will respect privacy and keep information confidential yet they have breached my husband's privacy several times. If this were any other situation he would be entitled to complain but the CSA is above the law and can do what they like. Very frightening for an agency to have so much power.

#### **My suggestions:**

1. That the Family Law Act be amended to require parents to jointly and equitably share the rights, duties and responsibilities of parenthood;
2. That the Family Law Act be amended to include a statement acknowledging the fundamental rights of children to maintain frequent and continuing contact with both their mother and father following parental separation or divorce and to experience and enjoy, the love, guidance and companionship of both their parents in an equal and shared manner;
3. That the Family Law Act be amended to establish a rebuttable presumption in favour of both shared residence and shared parenting responsibility with the burden of proof to rebut the presumption being placed upon the party seeking to deny the child their rights as detailed in Recommendation 2 above;
4. A reasonable assessment of the costs to raise children and a reasonable scaling applied to the support of children after separation. The assessable amount should be in base on after tax income for PAYE taxpayers. This should also be assessed on the type of lifestyle the family anticipated having had the family stayed in tact;
5. That a proposed statutory framework for mandatory mediation be implemented for all children's matters that would ordinarily come before the Family Court and that exemptions to mandatory mediation be only given in exceptional and specified circumstances;
6. That a person acting as mediator be approved by the Attorney-General and that the mediator have the authority to interview and the duty to assess the needs of the child. The approved mediator will

have, under specified circumstances, the power to appoint a separate representative for the child if required;

7. An improvement to the telephone advice the Child Support Agency provides and some guarantee as to the accuracy of the advice;

8. Clearly written guidelines and policy that is adhered to for all concerned. This would include the protection of new partners, as they have no financial responsibility for other people's children;

9. Ensure that children maintain a continuing close relationship with both parents after separation, including grandparents. This is through the support of the concept of a rebuttable presumption of shared parenting. I suggest:

- The abolition of the Child Support Agency and the Family Court.
- Replacing the Child Support Agency and the Family Court with conciliation in a tribunal system.
- Stop family assets being stripped by the legal expenses that result from the adversarial nature of the family law system.
- Have property and superannuation distributed fairly and appropriately after separation.

Why should children of separated families be treated any differently to children of intact families?

Yours sincerely

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