



Centre for Mental Health Research

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 222

Date Received: 3-8-03

Secretary:

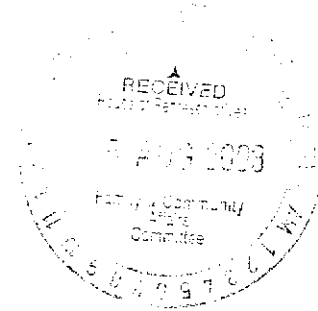


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3 August 2003

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



Dear Sir/Madam

I enclose a hard copy (signed) of the submission sent by e-mail today for the above inquiry.

Yours faithfully

Bryan Rodgers

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8 pages

Submission to the Inquiry into Child Custody Arrangements in the Event of Family Separation

Bryan Rodgers

The evidence and arguments below address the terms of reference of the Standing Committee on Family and Community Affairs' *Child Custody Arrangements Inquiry*. As a prelude to this, however, it is worthwhile pointing out that the name of this inquiry is inaccurate and potentially misleading. The term "custody" is no longer used in Australian family law, having been superseded by the terms "residence" and "contact". Reintroducing "custody" brings with it the connotations of ownership and treating children as property that the wording of our legislation seeks to avoid. This is not just disappointing but can lead to public misconceptions as the term "custody" has a different meaning in other jurisdictions. In the United States especially, a distinction is made in many state laws between legal custody and residential arrangements. It is possible for courts to award shared legal custody (ie equal responsibility of both parents) along with residential arrangements where a child spends different proportions of time with his/her parent. This possibility is not raised in the terms of reference of the current inquiry, which make no mention of the distinction in law outlined above. I hope that the inherent ambiguity of the term "custody" does not make the Committee's role of reviewing and synthesising submissions an impossible task.

There are several areas in which research evidence has a bearing on the terms of reference of the inquiry. These include: (1) children's views about residence and contact with their parents after separation; (2) how the proportion of time children spend with their respective parents after separation is related to children's psychological and social wellbeing; (3) the

respective time that mothers and fathers spend with their children and are actively engaged in their care in intact families; (4) the financial circumstances of families following separation. I am not aware of any good quality research in Australia, New Zealand, Canada, the United Kingdom or the United States that would assist with the issue of courts ordering contact with other persons, including their grandparents and there is no simple formula for determining when such contact could be deemed to be in the best interests of the child. However, courts should consider the factors that are generally known to influence children's long-term outcomes following separation and how these might be influenced by contact with other persons, i.e. the likelihood of exposure to violence or abuse, the likelihood of exposure to and involvement in conflict, the likely impact on the quality of parenting they receive (from both parents), likely influence on material resources available to the children, and likely influences on the mental health and wellbeing of parents (particularly resident parents). A court should also take into consideration the wishes of individual children in this respect.

All of the following areas of research are summarised in the book *Children in Changing Families: Life After Parental Separation* by Jan Pryor and Bryan Rodgers (2001) Blackwell Publishers: Oxford (U.K.) and Malden (Ma). This volume is extensively referenced in all areas and a number of individual research reports are cited when appropriate and appended as a bibliography to this submission.

Children's views about residence and contact with parents after separation

Studies have investigated the views of children on residential arrangements, using both general samples of children of particular ages and also samples of children who have themselves experienced parental separation and who are asked about their own circumstances. I do not know of any rigorous studies of the first type conducted in Australia,

but those carried out in New Zealand, Canada and the U.S. have very consistent findings (Derevensky & Deschamps, 1997; Kurdek & Sinclair, 1986; Pryor & Daly, 2001). Around 60–70% of children believe that children should spend roughly equal time with their two parents after family separation and this proportion is much the same for children who have themselves experienced separation and those that have not. The proportion also changes little if children are presented with a range of hypothetical scenarios regarding family circumstances, including instances of conflict (Pryor & Daly, 2001). However, there is some variation in respect of the next most popular option, in that living with father and visiting mother is the second choice option for adolescent boys, whereas living with mother and visiting father is the second preference for families with younger children and those with adolescent girls.

For children who have themselves experienced parental separation, the loss of daily contact with one of their parents is the most commonly reported worst aspect of separation. Children feel that they do not see their non-resident parent often enough (usually the father) and this has been reported by one Australian study (McDonald, 1990). Even children who have experienced violence in the family or have been abused by their non-resident parent hold many positive views of that parent, although their overall feelings are best characterised as ambivalent (Ornduff & Monahan, 1999; Sternberg, Lamb, Greenbaum & Dawud, 1995).

To summarise, research findings in this area show that children have a view of more equal sharing of time with both parents after separation that currently occurs in Australia.

However, this view is not reflective of circumstances where such arrangements may not be in their best interests, even circumstances of violence and abuse.

Does the proportion of time children spend with their respective parents after separation influence their psychological and social wellbeing?

There is a body of research evidence relating to this topic, but no major studies have been carried out in Australia. The important overseas studies are reviewed by Amato and Gilbreth (1999) and Pryor and Daly (2001). Although some individual studies have found significant associations between time spent with respective parents and children's longer-term development, the evidence as a whole shows this relationship to be minor and overshadowed by the importance of the *quality* of relationships with both resident and non-resident parents. In particular, an authoritative parenting style, involving affection, monitoring and involvement in children's lives, is far more important than the amount of time spent with children. Although the research evidence is clear, this remains a surprising finding to many people. There is a tradition of considering that the adverse outcomes of children from separated families as a group (that are extensively documented) arise because of parental absence and that this is particularly detrimental for boys who lose the role model of a father figure. The evidence does not corroborate this opinion. The poorer outcomes of children from separated families occur regardless of their gender or the gender of their resident parent. Indeed, they are seen irrespective of the duration of time spent living with a single parent and are just as evident in children whose parents remain together throughout their childhood and then separate at a later date. By contrast, children who lose a parent figure through death do not show the poorer long-term outcomes associated with divorce and partnership breakdown.

Respective time spent with mothers and fathers in intact families.

There is an extensive literature on the time that mothers and fathers invest in bringing up their children and this documents the time spent in various categories of activities. It is unnecessary to review this literature here (but again see a summary in Chapter 7 of Pryor and

Rodgers on *Fathers and Families*) as the findings are well known. In Australia, and other comparable countries, mothers spend considerably more time in looking after children than do fathers and this includes direct interaction with the children as well as those other domestic duties that maintain the household. These observations hold for dual income families and even those where both parents have full-time paid employment. There is evidence supporting the beneficial impact on children (living in intact families) of their fathers being actively involved in their upbringing (Radin & Sagi, 1992), although this appears specific to circumstances of choice rather than when forced by factors such as fathers being unemployed (which can then be detrimental). Although there have been changes over time towards fathers becoming more involved in bringing up their children, the trend is unlikely to result in an equal sharing of responsibility between mothers and fathers for a long time to come.

The financial circumstances of families following separation.

The separation of one household into two introduces greater cost through the loss of economies of scale (see Chapter 5 of Pryor and Rodgers on *Families that Separate*). This applies to housing and other costs. Separated parents have poorer socio-economic circumstances than parents in intact families irrespective of gender and whether or not they are the primary resident parent. However, lone mothers (on average) experience greater levels of financial hardship than lone fathers, in part due to the greater earning potential of the latter. It is also the case (including research in Australia) that women after separation experience greater financial hardship than men, on average, and that this disparity increases over time with men showing a trend to recovery of their income while women's incomes remain relatively low. The main factor in this is that women more often bear the greater burden of the cost of raising the children, both in terms of expenditure and in terms of the

limitations placed on their earning potential. Indeed, lone mothers often do not show any significant recovery of their financial circumstances following separation until their children leave home. The worsening of socio-economic circumstances of both mothers and fathers consequent on separation inevitably places the Child Support Formula under scrutiny and leads to criticism from all sides. However, no amount of adjustment to the formula can eliminate the cost to a separated family of having to support two places of residence. A move towards more equal residential arrangements or “shared care” after separation will further add to this burden, as it will necessitate a greater number of children needing two fully provisioned homes. Adjusting the child support formula will not solve this problem, as this brings no additional money into the system and simply redistributes that which is presently available. A major shift towards shared care will therefore require additional funding, either through increased participation in paid work, or through increased welfare benefits or changes in income tax.

Overview

A move towards greater shared care (ie equal time with both parents in the event of family separation) would be in keeping with the views of the majority of children. However, there is no evidence to indicate that this move would be in the best interests of children in other respects, particularly their longer-term psychological and social wellbeing. Children’s views do not take into account the known detrimental impact of conflict, overt violence and abuse. It is also possible that the socioeconomic disadvantages experienced by children after separation will be worsened by a move towards greater shared care, unless additional resources are channelled into the families concerned, and this could have adverse consequences for the children’s wellbeing.

The terms of reference of the Inquiry are explicit in accepting that the “best interests of the child are the paramount consideration”. Given this, there is no necessity for any presumption in law of spending equal time with each parent, as this arrangement is not associated with optimal development of children. To use a 50-50 division as the starting point for arrangements for children of separated families would establish a cultural difference between these children and their peers in intact families, where domestic and childcare responsibilities are not shared equally between fathers and mothers at this present time. Of course, it would be a step in the direction preferred by children themselves if policies and practices encouraged greater participation of fathers in these activities, in both intact and separated families. However, that is beyond the scope of the present Inquiry.

In regard to the existing child support formula, it would be valuable if the government could support some up-to-date research into this topic in Australia. Generally, good quality research-based evidence is lacking in this country across the whole field of family separation and this applies as well to the specific area of socioeconomic circumstances after separation. From out-of-date and overseas evidence, the best-informed guess in this regard is that residential parents have poorer financial circumstances after separation than do non-residential parents and that this gap widens over time. It is very likely, too, that children of separated families are particularly disadvantaged in not receiving support from non-resident parents when they approach their adult years and this may be a significant adverse factor in their capacity to remain in full-time education and fulfil their academic and vocational potential.

A handwritten signature in black ink, appearing to read 'Bryan Rodgers', with a stylized flourish at the end.

Bryan Rodgers (3 August 2003)

Additional references cited above

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