

Submission No: 124

Date Received: 23-7-03

Secretary: _____

23 July 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
Australia

Dear Sir/Madam,

As a non-custodial parent with two dependant children from a previous relationship I would like to put my views to the committee. There are 3 main issues of concern to me.

1. The Presumption of equal time to be spent by children with each parent

My former wife and I separated in [REDACTED] at which time our children were 3 ½ years and 6 months old. Shortly after I received a letter from my ex-wife's solicitor allowing me 4 hours contact per fortnight with the children. I was devastated and was forced to take the matter to the Family Court to enable any form of reasonable contact with my children.

Through the Family Court and after spending in excess of \$25,000 in legal fees I was able to achieve contact with my children for 5 full days per fortnight. In order to frustrate such contact (as she later told the court), my former wife re-located from our family home on the [REDACTED] a distance of 150 k/m away. Contact with the children was then restricted to every second weekend with a minimum five hour round trip to facilitate contact. I have continued this trip for the past seven years.

I am distraught with the adversarial Family Court System, which encourages ownership of the children by one parent, in most cases the mother. The system is fundamentally flawed, as it does not act in the best interests of the children. The concept of ownership of the children is in direct conflict with the underlying principle of the Family Law Act which states that *'the children have the right to know and be cared for by both parents'*. The current system of awarding custody of the children to the mother implies ownership which is clearly detrimental to the rights of the children. Furthermore, under the current structure of the Child Support Assessment Act there is a significant financial disincentive for the custodial parent to allow any more than minimal contact with the children for the non-custodial parent, as such contact may impact on the amount of money that the custodial parent receives in child support. Surely this impacts significantly on the children's rights to know and be cared for by both parents.

The presumption of shared custody would in my view be very much in the interests of the children who in most cases want to, and are entitled to, equal contact with the two persons in the world whom they love and are most dear to them.

My children have often said to me: "Dad it's so unfair that we spend so much time with Mum and so little time with you. It should be half and half."

To facilitate shared custody, I submit that the parents be restricted from moving any further than 20km from the former matrimonial home. This would ensure that the children could maintain their same school and friends and more importantly maintain their right to be known, loved and cared for by both their parents.

Upon separation from his former wife, in 19[redacted] my brother in-law [redacted] and his former wife, [redacted] agreed to shared custody of their son [redacted] [redacted] spent each alternate week with his Mum and Dad. He went to school, maintained the same friends and was fortunate enough to be able to know and be cared for equally by his parents. I have spoken to [redacted] who is now 18, about the Parliamentary enquiry and he is happy if required, to offer a very helpful insight into how he found shared custody.

A colleague of mine, [redacted] was forced to spend in excess of \$120,000 in legal fees to successfully obtain shared custody of his two young daughters. I have, witnessed first hand, [redacted] interaction with his daughters (he is a great role model) and can assure you that they are very fortunate that their Dad was able to afford and achieve shared custody. [redacted] daughters now know and are cared for by both their parents. What is wrong is that [redacted] had to spend a considerable sum to achieve an outcome that should be fundamental.

2. Grandparents Contact Rights

Contact with Grandparents is fundamental to most children(s) upbringing. Unfortunately under the present adversarial Family Law system, Grandparents of the non-custodial parents have no rights to contact with their Grandchildren.

I believe the presumption of shared custody would adequately address the problem, as each alternate week the grandchildren would be able to maintain a relationship with their respective grandparents.

3. Inequity of the Child Support Formula

I understand the need for a system that obliges non-custodial parents to make a viable financial contribution to their children. However, I now see my ex-wife being able to not work at all and experience a very enviable quality of life while I work a full time job. Why, 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 I have to pay \$500 per week that's 27% of my gross income to my ex-wife out of post tax dollars and she claims the full family tax benefit payments. My Child Support payments equate to a comparable of gross salary of \$45,000 per annum. Of course she chooses not to work. Further, I have the children for some 96 nights each year, and am 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 I am paying for an extra 13 weeks at \$500 per week. In effect its \$625.00 per week I pay towards the children's keep. This is an awful lot of money considering a recent study by the National Centre for Social and Economic Modelling ("NATSEM") in a paper presented to the Australian Institute of Family Studies Conference on 13 February 2003 estimates **the average cost of two children for a high income family at \$467.00 per week**¹. Furthermore, at the time of separation my former wife and I were by no means a high-income family.

This substantial child support is in addition to the significant amount of money (in excess of \$25,000) I spent to gain Family Court Orders to ensure contact with my children. Many men would just give up.

It should be remembered that during the contact visits, I have to provide suitable accommodation for my children's. This means a house big enough to accommodate them every second weekend and for half the school holidays. I have remained in Sydney where housing is not cheap.

To add insult to injury, should I decide to make a lifestyle decision to move to a less stressful job or to a less expensive area – as many people do as they get older, I may not be able to earn as much as I do now. A Child Support Review Officer can use my previously higher income to change the amount I must pay. Imagine earning \$35,000 yet being ordered to pay on an old income from better times of \$80,000. Payment should be based on a capacity to **pay**, not a capacity to **earn**.

¹ NATSEM Study. The Costs of Children in Australia Today 13/02/2003 Table 2 page 4.

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? I suspect it is 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, but rather they are unable to support their children while being able to maintain a reasonable standard of living for themselves. They just give up.

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 in two parent families. Professor Patrick Parkinson in a recent article published in the Sydney Morning Herald made the following statement: *"My research indicates that 36 per cent of Australian children did not see their father in the previous year. Both separated men and woman agreed on the need for fathers to be more involved: 74 per cent of men wanted more contact, and 41 per cent of mothers wanted the father to have more contact. Many children and young people also indicate that they would like to have more time with the non-resident parent."*²

Recommendations:

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 ceiling** (\$80,000 not the present \$120,000) applied to the income cap for the support of children after separation. This should be assessed on the type of lifestyle the family anticipated having had the family stayed in tact.

² Sydney Morning Herald 22 July 2003 'Equal Custody? It's not that easy' by Professor Patrick Parkinson, Professor of Law Sydney University.

5. Recognition of contact time with the non-custodial parent resulting in a reduction of the child support payable based on the actual percentage of time that the children spend with the non-custodial parent.

6. 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;

7. 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.

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.

I make this submission knowing that it is very unlikely to change to my particular circumstances. However I make it regardless as I am very concerned with the number of children in Australia growing up without knowing their fathers. Fathers are equally as important as Mothers to a child's upbringing. Our children have the right and deserve the opportunity to know and be cared for by both their parents. Awarding custody of the children to the mother and then restricting contact based on financial considerations is destroying the very fabric of our society. Too many children do not have a father as a role model and accordingly have no concept of commitment in relationships.

The children have a fundamental right to maintain a relationship with both their parents, yet the current system of awarding custody of the children to one parent over the other operates in direct conflict with those rights.