

Dated: Tuesday, 5 August 2003

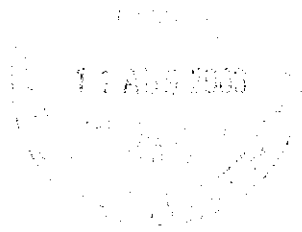
House of Representatives Standing Committee
on Family and Community Affairs

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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
FAX: 02-6277-4844



To: Committee Secretary

My main points are that:

- ◆ Both parents should share equally the raising of the children where the children are over the age of ten *by default and without financial penalty*
- ◆ A court should order the contact with other persons, who are not the parents, by special circumstances only
- ◆ The current formula for determining child support levels is an abysmal failure

In relation to the first point I will describe my experiences with the current system. In December of 2001 my wife and I separated into two households. Since that time the current system has done nothing to encourage me to be in my children's lives and to provide a home for my children.

The first hurdle was the counsellor I needed to pay to get an opinion as to how long our two boys should live with me. My wife was of the opinion that such matters would be decided by her. It has been an acrimonious divorce and is still in progress. Such circumstances test the law rigorously as it is only in contested situations the values in the laws get expression.

My wife told my sons that they needed to spend more time with her than with me as otherwise she could not afford to provide for them financially. This was never tested by the counsellor. So the interview with the boys took place and the pattern was established that the boys spent one week and an alternate weekend with me, and the rest of the time with their mother.

In spite of my wife stating to the counsellor she would support contact between me and my sons, she did the opposite. I have a seven page list of all the actions she took to minimize and belittle my contact with my sons. It took the form of preventing me seeing my sons on their birthdays, taking them to sport as I had done for years previously and so on.

I had made arrangement with my employer to change my work schedule so that I could be there to look after my children two weeks out of four. This was opposed

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by my wife and my wife's view supported by the counsellor. At one point in my interview, the counsellor showed her bias when she asked if I thought it was important my sons grew up with their mother present in their lives. I responded it was but in retrospect I thought it interesting she didn't choose the corollary. I believe this is a bias present in the child counselling world.

There was a program aired on the ABC about a week ago in which the issue of residence with the fathers was discussed. For reasons best understood by the producers of the program some considerable time was spent on the risk of pedophilia with fathers and daughters. What a beat -up! As though this was such a serious concern it needed to cloud the issue of fathers having equal responsibility in raising their children. I rang the ABC to complain. On what evidence should anyone claim a daughter is at risk with the father alone, or for that matter a son with his mother?

There isn't any, but there is a bias as demonstrated by this type of program. This is the essence of what needs to be changed in the law. Fathers are at a disadvantage when it comes to the issue of residence of the children. I was willing to change my employment to make myself available for full time care if needed but the argument got me nowhere. If the law had been framed to give me equal responsibility for my children there would have been a burden of legal argument from my wife as to why that should not be the case.

My situation at present is that my eldest son, now sixteen lives with me two weeks in a row and with his mother two weeks. This only came about as a result of a decision on his part to live with me half the time. It happened at great cost to him in stress and I blame the laws of this country for that fact. My wife even tried to force entry to my home to drag him away. She was punching me and demanding the "return" of my son, as that was "the law". All he wanted to do was share his time between his parents.

The time sharing works reasonably well, but it is still not possible to take any joint action in regard to decisions about the boys lives. My youngest son is now twelve and will be thirteen in October. In order for him to share his time with his parents he would be forced to endure the same sort of emotional gauntlet prepared by him mother. He is already showing signs of alienation from me. He has been well and truly emotionally brainwashed by his mother.

I have had reports from other parents I know who have overheard him making disparaging comments about me to his friends. Like "If dad would only go away we wouldn't have all these problems". That is a disgraceful state of affairs. The counsellor's advice, given this sort of feedback is to advise, " just be kind and loving to him and he will get over it in the long term". My point is simple. Why should he? The less time he spends with me the less time I get to undo the damage done by his mother.

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This is a situation created by the bias in the laws of this country. What is needed is affirmative action. The fact that he spends so much of his time with his mother is due to bias against me as a father. There is a web site maintained at McGill University in Montreal Canada that details studies on Parental Alienation Syndrome. It is <http://www.education.mcgill.ca/pain>. It has reassured me somewhat in that I wanted some support for what I was experiencing with my youngest son. I must repeat that this is a situation I and my sons find ourselves in is due to a bias in the laws. As soon as the divorce turned bitter it set in train a set of prejudices that ensured time with my sons would be something I needed their support in fighting for. This is wrong.

The rebuttal for denying shared residence lies in the ages of the children. I am advised that before the age of five children have difficulty attaching themselves emotionally to two parents. Friends of mine who swapped parenting roles when their children were of pre-school age discovered this. The hurt child ran to daddy automatically instead of mommy. Up to about the age of ten children mature emotionally and can form relationships with both parents. In these time frames both parents can be encouraged to care for the children equally through day and weekend activities. Mothers need a break from the constant demands of child rearing at pre-school ages and fathers can easily be encouraged to fill this role.

After grade five or six the child can reside with either parent for longer periods to provide stability in their lives. The point is that such decisions as regards to length of time and where need to be contested by the other party. It should not be automatically assumed that the child stays with "mom" and "dad" comes to visit. Such a status begs the question of how long this will go on for without encouragement. If the mother wants to impede this process of sharing she has many allies at this time. Not the least of which is the Child Support Agency. I will expand on that point in the next section of this submission.

An order to grant access to children by grandparents is more complex. In the case where the natural parents cannot provide for the children of one of the parents has abdicated their responsibility, then it may be argued that the grandparents/aunts/cousins have a role. There may be circumstances where the religion or cultural practices of the grandparents conflicts with those of one of the parents. There should not be an order of the court to drive a wedge between the parent and the child. Divorce is stressful enough for children without adding such a burden.

The existing Child Support Formula:

The current processes are a joke. There is no provision for a parent falsifying their income. It states on the bottom of the application that false claims will be dealt with severely. Not enforceable. The other parent can pursue the matter in court but not the CSA. It is a catch 22 where to stop the financial drain you can

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spend a fortune in legal fees to fix it. I found his out after eighteen months of fruitless pursuit of Ministers, heads of department, and opposition members.

My wife is self-employed and for the tax department earns twelve thousand dollars a year. She lives with the boys in a five bedroom home in Beaumaris while my sons and I live in a two bedroom unit in Parkdale. There is a specific provision in the Canadian Child Support Laws for parents who are self-employed. They specifically require the "gross" income of such a parent to be used in the determination of income. They also prescribe a standard of equal standard of living between the parties. Neither applies in Australia.

The dollar amount of support is also calculated on a specific period of residency. With a computer program there is no need for a fixed number of days to be used for calculation. It should be a straight pro-rata basis. Number of nights divided by number of nights in a year. Simple, and it would also have reduced the temptation to my wife to fight so hard to maintain a certain number of nights under her roof.

An issue which needs to be addressed is the matter of providing a home my children when a sizeable chunk of my disposable income is taken away for child support. I need to maintain a home for my children regardless of the period determined by any agreement. How do I do this? The calculation of support is done on the presumption of only having my children for part of the year. Where am I supposed to live for the rest of the time? Do I live in shared accommodation for part of the month and then rent a three bedroom house for the next two weeks and so on.

I need to provide a home for my sons on a full time basis. My wife is provided a protected income level of some \$40,000 to look after my sons on a roughly equal basis, while my income is protected to as level of roughly half that amount of sixteen thousand dollars. Is that because it costs me far less to provide a home for them than it does my wife? This is the bias that is built in to the current support system because it is based on the notion that the father earns the income while the wife remains at home with the children.

Fathers are penalised twice by this logic. The first time is when they are the major breadwinner in the home and so are away much of the time, the second time is when they are denied an equal support role for their children because the children are more familiar being at home with the mother. You must not have it both ways.

In my case my wife has three houses, two outright and a third she has a fifth share in that was owned by her parents. I was not astute enough to get my name on the deed when I became the sole wage earner in the family and my wife stayed home with the boys. Her rent is zero while mine was some sixteen hundred a month to live near my children in similar surroundings. None of this matters to the CSA who simply look at tax figures and never consider assets.

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I think it should be accepted that a divorce is two mature adults making a conscious decision to separate. The consequences of this action need to be shared, particularly where there are children involved. Placing the primary financial burden on the father is incompatible with this concept.

Assets are supposed to be disclosed in the application for child support but if they are concealed or left out altogether the CSA makes no effort to determine this. I am told by the CSA to pay a barrister and for a court case to sort it all out. What a joke. My wife was well advised to play the system for a fool. It has taken me a year and a half and letters to David Kemp, Amanda Vanstone and Larry Anthony to figure out how little interest they have in the shortcomings of this system. I am still waiting for a reply from Larry Anthony to a direct request from David Kemp for a response to my issues. I had a far better response from Wayne Swan and he is only in opposition.

The logic of the current system then is to keep penalising fathers for earning an income and deny them an equal role in raising their children. Is it any real wonder that so many fathers disappear from view after a year or two of this punishment? I am supposed to see my children for the minimum of time, as determined by the wife and a child counsellor, and live on the poverty line to try to accommodate my children.

The wife buys the children clothing, holidays in the snow and all sorts of treats on twelve thousand dollars a year and I am told to make do on what remains of my pay and to be happy with that. This is the system you are reviewing and this is the system that badly needs overhaul. The imbalance in our incomes and living standards were created by the laws in force today.

At a minimum you should recommend no self-employed person is allowed to have any payment based on what they claim in income. A panel needs to be formed to assess that. Any appeals can then go to the court. Evidence can be challenged and documentation provided to try to reach a fair result. The model in Canada provides for two statements per year to support claimed levels of income for the self-employed. The self-employed need to supply gross income figures.

Any claims for assets need to be similarly challenged. A million dollars in assets and between fifty thousand and seventy thousand dollars a year in income need to be open to review and documentation demanded before payments are made. My wife pays no rent and has the rent from two houses in Sandringham to support her but the CSA is not interested and does not possess the statutory tools to investigate even if it were. I am told they save this authority for the "really big players". I am an easy target as I am a PAYE earner.

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In summary if it is the wish of the parliament to have fathers active participants in the rearing of their sons and daughters then there will have to be some major changes made.

In my case the minimum change to the CSA needs to be statute modification that rigorously checks claims of income and assets before any claim is processed for support. If my wife has a genuine claim it can be processed quickly. To process it without any documentation required whatsoever is absurd. It is an invitation for abuse. The default response from the CSA should never be "take it to court at your own expense".

I would appreciate the opportunity to make my case in person before your committee and look forward to seeing your public hearing dates being published. There are more points I wish to make but they are of a supplemental nature to support those I have raised above.

I will fax this copy to ensure it reaches your office in time and will mail a copy with a diskette containing a word version of this submission. I will also enclose documentation to support my contention that the current system is punitive towards fathers in general and towards me in particular. Your committee needs to fix this mess and do so quickly.

Regards