1 Browne Place
KAMBAH ACT 2902
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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

I attach for the Committee's consideration a submission to its inquiry into child custody arrangements in the event of family separation.

My telephone contact numbers are [redacted] if you wish to discuss the submission with me.

Ken Morgan

SUBMISSION TO THE INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

MAIN POINTS

- The importance of the best interests of the child being paramount in all decisions affecting their future must be stressed to all parties concerned with a separation proceeding in the Family Court of Australia;

- There should be a presumption written into the Family Law Act that children spend equal time with each parent, as a shift back to centre is required on this issue;

- Rebuttal of equal time with each parent should only be made through Orders of the Family Court of Australia. Rebuttals should either be given voluntarily by a parent in writing, or based on legal proceedings where all involved parties have had an opportunity to give formal evidence, including any evidence housed by the Police, children's services or other court-appointed experts, before the making of such Orders;

- Non-allowance of time with other persons, such as grandparents, should also only be made by Orders of the Family Court of Australia, either given voluntarily in writing or based on proceedings where all involved parties have also given relevant evidence and Police and children's services and other court-appointed experts have made submissions, if necessary, in support of such Orders;

- The existing child support formula is not equitable, and only a formula that is based on the net income of a payer and on the actual number of nights a child is in a parent's care should be used to calculate parental liability to pay child support; and

- The Child Support Act and the operations of the Child Support Agency require a complete overhaul to remove bias against fathers, and an assessment process based on written proof of the actual circumstances, rather than unsubstantiated telephone advice.

CONTENT OF SUBMISSION

I have always held the view that as a parent, either in a relationship or not, the most important consideration in any decision regarding children is that their best interests must be paramount. The Family Court of Australia stresses this point, but unfortunately it does not always appear that this consideration has been taken into account by the court in decisions made by it. Children are vulnerable to many influences, and as parents we must constantly be on guard to protect them from danger, both physical and psychological. It is our duty as parents to provide the very best care for our children.

We know as adults that common sense must prevail in our dealings in life, and common sense says to me that the very best scenario for children affected by the separation of parents, is for the children to maintain a 'normal' relationship with both parents, as had occurred before the relationship break-up. It would be a very uncaring parent that did not uphold these values, and I see little of that in my day-to-day living experiences. There has been and always will be exceptions to the rule of course, but the vast majority of parents do care for their children to the best of their ability, whether they are a mother or father.

I believe that the paramount interest a child has is to be able to see both parents as often as possible following a family separation. In my current case, a 50/50 arrangement on a week-about basis made voluntarily by both parents works extremely well for our young son. He is thriving in all respects.

Therefore, based on my own 50/50 experience, I strongly believe that a presumption written into the Family Law Act that children spend equal time with each parent, but open to rebuttal on legal grounds based on socially unacceptable behaviour of either parent within a court of law, should be the norm not the exception under the Family Law Act. A shift back to centre is required on this issue.

There may be difficulties or impracticalities when long distances or prolonged travel is involved, but soon there has to be wisdom applied to Australian family law that provides the very best environment for the longer-term development, and welfare, of all our children, with a resultant lessening of the pain suffered by non-residency parents.

If a parent is a danger to a child, for cases legally proven in a court of law, then by all means provide protection for the child. In all other cases, there can be no valid legal reason why 50/50 equal care can't apply as the base line. Parental personal preference should not be a legitimate reason for dislocation of children from both parents. Current laws provide for courts to punish those guilty of offences against children. Let that also be the practice under family law. If an offence cannot be proved, access by both parents and others should not be rebutted or denied. The onus must be on proof, not personal preference. There can be no room for petty jealousies and vindictiveness in considering what is best for children, in any family conflict before the courts.

Rebuttal provisions should only be enforced through Family Court Orders after parties have had the opportunity to have their grievances heard before a court, with all complaints being investigated by the Police and relevant children's services and after legally-acceptable evidence is provided in the case. Only then should action be taken.

Under the current family court system, it seems to me that men before the Family Court are guilty before being presumed or proven innocent. It is time for the unfair system to change, for some wisdom to be applied. A mind-shift is required to remove the apparent bias that currently exists against men/fathers in the Family Court. That shift needs to be back to centre so that non-residency parents are not punished for no other apparent reason than one party wishes to have a major influence over another party.

The same scenario should apply for children's access to other persons, including grandparents. Many people grieve after family break-ups, and it would be a mean-spirited

person who demanded that all ties to people that their children have had be broken off following separation. It is not a logical conclusion to draw. The child's best interests need to continue to be the paramount consideration.

Under current family court legislation, the legal profession is feeding off people's misfortune like parasites. I have seen it in my case, where draft consent orders made by the respondent would have knowingly been unreasonable and unacceptable to the Family Court by any mediocre family law practitioner. The holy dollar prevails in prolonging proceeds before the court, simply for the benefit of lawyers, rather than a fair, transparent and equitable system that puts the best interests of the child first and an early resolution of disputes is reached based on formal evidence. The legal profession need education, fast, and I am relieved to learn that this is a priority by the government.

Payments of child support should be based on the net income of a payer. Assessment based on gross income means that the payer is paying tax for the payee, as well as the payee receiving an inflated financial gain, to the financial detriment of the payer. The current formula is simply not equitable. There is much room for a more equitable formula to be applied on this issue.

Assessment by the CSA also needs to be more equitable, and that can only occur when the relevant legislation is changed to remove bias and anomalies, and the CSA revises its current inadequate assessment procedures. I can provide more information on this point, relevant to my own case history with the CSA, if required.

As it stands at the moment, the assessment of child support based on a person's gross income is an unfair imposition, as the payer is effectively paying income tax for the payee. The law needs to be much tighter on this issue, as the current system is deeply flawed and acts to encourage payers to stop working for advancement as any additional benefits incur further financial penalties. Where is the balance in the equation that also allows a parent paying child support to try to maintain a lifestyle that they once had but cannot pursue because of crippling deductions from their gross income?

Further, the operations of the Child Support Agency and its legislation also need to be more considerate, transparent and equitable. It seems to me that a negative attitudinal problem exists with the Child Support Agency towards payers, which assumes that one is guilty and liable before the facts of a case are properly presented and fairly considered. I believe that there also exists under the CSA legislation a blatant bias against fathers. For example, a father's claim for child support cannot be finalised until paternal proof is provided in writing. The same does not apply to mothers. This is not equity. I am sure there are other examples in the legislation.