House of Representatives Standing Committee
on Family and Community Affairs
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Secretary:

I am presently separated and have experienced many aspects of the current family laws operating in these circumstances, including those dealing with children. Our youngest child (of four children) is now 14yo and is living with her mother 75% of the year under an interim shared custody ruling made by the Family Law Court. I have come to terms with my perception of the imbalance with these laws however I feel I need to mention just a few things to this inquiry. I submit the following based on the terms of reference of this inquiry.

(a) given that the best interests of the child are of paramount consideration;

1. *What other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted.*

- The stability of a child's schooling is most important and increasingly so as the child moves into high school. Where both parents can agree or are able to demonstrate that travel to and from school can be arranged from their respective places of residence, this should underscore an equal care situation by both parents. At the same time however the child should not be inconvenienced to any great degree in regard those travel arrangements.
- Where both parents can provide good conditions and supervision where necessary for doing homework and assignments, this again should reinforce an equal care arrangement.
- The courts appear to support the mother's claims to custody such that the mother has custody for more than the 110 day maintenance "threshold" which then means entitlement to 100% support from the other parent. Although this "invisible" threshold is never spoken about during Family Law Court hearings, it is clear from my experience that the mother's claim is heavily weighted towards reducing the fathers care to less that the 110 days. This process even occurs to the extent that this is the starting point, not an end point of any negotiations. I think this makes somewhat of a mockery of that particular process.
- The child's opinions are important but depending on the age, they can or should weigh differently in the decision of the courts. The older the child is the more weight should be given to the child's opinions, but barring other factors, should only move the balance of care marginally, bearing in mind that equal care should be the starting point. This is based on my opinion that all children deserve a father / mother relationship in order to grow and mature with a balanced view of life, society and experiences.
- I consider that there is perception held by the courts that results in mothers being treated differently to fathers. That perception is that the role of child caregiver, is the role of the mother, principally. This perception

extends to the extent that children are perceived as being part of the persona of the mother or that mothers are defined by their children. The courts seem to confirm these views in my opinion.

2. *In what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.*

- In the case of one parent being geographically remote from the children, I consider it reasonable that that parents parents (child's grandparents) be given formalised contact with the child, in the place of the away parent. This might also include the case where a parent is incarcerated for some reason.
- I think (possibly conservatively) that all children should be exposed to relationships with adult, mature and aged people in their growing up. If this exposure is not available readily in the principle caregiver situation but is available through the other parent, this type of contact should be encouraged (whether in a formalised or routine way) depending on the respective parents situation.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

- There are some mechanical issues to do with child support formulas, which I have some difficulty with. The amount to pay the other spouse is calculated from the previous year taxable earnings of both parties. I don't believe there is a reasonable assessment made by the CSA in regard the payee parent's ability, desire or attempts to engage in full time or part time work. It seems to be acceptable (to the CSA) that where a child needs to be cared for before or after school, however that is arranged or even deemed necessary, is sufficient reason that the payee parent not seek employment that would require paid care (of the child). The direct consequence of this is that the taxable income of the payee parent is reduced and more of the financial burden is placed on the paying parent, which can become a double whammy with spouse maintenance impacts as well.
- In my case I pay the entire upkeep for my 14yo daughter (ie payee parent income is maintained well below the exempt income amount), as well as the 25% of the year that she is with me. This formula seems to suggest that a child requires 125% of available resources for upkeep, which is a nonsense.
- After several years low paid part time work, my former wife started full time work in January (as a teacher). This means her 2002/03 income is only for half a year, therefore her 2003 income will not have any bearing on the child support payments I make until the end of the 03/04 tax year (some 20 months after starting FT work). I have checked with CSA and this is indeed the case, unless I make a claim for reassessment in 2003. If

I make a claim for reassessment, I have to disclose my entire financial position (to CSA and my former wife). It seems unreasonable that given a very clear situation of having a FT (and substantial) income, this new income is quarantined or ignored (under the law) from having any bearing on the child support payments for such a long time. The tax return is the only source of information routinely relied upon by CSA. Why is the onus on the father to seek some remedy and in the process having to divulge personal information? Making a claim for reassessment is very adversarial and can only inflame the care situation (which in my case I do not wish to do). The law seems to be ignorant and biased in this area.

- If a claim for reassessment is not made, any overpayments are not recoverable, because they are not deemed overpayments until a ruling is made by CSA.
- In regard to how the CSA calculate the support payments, any income earned and salary sacrificed to pay superannuation, is added back to taxable earnings to calculate child support payments. I have sought opinion from CSA on this point and they have confirmed this situation. I accept many employees can probably salary sacrifice a large part of their salary away (on other material things). This would drive the paying parents income down unreasonably - but it should be reasonable as far as super is concerned to sacrifice this without it being added back to calculate child support percentages. Paying parents still need to look after their futures too!

[redacted]