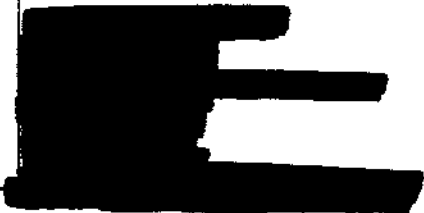


House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 876

Date Received: 15-8-03

Secretary: _____



7th 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
Australia

Dear Sir

**RE: Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry - Submission**

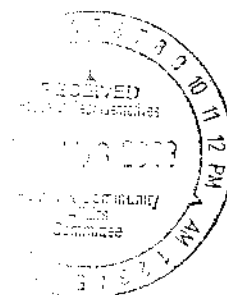
Please find attached hereto my personal submission to this inquiry.

I am a Solicitor in New South Wales and make the submission partly on a Legal basis and partly on the basis of my own views and experience of this issue. I commend my submission for Committees' consideration.

Given the nature of the content and discussion, I would require that all names and dated be removed from this document should the need to publish it.

Please contact me should you require further information or require my attendance to give oral or further evidencé. I would appreciate your keeping me informed as to the progress of the Inquiry.

Yours Faithfully



Standing Committee On Family And Community Affairs Child Custody Arrangements Inquiry

Submission by [REDACTED] Solicitor

Of: [REDACTED]

7 August 2002

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1. Introduction

1.1 This Submission

I propose in this submission to contribute my own personal experience of the Family Law system as it relates to contact arrangements and the implicit rights of children to have good contact with the father.

I further wish to give my views as to why the existing situation is the way it is, and to propose certain solutions to these problems which might help to achieve a more equal balance of contact for children of separated parents.

I find that the Family Law System tends toward an outcome for the present where women generally retain primary contact of the children. Whilst this may not be reflective of the existing legislative framework, it is the reality.

2 Marital Separation – Leaving The Home

2.1 Background

When a relationship fails, it is most common that one party or the other will be forced to move from the home. Only rarely can a failed relationship persist as between the parties, in the same household.

It is my experience, that only very rarely when a relationship with children fails, does the husband retain the primary contact of the children. Most commonly, the Wife either leaves with the kids, or the husband moves out and leaves the kids behind.

2.2 Dislocation

At the point at which a relationship terminates, generally both parties to the relationship will be extremely distraught and somewhat irrational. The simple dislocation for one party of having to locate to new accommodation is stressful enough. The party remaining behind has to deal with what are probably bad memories arising from remaining in the matrimonial home.

Children, depending on their age will have varying degrees of understanding as to what has taken place. In the majority of cases, irrespective of age they will be confused. They will probably be relieved to no longer have to live with conflict but nevertheless, they will face significant dislocation in their lives as their world will have been drastically re-organised by the separation of the parents.

2.3 Leaving Without Warning

It is my view that the worst scenario in all the circumstances outlined above is where either party to the relationship leaves without giving the other party (or the children) notice of their intentions. I believe that this requires legislative re-dress in some form by the imposition of a detriment on the party leaving.

A long term marriage becomes a financial relationship as much as anything else. By leaving the marriage, a party is terminating this financial relationship. Where else in the law can a party terminate a significant financial relationship without due notice?

I draw the Committee's attention to my own experience of this as noted at 2.2 above and the purported motivations for this. It is my view that there needs to be a requirement or some legislative framework to prevent parties to a marriage from taking such summary action. Clearly if domestic violence is an issue then special provision needs to be made, but then arguably this framework exists (in New South Wales at least) under the criminal laws relating to domestic violence.

One can view a relationship breakdown as akin to a war. Leaving without warning has the hallmarks of any attack. It is a pre-meditated and powerful offensive weapon which is designed to cripple the opponent. I measure this statement to exclude domestic violence situations as noted above.

One must pose the question, particularly in terms of Division 10 of the Family Law Act as to whether such actions are in the best interests of the children. The issues discussed herein are rarely an issue before the court however.

2.4 Financial Motivation

In the scenarios discussed above, there are at present significant financial motivations for taking such drastic action. The party retaining primary contact of the children is immediately able to claim Child Support from the other party. Dependant upon income they may also be able to claim significant payments from the Family Assistance Office and Centrelink.

To a parent of four children who does not work and has an estranged spouse earning \$50,000.00 per annum, these combined payments would amount to in excess of \$700.00 per week in the hand payment. Why ever work again?

Similarly, a party to proceedings for determination of financial matters arising from separation under the Family Law Act 1975 who has the greater contact and care of children of the marriage is entitled to claim a greater proportion of the marital assets further to s.79 of the Family Law Act.

2.5 Establishing a new home

For the party leaving the relationship as noted above, there will be a requirement to establish a new home. It is my view that this is more difficult for men to do, such as to establish an environment where they might have significant contact of the children.

This is especially so if through financial constrictions related to the payment of Child Support, they are unable to rent or purchase a home such as might be suitable for regular and ongoing contact to take place.

As the requirement to pay Child Support is geared primarily to the level of contact, then the man finds himself in a vicious circle from which escape is very difficult. Most men simply give up and yield to this.

2.6 An Alternative

The issues discussed in this section of my submission are not easily addressed. It seems to me that the mode by which the marriage actually ends and how contact arrangements for the children evolve in the period immediately following separation needs to be given much greater scrutiny by the Family Law system in determining issues of contact orders.

It is often said that children are quite resilient to change. Whatever the merits of that statement, it seems that for the present, that the concept that the status quo as to contact should not be altered leads to situations where the wife has far greater contact of the children.

The Status Quo commences day one of separation where the children are with the mother and evolves from there. By the time that a matter of contact reaches the court some months later, the status quo has already been established. The Wife retains principle contact of the children and it is extraordinarily difficult for a man to fight against this.

3 Fatherhood

3.1 The Male Role-Model

There appears to me to be a strong concept in our society as to the role in the home of a man. I would suggest that this generally could be summarised as follows:

“The man goes to work and does his best to provide for the wife and kids, is as good a father as he can be when he’s not at work eg: taking the kids to soccer or netball, and generally plays a supportive back seat role to the wife as mother and primary carer”.

This is a concept with great merit based on centuries of the male role being essentially in accordance with a view of this type.

But it is not reflective of many families in Australian society at present, particularly as to the increasing role of women in the work-force. However, if one takes a good long look at the way the Family Law in this country operates, then one must form the view that it operates to confirm the above statement.

Problems with this arise for men when a marriage breaks down? Is the father supposed to simply work harder, see his kids very occasionally and have no life at all.

I feel most men would (and do) reject this idea. Many fathers in the above scenario would still like to be around their kids, as they always have done. For many men, the fact that they do not have the kids around leads to unhappiness, depression and alcoholism in some cases. Significant numbers of men also simply give up under the financial stress of Child Support payments and slip into unemployment or cash based work.

In consequence they become far less effective in the fatherhood role and in their contribution as a parent and to society generally. This works as a detriment to the best development of the children. It also significantly degrades the fathers quality of life and no doubt the mothers also.

3.2 The Family Law Act

The Family Law Act draws dispenses Commonwealth legislative power over contact arrangements for children further to sections 51(xi) and (xii) of the Constitution as to marriage, divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants.

The Act was one of the first such instruments in the world to set up the concept of blame free divorce Through the governments ascension to the International Treaty on the Rights of the Child it now places the best interests of the child as the paramount concern in determining issues of contact.

It seems to me that interpretation of the Act by the Courts, Practitioners and society at large, tends to confirm that statement above at 4.1, yet as argued, this statement is not reflective of Australian society at present. By rights Family Law should be reflective of contemporary societal standards, given it’s constitutional basis.

3.3 A solution

I am of the view that there needs to be a concerted education campaign to our society at large that men also have an equal role as parents. The mere fact of separation does not terminate this relationship.

The law needs to be read in the context of contemporary Australian society. Courts need to be given the power to over-ride the concept of status quo in determining contact of the children more equally and men need to be educated that they lose no rights as a parent simply because of marital separation.

I would most strongly contend that few Australian men are fully aware of their rights as a parent and more particularly, as to the avenues by which they may exercise those rights, self help being the primary one. I would contend that by contrast, Australian women have a much greater understanding of their rights and how they can enforce them.

[REDACTED]

4 The Single Male Parent – A Social Stigma

4.1 Societal Views

The societal view noted at 4.1 above I feel is quite entrenched. On television and in the media, the role of Men is primarily portrayed essentially in accordance with that view. As noted that is not a bad thing and it is reflective certainly of a historically valuable Australia way of life.

4.2 Changing Roles

In my experience however, there are many Australians who do not accord with this changing role of Men in society. Whilst many women choose to align themselves with the concept of a liberated woman, there are many also who like things the way they used to be and are happy primarily in the role of wife, mother and home-maker.

Whilst financial pressure makes fulfilling this increasingly difficult for many Australians, often due to the necessity to have two breadwinners, the societal view nevertheless persists.

There are also significant numbers of women (and, indeed men) who wish to exercise both the breadwinner role and the parent role as truly and totally liberated people. The single working parent.

4.3 Facilitating Change

Times have changed. As women increasingly elect to undertake the role of primary or at least contributory breadwinner, the concept of the Australian male and the father as a parent needs to bend with the flow of society. The view of the role of the mother also needs to change. Accordingly, government policy needs to appropriately reflect this in all respects.

5 The Role of Legal Practitioners

5.1 Conflict Management

Lawyers are a very significant component of our Family Law System. However we are only qualified to practice law. There is no component of a Degree in Law which educates a lawyer to be a counsellor or any sort of authority on welfare of children or anyone else, excepting perhaps as to assessment of capacity to enter into an agreement or sign documents.

At present, Lawyers regularly become involved in the above tasks and are often called upon to make value judgements as to issues on which they have little or no training. This is an intrinsic component of the competent representation of their client. In an adversarial system however (as the Family Law primarily is), there is no room for a Lawyer to make value judgements or assessments on an impartial basis. Accordingly, the judgements tend to be in accordance with advice to the client and in carrying out their clients instructions to the best of their ability.

Conflict management should not be the domain of two lawyers for opposing parties in an adversarial situation. Lawyers are not impartial representatives. There needs to be some third neutral party which can step into a situation and having regard to all the circumstances of the matter, make a directive in a timely manner. In particular this should be with reference to the wishes and interests of the children

5.2 Client Outcomes

The entrenched values as noted throughout this paper as to men may be used very effectively by a Lawyer to attain for their client the outcome which is sought. No ethical issue arises and to fail to do so would be negligent. Only if specific legislative provisions to the contrary exist, is a lawyer compelled to act in any other way than that which will achieve the best outcome for their client in accordance with their instructions, the law and society values.

Mediation indeed fulfils this role somewhat, but it is expensive and relies upon the opposing parties being in close proximity. Mediation is an alternative to litigation and whilst an effective tool, outcomes of mediation are not specifically enforceable.

5.3 The Offensive Edge

I draw the Committees attention to my point at 3 above with respect to the manner by which a marriage terminates. The scenarios discussed lead to a scenario where lawyers will become involved in the whole marriage breakdown process from its very inception.

As a legal advocate, this type of behaviour, for the present creates a presumption in favour of the person who retains the children in their care. It is a presumption which (speaking from experience) is very difficult to rebut. This is irrespective of the financial resources of the parties to pay large legal bills and reflects the operation of the law.

5.4 Gender Bias

I have experienced as a practitioner that there tends to be quite an element of Gender bias in family law. One particular example of this is the drafting of documents.

In my own matter, I submitted draft consent orders to solicitors for my wife. The orders were competently drawn, accurate and bias free other than to the rights of the parties. Her solicitors returned to me a document which purported to outline my rights and leave her rights as being the residue. Yet, we were setting in place an arrangement for shared custody.

The orders submitted by them were intensely biased toward her on the basis of gender alone. These orders will go before a Court and be read and stamped by the Court. I argued this to them, but realised I was wasting my time and that they were within their rights to present such a document.

Should not those provisions as to sex discrimination relevant to the rest of society apply also to documents placed before a Court? Like many forms of discrimination, this is a very subtle technique by which the man is dis-empowered of his rights.

6 About The Author - Background

6.1 Qualifications

I was admitted as a Legal Practitioner in the State of New South Wales on 14th February 2003 and hold the following formal qualifications:

- Solicitor of the Supreme Court of N.S.W and the High Court of Australia;
- Graduate Diploma of Legal Practice;
- Bachelor of Laws;
- Bachelor of Commerce (Information Systems);
- Associate Diploma of Applied Science (Hospitality Management)
- Hospitality & Catering Certificate

Although only newly admitted to legal practice, approximately 25% of my current role with a [REDACTED] law firm is as to Family Law. I regard myself as legally qualified to comment on the legal aspects of issues before the Committee. My personal experiences of separation experiences qualify me as a father and parent.

6.2 My Story

On or about 20 January 2000, I returned home from work to my home at the time in [REDACTED] and found it to be empty. My wife had vacated the home and moved with my son [REDACTED] (aged 4 at the time) to an address in [REDACTED] some 60 kilometres from the Matrimonial home. We had had some problems, but this came without warning. We subsequently re-conciled 6 weeks later and in time, it emerged that she had been having an affair with another man. In my view my wife vacated the home hoping to form a longer term relationship with this other person.

I was totally devastated by her actions in taking [REDACTED] and leaving the home vacant without warning. She later said to me once about her actions in leaving, the following words "Oh, I knew you'd be mortified...". She was correct. I was.

6.3 An Abusive Relationship

I always found the relationship with my wife to be an abusive one. She has an extraordinarily bad temper in my view and regularly perpetrated psychological and emotional abuse on me. She still tries to do this over the telephone quite regularly, even though the relationship is long over. During the course of the marriage, I called the police 3 times to the matrimonial home and sought their help as to my further rights. I did not leave the relationship at that time or take further police action as I loved my wife and considered that such actions would destroy the relationship.

I now understand my actions to be thoroughly consistent with what is known to psychologists as "abused wife syndrome". One would note the gender bias implicit in this term and I refer the Committee to the raft of research available on this subject¹

¹Please see the following link:

<http://www.austlii.edu.au/form/search/?method=any&meta=%2Fau&query=abused+wife+syndrome&results=50&submit=Search&rank=on&callback=on>

6.4 My Wife

My wife is a [REDACTED] Teacher and 7 years older than me. We entered a de-facto relationship in 1990 and married in March 1996. She had been married once for 2 years and also in another defacto relationship for 2 years. I had not lived with a woman prior to entering the relationship with her. The prior defacto relationship she was in was an abusive one and she always maintained that the man hit her many times over the course of the relationship. Drugs (Marijuana) had been an issue in both her previous relationships and it is my view that my wife suffered and still does, from the long-term psychological effects of Marijuana abuse.

I am informed she has in recent times had further liaisons with the former de-facto. I regard this as consistent with psychological scarring from abuse perpetrated during her relationship with him. It is my information that this relationship has been hallmarked by shouting and arguments. My son is exposed to this and I am for now largely powerless to do anything about it

In short, my wife has an extremely bad temper and when the relationship did finally terminate in January 2001 it was upon my calling the police to the home yet again to protect myself and [REDACTED] from her psychological and emotional abuse.

6.5 My Son

My son [REDACTED] resides with me 6 days of each 14. He spent 45% of nights with me last year, 55% with her. Both myself and my wife live within 500 metres of Bens' school and we now have a moderately workable shared care arrangement, notwithstanding all of the above. We both love our child and I believe we do our best to be good parents.

[REDACTED] was born on [REDACTED] 1996 by Caesarian section and from that day I had always had a very close relationship with him and still do. As a University student from 1995-2000, I had far more time to devote to raising my son than did my wife and did far more than 50% of the parenting and home-maker role prior to our initial separation. I also worked my own business during this time and attended University full-time. It may be unusual, but I do hold formal qualifications in Cooking and Cleaning. In short, I was (and am) a hard working father endeavouring to establish a better life for his family.

[REDACTED] and I have an extremely good relationship and I believe that as he grows older he is likely to become closer to me and grow apart from her. [REDACTED] is a very bright child and although only in year one has been assessed by his school as having skills well above the average for his age. He is also a socially adept and popular with the other kids. He excels at any sport he undertakes.

6.6 Family Law

It has taken massive emotional and financial resources for me as a father to achieve the contact arrangements I have with my son. My wife has resisted this arrangement at every opportunity. I have become a solicitor over the last 2 years and it is arguable that without having done so, I would not have the level of contact of [REDACTED] that I do. That said, we have not been before the courts. I would suggest that if we had been, I would not have the level of contact with [REDACTED] that I do.

7 Conclusions

I drafted this submission with very little time. It is not perfect in many respects and I would be more than happy to present before the Committee and give further evidence as to the views disclosed herein.

I would have liked to discuss domestic violence further and my own experiences as a domestic violence victim, but I do not have the time. I would suggest though that there are far more male domestic violence victims than is generally portrayed to society by the media and government policy.

I conclude by saying that I believe that many men wish to have more contact of their children upon marital breakdown. However the legal framework presently in place and more generally societal views, work together to make such an outcome quite difficult for the average man to achieve, unless the wife concedes it happily. There are significant financial motivators for a wife not to concede this.

Modifications are required to the legislative framework of the family law system to address these issues and allow for a situation where children may have equal contact to both parents, without the necessity for an entrenched and costly legal battle.

I present these views herewith for the good consideration of this Committee.


(Solicitor)