

House of Representatives Standing Committee
on Family and Community Affairs

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Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

Dear Committee Secretary

Re: Inquiry into child custody arrangements in the event of family separation

This submission addresses the question of 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 submission has been prepared by Lyn Hulett, Manager of Building Bridges Together Children's Contact Service program which comprises four contact services in South East Queensland. The Service is recognized as one of the leading providers of supervised contact services in Australia and is also one of the largest services of its kind.

Building Bridges Together Children's Contact Services provide supervised contact both on and off site, for children with their separated parents. The service also oversees the transfer of children from one parent to the other, for periods of unsupervised contact, without the parents having any contact with each other, enabling safe and pleasant changeovers to occur. These services function to 'build bridges' between children and their separated parents, enabling the development, or maintenance, of a strong relationship, where this can safely occur. Adult clients are given assistance and support to move past any conflict which exists and focus on being responsible and responsive parents.

Reasons for using this service are diverse, and include ensuring the safety of children and their parents where there has been a high level of conflict, history of domestic violence, child abuse, mental illness, substance abuse, or threatened abduction. In some cases parents have not seen their child for an extended period, and need contact to be facilitated to help establish a sound relationship, or to enable the development of parenting skills. Families are referred to our services by the Family Court and Federal Magistrates Service, Solicitors, Community Legal Services, Police, Domestic Violence Agencies and Community Services.

The concerns expressed in this submission relate specifically to how a rebuttable presumption of joint residency would impact on this particular group of high risk and vulnerable families.

The views that are expressed here are representative of the views of the FSA funded Children's Contact Services in Queensland, and have their endorsement. I respectfully submit the following points of concern for your consideration.

Joint residence is not appropriate in cases involving high levels of conflict, violence, parental mental illness, or drug abuse

Research available on shared (joint) residence arrangements points to this being a satisfactory arrangement for many families, but not for families in high conflict or where there is a history of violence, parental mental illness, or drug abuse issues (Braver & O'Connell 1998; Dion, Braver, Wolchik & Sandler 1997; Goodman, Koss, & Russo, 1993; Johnston 1993). For joint residence arrangements to work well, parents must be able to communicate and use problem solving and negotiation skills for the inevitable challenges with parenting post-separation and divorce which are encountered.

Most families using our service are unable or unwilling to show the flexibility and child focus required to make shared residence work. They have great difficulty coping with problems which arise even with supervised changeovers, and many problems require staff interventions for their resolution. The stress levels of these parents is enormous. My research conducted with clients of this service in 2000 showed high to very high levels of anxiety, anger, depression and stress in a high percentage of clients involved in the project.

Saunders (1998) describes waning enthusiasm in recent years for joint custody, partly because of social science findings, and cites Johnston (1995) who concludes that "highly conflictual parents" have a poor prognosis for becoming cooperative parents. Saunders further notes that "frequent visits and joint custody schedules led to more verbal and physical abuse. More frequent transitions between high-conflict parents were related to more emotional and behavioral problems of the children". Saunders goes on to point out that this is likely to be an understatement of the case for parents who are physically victimized. Johnston, Kline & Tschann (1989) claim that joint custody applied against the will of one parent, may be "contraindicated because of its potentially harmful effects for children".

A presumption of joint residency would lead to a crisis situation by overwhelming the capacity of the Family Court and Children's Contact Services to provide much needed support to these families.

If this presumption is introduced, we expect that many of the non-residential parents using this service, as well as members of the general community, will apply for shared residence orders, perceiving that they have a greater right to more contact

with their child/children. Such applications will increase stress and heighten the levels of conflict between parents, with an inevitable negative impact on the children concerned. The strain of processing these applications would cause an already overburdened and under-resourced Family Court to be rendered almost unworkable, and blow out the timeframes of progressing cases through the litigation pathway.

The indirect effect of this would be that clients in our supervised contact service would be stuck having supervised contact for unnecessarily extended periods. Some clients are already waiting two year periods to get to a Final Hearing, and to get Orders made that enable them to move to supervised changeovers. This is unfair when it means children have very restricted contact with their parents over this long period.

Our service is already operating beyond its resource capacity, and the waiting list gets longer and longer, increasing the frustration and anguish of parents waiting to reestablish contact with their children. Some applicant parents find the waiting unbearable and drop out of the system.

There is a strong correlation between maintaining contact and parents being responsible for paying child support. The children whose parents drop out suffer all the disadvantages of losing contact with that parent as well as being impacted on by the lack of financial resources coming into the household. Other parents become angry and frustrated and express this in violence, drug taking or reckless behaviour. If the proposed changes are implemented, the extended waiting time for attending children's contact services will be a significant deterrent to parents' willingness to persevere with trying to have contact with their children.

The proposed amendment would also result in a huge increase in the numbers of supervised changeovers required, stretching the limited resources of children's contact services even further.

For litigants in person, the burden of proof that joint residence is not appropriate in their case, is an onerous requirement

Clients acting as litigants in person are faced with the daunting task of proving that shared residence will not work in their case. There is an expectancy that they will be able to provide a clear nexus between a history of violence and the orders sought, convincing corroborative evidence of violence, and of the impact of the violence on the children (Altobelli 1998).

Of necessity, litigants in person have to develop expertise in researching the appropriateness of shared residence arrangements where there has been abuse, violence, mental illness or drug abuse, and/or where there are high levels of entrenched conflict, to adequately support a position against shared residence orders. It is expected that there will be many more litigants in person due to

increased requests for limited Legal Aid funding draining the pool of available funds, and this presents its own challenges for the Family Court, as well as being a huge stressor for parents who have to take on this task and responsibility.

Many clients using this Service are facing their own emotional issues of loss of the relationship, loss of dreams for the future contained therein, loss of security, changes in lifestyle and other challenges associated with separation and divorce, repartnering and caring for their children and possibly stepchildren. Many find issues arising from contact are highly contentious and feed feelings of anxiety, depression, frustration, bitterness, and anger. Many of our clients leave their employment because they cannot attend to their work with all that is going on emotionally for them.

With all these stressors, the prospect of having to represent themselves in the Family Court causes overwhelming anxiety to many clients who feel incapable of meeting this additional challenge. Where there is no alternative course open to clients but to represent themselves, our observations have been that there is often a huge toll on clients' emotional and physical health and well-being. It is anticipated that this toll will be exacted on many of our clients when applications are brought for shared residence of children.

Where there is domestic violence and child abuse, there should be a rebuttable presumption of limited and supervised contact.

Where family violence has been an issue, increasing the time children spend with their non-residential parent exposes the children to an unacceptable risk of being witness to, or recipient of, future violence. In many cases, inadequate recognition is given to the impact of experiencing family violence on children, and expecting children to cope with spending longer time periods with a parent who has a propensity to violence is not a child-friendly concept.

If the Government is resolute about its stated intentions to strengthen families, to protect children and to end family violence, the focus of any amendments to the Family Law Act should reflect this, in establishing the exceptions which should apply to any shared residence presumptions.

There should be a rebuttable presumption **against** unsupervised contact or residence where:

- a child has been abused by a parent
- a child has been exposed to abuse of one parent by the other

unless and until the abusive parent has taken responsibility for the impact of their behaviour and evidenced their commitment and capacity to change this behavior in the future.

Including these exceptions would send a strong message that the Government exercises zero tolerance of abuse, and is genuine in their commitment to "our children: our future".

Disruptions of bonds between step-siblings may occur when some children are only part-time in the household

Given the high percentage of separated and divorced parents who re-partner, and together have children, the potential impact on relationships between children in shared residence arrangements and step children deserves consideration. There may be significant difficulties in attachments being formed with new step siblings, and of developing and maintaining close and supportive relationships throughout childhood, when children of previous relationships are only living in the home on a part-time basis.

Sibling studies have shown the importance of siblings in children's lives (Lamb & Sutton Smith 1982), and the source of comfort and strength which siblings provide (Bowlby 1969). In divorced families, the value of sibling support is particularly advantageous, enabling children to develop resilience and cope with the turmoil which often exists (Krios & Ritvos 1983; Waters 1987 & Wallerstein 1985). Children who move in and out of the home may be deprived of the opportunity to build and benefit from close, supportive relationships with their step-siblings.

There may be perceptions of unfairness and disadvantage by the child in a shared residence arrangement, whose step siblings are permanently in the home and can share activities with the parents, in which the child moving between homes is not involved. The shared residence child may perceive that their parents will develop closer relationships with children who live with them full time. In dysfunctional or conflictual families, where parental emotional resources are scarce, there may be more competition and hostility between step-siblings as children in shared residence seek to meet their emotional needs for nurture in each household.

Children in shared residence arrangements may feel that they have to fit into an already existing family structure in both homes, adjusting to being the youngest in one home, and the oldest or middle child in another, coping with different routines; rules and expectations in both homes, and feeling like they are a part-time member or visitor in both homes, unlike their step-siblings. This may lead to a sense of transience, of either staying at 'Mum's house' or 'Dad's house,' and not having a sense of 'my home', and to lacking a sense of belonging.

These children have to continually adjust to separations not only from parents but also from step siblings. Where the conflict between the parents is entrenched, and the parents are hostile and uncooperative, and continually involved in litigation, the parents may not be available to emotionally nurture and support the children to cope with the stressors of these continual adjustments. These children have the potential

'double whammy' disadvantage of not having strong attachments with step-siblings to bolster their coping resources and provide them with a sense of support.

Practical difficulties abound when parents cannot work cooperatively, or are inadequately financed to cope with the challenges of joint parenting

Children of shared residence arrangements often have to do mid-week changeovers, carting bags of belongings to school, singling their situation out for attention, and causing inconvenience and difficulties when they travel by public transport. They often have to transport supplies needed for several days including musical instruments, sporting gear, school projects, medication etc. as they move from one household to the other. When parents are cooperative, adequately resourced, and can make child friendly arrangements around these practical difficulties, the problems for children can be ameliorated. When the parents cannot communicate, or help each other out, the practical problems can be daunting.

Parent-child quality time is more important than parent-child quantity time

Shared residence is an appealing sounding alternative, but in practice does not necessarily mean that children will have more quality time with their non-residential parent. The concept is based on an assumption that spending more time in another parent's household will equate with having more special time with that parent. In practice this may mean fitting children's needs around another parent's busy work, study or recreation schedule. The purpose of contact has been described as "giving a child a sense of belonging, of identity, of role models, and of promoting the child's sense of self and self worth" (Stout 1998). The realization of these goals of contact is not parent/child time quantity-dependent, but parent/child time quality-dependent.

Shared residence works best when it is a self-selected solution

Where both parents want a shared residence arrangement, they are usually in a position to effect it successfully, and have the sort of post-separation relationship which supports the co-parenting required. Where shared residence is foisted on unwilling parents, particularly those who are hostile, distrustful, highly conflicted or anxious, or who will struggle to overcome the practical and financial repercussions of this arrangement, the research evidence suggests this will not advantage the children involved. Rhoades, Graycar & Harrison (2000) found where parents are in dispute over children, and cannot cooperate, the shift to shared parenting increased opportunities for conflict, and affected the children's welfare, and often, their safety.

Shared residence can work for some families. It is not an arrangement which would suit for all families, and for some families it is not a viable or safe option. If this amendment is passed it will have dire consequences for supervised children's contact services, for the Family Court, but most importantly for the families

concerned. Despite best intentions of protecting and promoting children's rights to have opportunities to spend equal time with both parents, it may have the unfortunate and unintended consequence of subjecting children to living arrangements which are later found to be not in their best interests. The right of contact must be seen as belonging to children and not to parents, and decisions made on this basis.

.....*Lyn Hulett*.....

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