

Submission No: 1005

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Submission to House of Representatives Standing Committee on Family and Community Affairs

8 August 2003.

Submission [REDACTED]

Background:

I refer to my case of [REDACTED] and use this as a basis for my submission. It is my intention to highlight the issues through my case with the intention of bringing about much required reform if the Family Court is to be regarded as a deliverer of just outcomes. I have been through the Family Court system and have been most disappointed in the approach undertaken by Judges in particular, Chief Justice Allister Nicholson and this colleagues.

I believe that the Family Court system, under the current leadership and membership of judges is conservative, bias and operates at the mercy of those in judgement without due consideration of children's needs. I also believe that the current leadership lacks experience in terms of ability, professionalism and intents of the Family Law as intended by legislators.

My submission is intended to identify options which legislators could consider in their attempts to improve outcomes through the Family Court system and enable, children from separation to be given due love and care by both parents and parental families. My submission is particularly intended to give due consideration to non-Anglo Saxon families or families from different other ethnic backgrounds where extended family is regarded as a basic family unit.

My submission is based on my personal experience as a father, a scholar in public policy and a representative of non Anglo-Saxon community. I believe that the Family Counselling, Family Reports system, is working well and has most competent staff within the system that are capable of providing objective assessments in the best interest of the children however the Judgements of the Family Court are deteriorating under the current membership of judges.

i) What 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 should spend equal time with each parent and if so, in what circumstances such a presumption could be rebutted, and

I believe that in all cases the children of any relationship should be given the opportunity to spend equal time with each parent unless the allocation of equal time is likely to have a significant impact on the children development or the other parent is unable to provide for their care on an equal basis.

This presumption could be re-butted in the following circumstances:

1. Where extended family unit provides existing care and the children have been brought up in such environment and are likely to benefit from such ongoing arrangements better than if isolated to individual parents. For example, in cases where parents live in an extended family and where other family members such as grand parents have been providing the basic care while parents are working or choose to use the extended family as the basic family unit. In such situations, the status quo should be maintained with access/care given to the departing parent on availability basis. That is that children continue to be cared for by the extended family unless the parent departing from the extended family is available to care for the children on an equal basis. Recognition of cultural background and importance to culture should be given the due consideration. The role of grandparents in contributing towards social development should be given the due consideration just as schooling in a non-sectorial or religious school.
2. Where one of the parents voluntarily grants the other parent greater care and responsibility
3. Where the children's care is likely to be compromised if equal care is granted.
4. Where the expressed interest of the children are for a different arrangement.
5. Where, one parent is unable to provide equal care for any other reason apart from financial.
6. Where other medical reasons such as post-natal depression is likely to endanger the life of children.

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

1. Where other immediate family members, such as uncles, aunts, and grandparents have played a significant part in the children's life and have provided historically care for the children in place of the parents.
2. Where the continued contact is likely to re-enforce the child's development and association with parental ethnic background.
3. Where one parent has the likely hood of alienating broader family contact by not associating with the children's ethnic associations.
4. Where one of the parent nominates a family member to provide care or have contact on behalf of the parent, which is likely to enable the nominating parent to have regular contact with the children.
5. Where by the communication between separating parents is poor and unlikely to improve and the other family member represents an opportunity for one or both parents to consider the children's real concerns and issues without having

to undermine their trust and confidence. Basically enable the children to voice their concerns without having to go to the warring parents.

I provide details of my case to demonstrate my points:

Our separation was initiated by my former wife for reasons still unknown to me. The Family Court through the family report gave equal care to both parents after extensive court battle and recommendation of the family report. The Family Court at its discretion gave greater property to the children's mother and later ordered court costs against me. Basically, I gained the opportunity to care for my children on an equal basis but lost the ability to care for the children on an equal basis because of unfair allocation at property settlement. The children's mother later lodged bankruptcy proceedings against me and after payment of legal costs; I was left in debts arising from the matrimonial settlement. My financial ability to provide for the care on an equal basis was significantly impacted on by judgement of costs against me and the property settlement outcomes. I was forced to seek better employment elsewhere in order to pay my debts, which required me to move inter-state for employment. I was happy to continue to care for the children on an equal basis through my extended family as this had been the arrangement prior to separation but was told by the Family Court Judge [REDACTED] that I cannot continue to provide for the children's care on a real basis if I was not living with my children. I was forced to lose the care of my children due to my financial circumstances. The children's mother and I do not communicate and the children's views were not taken into account in forcing me out of their care. By living in Melbourne, I still provide for them and have negotiated a 2 days contact with my parents during which time I have contact with my children. I have some contact during the school holidays but the contact is limited. I was forced into this financial position and now I am required to pay full child support despite paying my parent money to care for my children and paying for all contact costs.

I could have continued to care for my children on an equal basis through my parents and family and maintained liberal and ongoing contact with my children but the system which forced me out also has forced me out of their care. I am more than happy for my case to be investigated and used as an example of poor outcomes.

My children were happy to continue on an equal basis through my parents but the system and their mother did not allow this to be the case.

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

I currently provide give my parents on average \$200 a month for contact with my children because I live in Melbourne for employment reasons and the children live in Hobart with their mother. Prior to that and following separation I provided the care for our children on an equal basis with their mother. My parents are both pensioners. I also pay for their airfares (3 children) to and from Hobart to Melbourne at least 4 times a year and sometimes pay for one of my parents to travel with them to care for the children while I work. I pay half of their school fees, supply their school uniforms

and pay for other costs such as excursions, shoes haircuts and medical costs. I am now required to pay their mother \$836:00 per month in Child Support.

Through the matrimonial settlement, I was forced out of the family home which also has two flats attached to the matrimonial home. These flats were income generating and I had spent extensive money renovating the property. The children's mother was also given an allowance of \$14,000 towards securing a mortgage while forcing me to pay some \$13,000 in her legal costs. The property balance was allocated on a 60% and 40% basis in favour of the children's mother and she had a higher income at the time. Loans outstanding to my parents were considered as gifts when the children's mother submitted that the loans had been paid off and provided no evidence to the court for the payment. I was left with the debt. On a single income, I supported the children on an equal basis, paid my legal costs and hers and reduced part of my debts but now have to pay around \$210.00 per week for my children who are cared for my parents at least two nights a week sometimes more. I also have to pay my loans off, pay rent and try to save for a deposit.

How can the child support system can be considered fair when it's designed to be discriminatory and not take into account individual circumstances?

Recommendations:

1. I recommend that the child support assessment should take into account all factors including the relative outcomes of property settlement and financial circumstances of both parents with a view to enabling both parents to play equal role rather then forcing one parent out of ongoing involvement.
2. That child support to reasonably enable both parents to gain stability in their lives following separation in order to be able to provide for the children both materially and socially.

The current system is unfair and does not enable both parents to maintain adequate income to maintain ongoing interest in their children. If I am forced to pay over \$200 per week for child support, I will be forced to re-consider my ability to have contact with my children which really will not be in the best interest of the children.

I will have a better appreciation of the current formula if the \$210 per week was actually used for children's purposes rather than paying off a mortgage, which also generates rental income.

OTHER COMMENTS:

I believe that better outcomes from Family Court is possible through more effective decision processes such as using a jury system or a panel of decision makers through guidance of a judge.

I doubt very much that any of the judges in the family Court have been a carer of children. Real parents or professional panel of carers with training and education on the needs of Aboriginal people and other ethnic communities would be useful.

Any judge who has been criticised by any of the parties to a case in the media should be forced to automatically disqualify themselves from presiding on a case.

Use of jury or panel system can also be very cost effective and lead to much better quality outcomes and be more in tune with contemporary society.

