

Submission No: 1254

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Secretary:

Submission [REDACTED] to the Standing Committee on Family and Community Affairs re Inquiry into Child Custody Arrangements.

Preamble:

I am writing as a private citizen. I have an interest in this inquiry as a consequence of the failed relationships of two of my children and the consequential effect that the failure of these relationships has had upon their children.

Together with my wife, we are caring for our eldest grandchild, who is currently living with us, as a direct result of the custody/contact arrangements, of the Family Court system.

I am also writing as a practising Christian with an affirmed traditional concept of marriage, and the concomitant responsibilities that marriage requires.

My submission will address the terms of reference and will include comments from personal experience, and from knowledge acquired in the course of my voluntary activities as an active Christian.

Failed Relationships and the children born of those relationships.

In this opening part of my submission, I wish to clarify that the inquiry is addressing the issue of children of **all** failed relationships irrespective of whether their parents were married, in a de facto partnership, or were born from a brief cohabitation period. In other words, to make the subject of the inquiry as broad and as inclusive as possible, i.e. 'One size does not fit all.'

In regards to the above, as implied there are many scenarios. Children born of any relationship that fails, invariably are the ones least considered when the relationship fails. They become the 'spoils of battle'. Hence the Family Court and all that entails. The losers I believe are the children.

There are many reasons for failed relationships. There are many causes [or excuses!], such as money management, incompatibility, one-night stands, boredom, lack of responsibility, et al but above all I believe the principal causal factor is a lack of commitment, and that element needs to be addressed by the committee. In this respect whilst I am personally committed to the sanctity of marriage in accordance with my own beliefs, I am not exclusive to the convictions of others and their lack of belief in marriage. Nevertheless any union as such should be a committed one, especially if there are children involved.

However in any union whether it be Church, Civil, Celebrant, or as now is a trend a Commitment Ceremony, children must be of paramount consideration. From my own evidence, I believe that this is not happening. There is no stability between couples today. I further believe that society does not encourage stability through laws enacted. In fact these laws work against stable relationships, to the detriment of the children of these relationships. It is too easy to get together and even easier to break up.

Children of partners who separate, are without fail, used as a means for controlling contact with the other partner. In other words, one partner or the other, uses the children, to keep the other partner in line. I believe [from personal experience involving family members, together with evidence from other sources], that there is room for improvement in judgements when mediation fails, and the relationship break-up ends in the Family Court.

As unpalatable as it is, [and also very politically incorrect], I feel that fault as a factor should be re-instituted by the Family Court as a determinant for decisions emanating from the court. Shortcomings such as, Continuous Domestic Violence, Adultery, and Desertion, are serious faults in any relationship. It takes two for any relationship to work so why should the innocent suffer? As well, children under the current system are never considered when relationships fail. They are part of the current legal vogue for a form of plea bargaining. This solves nothing and can be confusing to the children.

As I understand, abolition of fault in divorce, and the liberalisation of divorce, was a measure introduced to enable people living in unhappy unions to access divorces irrespective of the socio-economic level of the petitioner. I would suggest that this is not the case today, or is likely to be the case in the future. Even with the best intentions, the majority of marital and de facto relationships go further than the initial mediation process, and judgement decided in the Family Court. As a general consequence, the legal profession is usually the long term beneficiary.

Co-parenting has its shortcomings. The custodial parent generally makes the running, but, again children can be used by either parent in a form of ping-pong parenting that has no real benefits for the child. Also it can be very disruptive to the child. 'Equal time' is a euphemistic concept. It presumes that one-size fits all. I can assure the committee that it does not. Within my own family I have two examples of co-parenting. One definitely does not work, and as far as the other, only time will tell. From other confidences, I must confess that I have some scepticism in this regard.

The notion that a child should know the non-custodial parent is ideal if the non-custodial parent is co-operative and there is no animus. If however there is residual conflict, then the children will be exposed to even more suffering as they would be in the middle of this parental warfare. Again I have experienced this with one of my grandchildren.

I do believe society including governments, do not look after the interests of children of failed relationships. To do this effectively would be very costly. As a result, children are suffering financially and emotionally. If the present system is to be maintained, then there should be more Children's, Advocates. These should be easily accessible to children, irrespective of the costs. However another alternative is to re-institute allocation of fault into the failure of relationships. Society then would take a more responsible attitude for actions that have far-reaching repercussions.

Contact with other persons, including their grandparents.

I believe that the [Family] court should be in a position **not** to order contact. Part [ii] of Section [a] of the terms of reference makes a presumption of guilt before innocence. This presumption should be judged on the individual circumstances. Some grandparents can be as much at fault as any partner in a failed relationship. Indeed they could be another causal factor, through having a controlling influence upon the relationship. This is a negativism, in an otherwise rational relationship, that goes off the rails through grandparent/in-law interference. If there are no children involved it is less damaging, but, when there are children involved then there are big problems. It is this element whereby the Family Court should have the power to decide against other family members having contact.

Grandparents can be a benefit and an impediment to the harmony of their offspring and their partners. The children of their offspring, can be a means of creating disharmony, with detrimental effects upon the children, if grandparents and other relatives, interfere in the relationship of their kin. In some cases, 'in-law interference' can be a prime reason for relationship breakdowns.

Contact between all members of families who have marital/relationship conflict should be circumspect. This is an area that the Family Court should keep a watching brief. It should have specialists trained in this aspect to not protect the children in this regard, but also to assist the couples who are breakdown mode.

Grandparents and other family members can, and often do, play a positive role in respect of children who are the casualties of relationship breakdowns. However that said, it behoves all concerned to be aware of their objective responsibilities, and contain whatever prejudices they may have. This is the real difficulty of any of these situations.

Child Support Formula:

The Child Support system I feel is open to abuse. It is a difficult problem because the problem impacts upon everyone involved in the relationship breakdown. It is a classic example of a no-win situation. A lot depends upon the responsibilities of the individuals concerned, and from a general observation, this is lacking. Furthermore it is difficult to administer. Those lacking responsibility, and intent to contribute towards maintenance of their children, will do anything to escape this responsibility, even if the sum involved is only say a nominal amount of \$20 per month. [This is an actual occurrence]. It is absurd.

Child Support is vexing, and it is the children who lose out. All parents, regardless of being the custodial or non-custodial should be required to provide for their children. It is a cop out if non-custodial parents claim they have insufficient funds to provide for children, yet indulge in anti-social habits such as smoking. It is worth noting that \$20 is equivalent to cost of 2-3 packets of cigarettes! Children are worth more than this!

In respect of the above, Child Support and Centrelink, should be the responsible agencies for monitoring financial maintenance of children. They are to have sufficient resources to see that equity of rearing a child occurs. One partner should not bear the burden by themselves.

Summary:

My submission draws from personal experience in regards to the overall topic of the inquiry. As a citizen I welcome the inquiry, and, hopefully that some good will emanate from its findings.

To conclude this statement, the following comments refer to the thrust of this submission:

- That society respects the institution of marriage; the responsibilities of parents, and the rights of children.
- Greater emphasis be placed upon all relationships, especially commitment and fidelity within those relationships.
- A more robust approach by the Family Court in respect of *fault* and *no fault* in regards to relationships that have either failed or are failing.
- Co-parenting be more practical than theory.
- Establishment of Child Advocates representing the interests of children of failed relationships. Also Children's' Ombudsman be established to protect the interests of children rather than the parental antagonists.
- Review of the powers of the Family in respect of contact between family members and their effect upon failed relationships.
- Child Support be equated to the real financial and emotional practicalities of rearing children.