

Submission No: **483**

Date Received: **11-8-03**

Secretary:

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

**Child Custody Arrangements Inquiry
Submission August 2003**

INTRODUCTION:-

The best interests of children need to be served by an independent National Children's Commission. Advocacy for children is their democratic right. The United Nations Convention November 1989 on the 'Rights of Children' [Article 12], which was ratified by the Australian Government in December 1991, would set the "frame of reference" for a Children's Commission.

Persons working in the Family Court need to be child oriented, have an understanding of child development, and advocate on behalf of children. Children become victims of an adversarial situation, that is no fault of theirs, and are powerless for their voice to be heard. They have no avenue open for them to appeal.

The presumption that shared custody will be acceptable to all families is pure conjecture. Currently in the Australian Family Court the health, safety, and wellbeing of children are frequently ignored [and in many instances those of their parents.] It is also potentially dictatorial, simplistic, and dangerous.

If families disagree with shared custody they are forced into the legal system, often with limited understanding of Family Court procedures, and relevant legislation. Judges can make some life shattering mistakes and, discounting peer review, are not made accountable. On entering court private lives are made public. Public hearings and wide spread legal access of family law reports is an infringement of privacy rights.

Response to Terms of Reference:-

[a] "Best interests of children"

- Lip service is given to "the best interest of children".
- Effective outcomes that prevent the real risks of poverty, homelessness, chronic depression, abuse, school dropout, and suicide-are an urgent priority.
- No recognition is given that children [through no fault of their own] are victims of adversarial situations both in family breakdown and the legal system.
- Children are still not considered to be key stakeholders. Their day to day living experiences is discounted.

- Some children are frequently subjected to counselling by potentially qualified people who have no knowledge of child development and little empathy with children.
- Strict accountability of judges, child representatives, mediators and counsellors is imperative if the legal system is to avoid discrimination and outmoded prejudices.
- [1] Equal Custody:-
- With the presumption of shared custody the level of dispute will rise and many families will have no recourse to courts for assistance.
- A system that expects equal time with each parent, irrespective of the wishes of the children, is totally impractical.
- Such a system will be uneconomic for both individuals and the legal system.
- The time taken for a court to decide could take years of a child's life and subject all those involved to prolonged stress.
- Family conflict could be amplified by adversarial court proceedings
- If shared custody of children has not worked before separation why is it assumed it is possible after marriage breakdown?
- Political pre-empting of this inquiry and media attention have focused attention on self-interested, militant lobbying groups- e.g. Father's Rights, and the so called 'Black Shirts'.
- Competing interests of parents, as a result of gender issues, do nothing to further children's rights.

[11] Contact with other persons:-

- More research is needed before a government could impose rules that presume all parents and grandparents have close bonding with their children.
- Children of all ages can clearly identify the persons to whom they can relate [even a young baby]. Young people should establish relationships with people they can trust and with whom they feel safe and this may include grandparents
Does anyone ask the children?

[b] Child support formula:-

- If "child support formula" refers to financial support [maintenance] then the existing formula discriminates against the parent who provides physical care on a day to day basis.
- The interminable process of claims, counter claims and appeals, threaten the wellbeing of the family.
- The lack of follow-up and checking that arrears are paid can sometimes take months and in some cases, is not resolved until tax returns are finalized.
- Some self-interested parents appear to be more anxious to claim money from custody rather than using funds for quality childcare. Arguments can ensue between parents over the number of nights the child spends with each of them rather than who pay the bills.

- Many parents juggle full workloads and childcare in order to feed and clothe their children while their ex-partner stops work and maintenance payments then stop.

[c] Limited time:-

- The limited time given to respond to this inquiry is unrealistic. Many parents have minimal time and resources to respond. Often they are not made aware of the opportunity or feel powerless to participate. Their responsibilities and the very real fear of reprisals marginalise them. The Family Law Pathways Advisory Task Force must endeavour to reach those separated parents who are unable to adequately get their concerns heard.
- What avenues have been made available for children to participate in this inquiry? The National Youth Roundtable of Australia's views could well be sought.
- In 1998 a Joint Standing Committee on Treaties of the Commonwealth Parliament recognized that "children who are aware of their rights are more likely to articulate their concerns leading to early intervention in problems" But, again, does anyone listen?

Conclusion:-

- An on-going Family Law Pathways Task Force should recommend urgent implementation of a Children's Commission.
- Many organizations, experienced in working with children, have, for many years, extensively researched and supported a well-resourced Commission. Clear strategies formulating such a Commission should preclude inadequately planned existing attempts e.g. Queensland.
- This Commission [to quote the Association of Children's Welfare Agencies] must have a "recognised place and responsibility in the government bureaucracy"
- It should be an independent entity promoting the rights of all children.
- The Task Force recommendation to ensue child-focused research and education throughout the legal system is long overdue and needs also to be extended to society in general. What, then, delays the recognition of the rights of children if "the best interests of children" are universally accepted to be paramount?

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