

House of Representatives Standing Committee on Family and Community Affairs	
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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
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Re: SUBMISSION INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

I am pleased to have the opportunity to make a submission in support on this important social issue.

SUMMARY -

- 1) given that the best interests of the child are the paramount consideration:
 - a) There should be a presumption that children will spend equal time with each parent post separation.
 - b) Parents should be able to alter this presumption or any court order at any time through mutual agreement with out notice to the courts.
 - c) This presumption should only be altered or rebutted in cases where there is proven instances of -
 - i) child abuse (legal definition) or
 - ii)
 - iii) child sexual abuse (legal definition) or
 - iv)
 - v) child neglect (legal definition) or
 - vi)
 - vii) psychological abuse that does or does not include parental alienation syndrome (as verified by a professionally qualified child psychologist and not disputed by any other professionally qualified child psychologist)
- 2) Factors that should be taken into account in deciding the respective time each parent should spend with their children post separation -
 - a) The parents demonstrated willingness or opposition to -
 - i) the child/rens contact with the other parent where there is no provable reason to deny such contact
 - ii) the child/rens contact with extended family where there is no provable reason to deny such contact

- iii) The parent's willingness to maintain a residence within one hours drive from the other parents residence and/or the last residence of cohabitation or conception.
 - iv) The relationship between the parents should not be considered other than the points above.
 - v) The age/maturity of a child should NOT be taken into account unless in extreme circumstances such as a necessity that is not able to be fulfilled by the other party.
 - vi) A court should order that a child of separated parents have contact with other persons, including their grandparents when that child specifically requests such contact and the child is of sufficient maturity to make such decisions.
- 3) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

The existing child support formula does NOT work fairly for both parents in relation to their care of, and contact with, their children. In many cases it is depriving non-resident parents with the means to have a meaningful role in their children's lives. In addition to this the stress generated by this agency is having indirect negative psychological impact on children via their parents.

Child support payments are made in accordance with a rigid formula. This rigid formula applies to the paying parents' perceived income earning capacity. In some cases the perceived income earning capacity can be much higher - even several times higher - than their actual income.

This formula does not make allowances for other financial requirements on the paying parent. Such requirements NOT allowed for include the costs of ongoing proceedings - whether they be family court proceedings or proceedings of false allegations - proceedings to rectify an erroneous rate of child support collection - financial responsibility to a second family - the real costs of providing for the children of the first family while in their care. A paying parent in this situation has only one recourse to rectify the situation. Should they keep working they will struggle to meet there own costs of living - and have no hope of any substantial contact with their children as they cannot provide for them. Alternatively - in many cases - their child support payments are recalculated when they apply for Newstart allowance (unemployment benefits). This also provides them with a greater means to substantial contact with their children. The current child support system is a national insult to taxpayers.

The only realisation that has come from the child support system - apart from the tremendous burden to the tax payer - is that - left to their own devices - parents will provide for children better than will occur with government intervention.

We must re-educate our service providers in the Family court arena from Counsellors right through to the highest judges and ensure that they are implementing the new policies and legislation. Each service provider in the Family court must be made accountable for their actions and decisions. One of the best way to carry out this activity is to appoint and INDEPENDENT review board to assess decision from time to time in line with the intentions of the act.

Details -

The first stage of correcting any problem is admitting that such a problem exists. I believe we all acknowledge that there are problems with the current outcomes for children of separation.

The second stage is to identify the causes of the problem. This second stage is crucial. Several attempts of correcting this problem have failed due to the failure of this stage of the process. The family law act was introduced and then modified several times in failed attempts to rectify the poor outcomes for children of separation.

Why?

All these attempts related to the changing of laws that are interpreted by family court judges. As significant as family court judges are in the over all process, they are many others that play a role.

The process of determining outcomes involves the following -

Family court judges (court proceedings)

Family report assessors (court reports) (employed by the family court)

Psychologists (court reports)

Barristers (court proceedings)

Solicitors (court proceedings) (mediation or the lack thereof)

Family court councillors (mediation)

Legal Aid (legal representation)

State police (domestic violence/criminal allegations)

Magistrates court (domestic violence/criminal allegations)

Department of family services (by various state titles) (child abuse allegations)

Centerlink (financial provisions)

Child support (proportioning of finances)

The children's parents (?)

Lets look at the role that each of these people/organisations play.

Family court judges -

Family court judges are placed in the unfortunate position of having to make final decisions on court orders. In many cases these decisions are highly subjective. The subjective nature of these decisions allows the opportunity for judgements to be made on personal beliefs and/or biases. Some will argue that family court judges are out of touch with modern society. This could well be the case considering the social class separation as a result of their income. Media releases from family court judges appear to support this concept. If this is the case then the judges are likely to act on perceived stereotypes.

Most people who have authority and interpret law tend to seek expansion of authority by way of litigation. Our society is increasing litigation on all boundaries.

The current family law act protects judges from public criticism and accountability.

Unfortunately - in the current system - high levels of conflict and therefore litigation - increase the demand for judges and thereby increase their financial reward. It also increases their sense of self worth and self-importance.

Family report assessors -

Family report assessors are employed by the family court. One would expect that a person assessing the relationship between family members would be a professional child psychologist or - at least - a professional psychologist. This is exceptionally uncommon. Most have the qualifications of a councillor or social worker. Male and Female parenting styles are different. Children need a balance of both of these parenting styles. That is why children that are deprived of one parent have poor outcomes. This occurs regardless of the gender of the removed parent. An assessor that is unaware of the gender differences in parenting styles will identify with the styles of their own gender as good and determine that parenting styles of the opposite gender are bad. Even if they are aware of the differences in parenting styles - they will still have an inherent bias towards parenting styles of their own gender. The vast majority of family assessors are female. Family court assessors also have a tendency to write reports that satisfy the expectations of the court as the court is their employer.

The current family law act protects family report assessors from public criticism and accountability. It also protects their reports from peer review.

Once again - increasing levels of high conflict divorce - increase the demand for family assessors and thereby increase their financial reward. It also increases their sense of self worth and self-importance.

Psychologists -

There exists several psychological tests that standardise the assessment of a person for a particular psychological quality. The results of such tests would be similar for a given person regardless of what psychologist conducted the test. However - no such test exists for relationships or parenting. The results of such an assessments vary dramatically between differing psychologists. Even to the extent of being in direct conflict. Obviously the assessments are highly subjective. For this reason - psychologists can be hand picked as either mother friendly or father friendly.

Please note that external psychologists are rarely employed. This is for two reasons. Firstly - it is the opinion of the court that to order a parent to attend for a professional assessment is a violation of their privacy/liberty. This appears unusual as a family assessment by family court employed staff is often court ordered. Secondly is simply that litigants cannot afford such professional services.

Once again - increasing levels of high conflict divorce - increase the demand for psychologists and thereby increase their financial reward. It also increases their sense of self worth and self-importance.

Additionally - in the case of psychologists - a finding of some psychological deficiency is likely to bring another client into the industry - if not to the same psychologist.

Psychologists reports are protected from peer review by patient confidentiality.

Barristers -

Barristers are employed to argue more complex issues of law. They are not employed to provide any information about families or children. Barristers are employed - only - by referral from a solicitor.

Once again - increasing levels of high conflict divorce - increase the demand for barristers and thereby increase their financial reward. It also increases their sense of self worth and self-importance.

Solicitors -

Solicitors are in direct contact with parents through out the entire court process. There is no other group of professionals that has more opportunity to effect early resolve and amicable results. Unfortunately there is also no other group of professionals that are better financially rewarded for high levels of conflict and therefore litigation. A solicitor stands to gain the maximum if the process goes through the full length including trial. However - they gain little should the process be resolved early and without conflict.

Once again - increasing levels of high conflict divorce - increase the demand for solicitors and thereby increase their financial reward. It also increases their sense of self worth and self-importance.

Family court counsellors -

Family court counsellors are employed by the family court. The court often orders parents to attend family court counselling. Counsellors are often the same people that write family reports.

As is the case for family report assessors -

Male and Female parenting styles are different. Children need a balance of both of these parenting styles. That is why children that are deprived of one parent have poor outcomes. This occurs regardless of the gender of the removed parent. A counsellor that is unaware of the gender differences in parenting styles will identify with the styles of their own gender as good and determine that parenting styles of the opposite gender are bad. Even if they are aware of the differences in parenting styles - they will still have an inherent bias towards parenting styles of their own gender. The vast majority of family court counsellors are female.

Additionally - family court councillors offer support on the basis of the above mentioned biases. They are aware that the family court is very reluctant to order shared parenting. As an employee of the family court - they offer counselling with an expectation that parents will conform to the courts reluctance of shared parenting orders.

Statements - verbal or otherwise - from family court councillors are protected by that family law act.

Once again - increasing levels of high conflict divorce - increase the demand for solicitors and thereby increase their financial reward. It also increases their sense of self worth and self-importance.

Legal Aid -

Legal aid provides representation for parties on lower incomes. This provision is subject to a means test. Many child support payers - who could otherwise afford their own solicitor - are excluded from legal assistance because their income before child support deductions is higher than the threshold. Child support payments are not taken into consideration by the means test. The child support agency will act before the family court determines a residence matter.

In many situations - both parents are not able to finance representation. In these cases legal aid will only provide representation to one party. The determination as to which parent gets representation is made in a subjective manner. This subjective decision is often made on the personal biases and beliefs of the assessing Officer of legal aid - most of whom are female. It has been widely accepted that those who represent themselves in the family court are at a strong disadvantage. Solicitors who are funded by legal aid openly state that legal aid often chooses the wrong cases. This can be interpreted to mean that legal aid is often provided to the party has the least merit in their case. Most recipients of legal aid for family court trials are female. This statistic is not obvious in legal aid documentation as the funding for males is often withdrawn and reinstated. This results in a higher count of cases for males although there are fewer males supported. Additionally to this - males are often only funded for less expensive and less significant parts of the process.

Legal aid staff does not significantly benefit financially by high conflict divorce. They may benefit by way of job security as that would be a concern considering ongoing budget cuts. They are - however - in a position to subject others to their personal perceptions and biases. Most of the staff determining which cases are to be funded are female.

Legal aid does not publicise statistics for scrutiny and evaluation by the public.

State police -

State police are often involved by way of allegations of domestic violence. There is a clear bias towards taking up cases where that allegation is made against a male. In some states it is policy NOT to take up cases when the allegation is made against a female. State police funding is determined by successful prosecutions. Applications for domestic violence orders are rarely rejected.

In the cases of criminal allegations - state police do NOT interact with other aspects family court proceedings. A disproportionately high number of child abuse/child sexual abuse allegations are made during family court proceedings. Most of these are NOT referred to state police or are not taken up by state police.

Magistrates court -

The magistrate's court makes decisions in relation to domestic violence allegations. In this context the decision is subjective and not bound by proof or evidence. The process for determining outcomes for domestic violence applications is designed for time efficiency and NOT accuracy of determination. In these circumstances - a domestic violence order will be issued unless it is blatantly obvious that the application is a fabrication. Most magistrates openly state that they believe many domestic violence applications are made to gain a pre-emptive advantage in family court proceedings.

In the case of criminal proceedings - proof of fact evidence is required and a determination is made by jury.

Department of family services -

This department often becomes involved when allegations of child abuse are made. Their definition of abuse includes emotional abuse, physical abuse and sexual abuse. The training level of staff is extremely poor due to their high staff turn over. Young people of very little life experience and very little training make decisions to remove children from parents on highly subjective terms such as emotional abuse. Once again these decisions are made on personal biases and perceptions. Most of these decisions are made by females. Mandatory reporting has placed such a burden on this department that only a small percentage of reports are found to be warranted. This in conjunction with the fact that their funding is determined by the number of children in the care of the department - has resulted in more resources being utilised on obtaining legal care of children and less resources in determining which children should be taken into care and whom should care for such children. This department has reached the point that due process is not available to parents and the legalities of their actions are highly questionable. A royal inquiry into this department is long overdue.

Centerlink -

Form many low income families - financial resources are a determining factor in which parent the child/ren will live with. Even should it be the case that a child lives exactly 50% of the time with each parent - Parenting Payment Single (single parents pension) will only be paid to one parent. The other parent may receive Newstart (unemployment benefit) if eligible. Parenting Payment Single is substantially higher than Newstart. Additionally to this - the parent receiving parenting payment also receives rent assistance for themselves and the children. The parent on newstart will only receive rent assistance for himself or herself - even though they have to provide accommodation for their children as well. The parent receiving Newstart is also required to actively seek full time work. The decision as to which parent receives parenting payment is made subjectively. These decisions strongly favour female parents.

Family tax benefit is also proportioned subjectively. Once again the decisions strongly favour females.

Child support -

Child support payments are made in accordance with a rigid formula. This rigid formula applies to the paying parents perceived income earning capacity. In some cases the perceived income earning capacity can be much higher - even several times higher - than their actual income.

This formula does not make allowances for other financial requirements on the paying parent. Such requirements NOT allowed for include the costs of ongoing proceedings - whether they be family court proceedings or proceedings of false allegations - proceedings to rectify an erroneous rate of child support collection - financial responsibility to a second family - the real costs of providing for the children of the first family while in their care. A paying parent in this situation has only one recourse to rectify the situation. Should they keep working they will struggle to meet their own costs of living - and have no hope of any substantial contact with their children as they cannot provide for them. Alternatively - in many cases - their child support payments are recalculated when they apply for Newstart allowance (unemployment benefits). This also provides them with a greater means to substantial contact with their children. The current child support system is a national insult to taxpayers. The only realisation that has come from the child support system - apart from the tremendous burden to the tax payer - is that - left to their own devices - parents will provide for children better than will occurred with government intervention.

The children's parents -

This is the human factor that is not allowed for in the over all process. Once an application is made to the courts - the parents become the subjects of a traumatic experience that they have little or no control over. This experience negatively impacts on their parent to parent relationship to the extent that many parents never recover from this damage. The parent to parent relationship is a key factor in achieving a positive outcome for the child/ren. Much is said about the emotional experience of separation and it is true that newly separated parents are less capable of making rational decisions due to the influence of emotions. How debilitating this experience is and how long it lasts varies from person to person. What these parents need is some time to grieve the failure of their relationship. The children need to maintain a stable relationship with their parents. As the parents come to terms with their separation - they need

to establish a path of communication that is fluent and comfortable so as they can minimise the impact on the children.

The current family court system is the opposite of these requirements. The family court system places these parents into a position of making the most important decisions about the child/rens future at a time when they are least capable of making such decisions. Furthermore the family court system rewards a parent who isolates the other parent from the children. Most interim residence/contact orders are placed very closely to the children's current living arrangements. If one parent mostly - or totally - excludes the other parent from the children in the time between separation and the application for an interim order - then that parent will most likely obtain residence. False allegations of domestic violence and/or child abuse are ideal ways to achieve this objective.

At a time when the parents need establish a fluent and comfortable means of communication - their mode of communication is likely to be via solicitors. The terms used by solicitors are not the terms used by adults who re-adjust to a new living arrangement. In fact the solicitors earn their living from conflict in divorce.

As the family court system is highly reluctant to issue orders of shared parenting - both parents are in fear of loosing reasonable contact with their children. Parents placed in this fear at a very emotional time are more likely to behave in a manner that is less beneficial to the child/ren. This is not a function of the parents themselves - excluding that they are human - but a function of the process of the family court system.

At the time of trial the parent with residence on the interim order will most likely obtain permanent residence as the family court has a high regard for the status quo.

Yours Sincerely

Paul Hewitt