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House of Representatives Standing Committee  
on Family and Community Affairs

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Secretary: .....

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Standing Committee on Family and Community Affairs  
Child Custody Arrangements Inquiry  
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**Re: Inquiry into child custody arrangements in the event of family separation**

Dear Committee Members,

I am a father of two beautiful children and I love them dearly. My daughter [REDACTED] and my son [REDACTED] live with me for 5 nights in each fortnight. Starting my own family and having children to love and nurture comes naturally to me because I had the privilege of being raised by my own mother and father in an environment of love and respect for each other. Our [REDACTED] European heritage and our Christian faith means that we live for family as well as for ourselves, but the centrality of family is paramount to our lives. Nothing in our lives happens, that does not, in some way, pass through the family. I have found the cohesiveness of our family to be diminished only by death, war and the doctrine of the Family Court in seeking to promote single parent mother-headed families at the expense of the father-child relationship. I knew that my children's relationship with myself would survive even the unwanted separation between my wife and I. However, I was justifiably terrified of what Court enforced separation from their father would do to my children and I, knowing the Spartan contact arrangements for fathers routinely handed out by the Family Court.

I was separated from my former wife on [REDACTED] 2001. Initially I did not see my children for 8 weeks, followed by a separation of 3 months. The absence was excruciating for both my children and me. When finally I got to see them for part of one weekend, they hugged me and hung onto me and would not let go, so great was their pain and so glad were they to see me. In that time of separation, my children had lost weight and their health had run down also. At our Interim Court Hearing, my children's time with me was set at just over 110 nights in the first year. I agreed final court orders under great duress. If I didn't agree my wife's terms then I would be at great risk of routine Court orders forcing me to become an infrequent contact dad with little tangible time and relationship with my children. I am currently a joint resident parent with 40% care whilst my former wife has our children 60% of the time. My status as a resident parent was ignored by the Family Court, which awarded my former wife 70% of our joint assets and ordered the auction of my home. Without additional funds from my parents, my children and I would have lost our home. Given the large payout and my continued onerous child support payments, I have struggled to remain financially viable, whilst my former wife chooses to minimize her professional work and maximize her child support and Government parenting subsidies.

When my wife and I were still together, we shared the parenting duties. I attended to our children daily, feeding my infant son, folding and changing cloth nappies, washing soiled clothes with Napisan, making meals, washing dirty faces, dressing my children, rubbing their chests with Vicks Vaporub when they were ill. When [REDACTED] or [REDACTED] had a high temperature, earache or conjunctivitis, I wrapped them in a blanket and took them to the [REDACTED] Hospital Outpatient Clinic late at night to be seen by the doctors and nurses. I enjoy vacuuming and doing the dishes and I am a homely person. I love being at home and in the garden and I treasure time with my children. We do many activities together and they need my time and assurance throughout the day.

Shared parenting is vitally important to my children and me. Not only are we asking for more time to be with each other, but also this is the special time of their childhood - it cannot be replaced. It is the time when they need their mother and father the most. It is a make or break time for my children's development as persons. Their cognitive, social and personal development hinges on frequent and regular contact with both their mother and their father. We are not total replacements for each, we each bring a distinct gift to our children's lives and they thrive on our love and daily presence. The only way I know that they can be afforded the maximum time from both of us is to share the time equally. Right now my children are telling me that 40% is not enough. They want to live with me for more time than that and my daughter was the first to suggest equal time. She has even reasoned that week-about would suit her better than the current 5 nights in 14 with me.

My parents ([REDACTED] and [REDACTED] grandparents) have always visited on a weekly basis. They have been ever present in my children's lives. My mother is very traditional and brings home cooked meals and food and doughnuts. My father fixes toys and is a real handyman about the house. They have a special relationship with my children that extends back to when [REDACTED] and [REDACTED] were babies. As grandparents, they received no consideration from the Family Court. This is not so surprising given that the Family Court did not value my

fathering and my parenting of my children. Instead the Court leans to the parent that attended the children for the longer time, despite the quality of the bonds between us. Between my children and myself, and their grandparents, the bonds are really excellent and run very deep. The legal system just cannot or will not appreciate and recognize this fact and more particularly the need and rights of my children to sustaining these core ongoing relationships. The maternal grandparents are noticeably absent in the raising of my children and it is their own personal choice to remain peripheral.

My boy [REDACTED] is generally undernourished and not thriving as much as he could be. His iron levels are low and he gets tired easily. He lacks vibrancy. I see his condition improve when I get to feed him and he gets adequate rest. He perks up in my care before going back to mummy. The cycle repeats. Despite advice from a nutritionist that we jointly attended, my former wife doesn't attend to cooking red meat and feeding as well might be expected. My daughter has special needs as she suffers from verbal dyspraxia. Her speech is affected but not her intelligence. There are so many good remedial language programs that I could be doing with [REDACTED] if only I had the time to spend with her. The Family Court is not too concerned about low level neglect yet I know that nutrition and language development are critical to my children's health and general development. Under the current laws and Judges' discretion, I would be unlikely to succeed in an application for more time with my children.

I would like to spend more time actively participating in school events and nurturing my children but I have been told by the Child Support Agency that if I were to knowingly lower my income in order to care for my children, then I would still have to pay the same high level of child support. Under the CSA deeming laws, I can never openly reduce my work hours and income in order to attend to my children, as "needing to care for my children" is not considered to be a valid reason to lower my child support payments. There is nothing more discriminatory and antagonistic than bad law, which discriminates against fathers and harms my children and me. I managed to raise the profile of this seriously discriminatory law in an article published in the Western Australian newspaper on 26<sup>th</sup> January 2003. I have attached the article written by journalist Julie Butler for the Committee's reference.

There is nothing more conflictual in a marriage separation than the involvement of the adversarial Family Court. If shared parenting had been the presumption, then outcomes for my children and myself would have been vastly better than what we experienced. Family Court Judges use their very wide discretion to make findings and orders down gender lines and stereotypes of mother-nurturer and father-worker. The Family Court finds fathers at fault for either working (and not parenting) or not working (failing to take proper responsibility for the family), while never censoring a woman for failing to work when she has the capacity to do so and has been doing so. The end result is that children go to live with mother and father becomes a virtual stranger with few rights and next to no influence in the care and day-to-day development of the children.

In the adversarial court system, the stakes are very high. It is a winner takes all fight to the finish. Family Law lawyers know the mind and operation of the court. My former wife was advised by her lawyer to do a snatch and grab for the kids and take them away as possession is nine tenths of the law. Whoever has the children for the first 3 months, will be awarded the children in final orders. Whoever has the major care, automatically gets 50% of the property division plus 10% for each child. My wife's payout was 70% percent (that is  $50\% + 10\% + 10\% = 70\%$ ) even though I was legally a 40% resident (not contact) parent. By snatching the children away from our shared parenting situation, for a brief moment in time, my former wife asserted the sole care of our children. Unquestioningly, Centre Link and the CSA accepted her requests for the parenting payment and that I be assessed for child support payments. I was reeling from the abduction of my children and they were suffering enormously. Without any prior consultation with me I was assessed to pay \$1,800 per month. I still had to pay the mortgages and bills. I had to find \$25,000 to pay my lawyer just for the Interim proceedings to have the children ordered returned to their hometown, to myself, and to their grandparents and uncles and cousins. The stress was enormous. I nearly lost my job because of my absences to attend court and the trauma I was going through. This would have been unnecessary had there been a presumption of shared care in the first place. My former wife then fought for sole custody of the children whilst I could see that [REDACTED] and [REDACTED] needed both of us in their lives. The Courts' modus operandi that only one parent can prevail, was the fuel for the fire to a very hostile court battle which cost me \$150,000 and my former wife about \$40,000 in legal fees. We will never recover financially. I can never pay back my debts whilst I have to pay for two households and my former wife chooses to work only when it suits her.

When my former wife acted to steal [REDACTED] and [REDACTED] away from me for over 3 months, it probably never occurred to her that it was not solely up to her to make any unilateral decisions about their future care, and it never occurred to her that our marital separation had not altered our joint and basic parenting responsibilities. She simply assumed that she was the one to have the children's primary care, at the same time knowing, through my many legal letters and protests, that I saw myself as unjustifiably excluded. One can understand why my former wife felt as she did, if indeed she took as her starting point that on separation the only issues that needed to be considered were custody and access. If her starting point had been that both she and I, as parents, had equal and shared rights and responsibilities for our children, she might seriously have reflected on whether there

were any valid reasons why the balance of parenting responsibility needed to be so drastically altered.

The central and essential point is that when parents separate consideration of the welfare and interests of their children should always start from two propositions. First that the children are entitled to retain the advantage of being nurtured by both parents. Second, that neither parent has a greater right than the other to nurture the child. Those propositions do not admit of any assumption that the parents' separation automatically requires that the principal responsibility for nurturing should be assigned to one parent only, whether that be the mother or the father. If there is a general public perception that the Courts ordinarily approach custody or guardianship on the latter basis, (and there is), that perception will profoundly influence the arrangements which separated or separating parents will make for themselves in regard to the future care of their children. So that separating parents will be conditioned to approach decisions about their children's future on the footing that one parent will have custody and the other access, rather than on the footing that before they get to that point they are required as a compelling priority to think seriously about how they can jointly continue to carry out their responsibility as parents to nurture their children.

On that footing neither parent can take it for granted, on separation, that he or she is entitled to assume sole possession and control of the child, for that would be to deny for the child the other parent's equal guardianship rights and in itself would be a misconceived view of parenting responsibilities. The only appropriate starting point in a dispute over arrangements for the children's care on the parents' separation is recognition of their equal and shared guardianship responsibilities and obligations and their equal and shared legal right to exercise them. Unless Shared Parenting with equal time is made law, separating parents will continue to act unilaterally in their own selfish interest knowing that the Court will reward them with final custody (or residency) for making a pre-emptive strike in taking off with the children.

There is no more conflictual a situation than that created by the Family Court. It is hypocritical of legal professionals and court expert psychologists to use conflict between the parties as a reason not to award shared parenting, when in fact the Courts presumption of sole or major care is the one thing that causes so much conflict and despair. I need to emphasize that Judges use their very wide discretion under colour of law to make findings in favour of mothers. The whole Family Law legal system revolves around this fact despite the rhetoric that the Family Court is gender neutral. I know it doesn't work that way. Many lawyers and court experts rely on this fact to earn a living off the assets of the separating couple needing the most emotional support. In my own case, the competitive accusatory affidavits filed in the Court also increased hostility and ill feelings amongst the parties. The conciliation conferences or court counseling force the parties to behave as though they are already divorced and there is no mechanism for dispute resolution and/or marriage reconciliation. The counselors insist that the discussion be about the children and not about solving marital issues. I am convinced that the court process ensured our divorce. Once on the roller coaster ride of court hearings and through fear of losing the children, it was impossible to break out of this process. The Court appointed expert psychologist in our case said to me that most people don't have the

human capacity to tolerate separation from their children but that his job was to nevertheless nominate one parent to be the winner, while the other parent loses out. In my own case, our dispute would have calmed down very quickly had my relationship with my children not been under such a serious and dire threat from Family Court ideology and practices.

Shared parenting can work. On balance, my former wife and I agree most matters regarding the children and make concessions to each other. We rarely see each other and then only at the weekly changeovers and the occasional school function. We jointly visit the pediatrician with our children. We jointly attended a nursing home for the aged so that our [REDACTED] could dance and perform with her ballet class. To answer the critics I can honestly say that increasing my time with my children to 50:50 would not result in any more or any less changeovers or opportunities for discussion and the clichéd “conflict” to occur. When looked at critically, the fear of parental conflict that drives court decisions against fathers is not borne out by the facts. I cannot expect to have a sympathetic hearing from the court as my former wife only has to use the tactic of fabricating examples of “conflict” and citing “ill will” in order to prevent me from becoming a shared care parent with equal time. In this way she preserves her Centre Link Parenting Payment and her Child Support monies.

The battleground is the Family Court arena. Marital discord pales into insignificant when viewed against the frightening choice of one parent over another and forced alienation from ones’ own children. Just like the movie film “Sophie’s Choice” where actress Merrill Streep plays a mother during the Holocaust, forced by a military official to choose and save just one of her two children; terrified and broken she chooses her boy and her daughter is taken away to the gas chambers. The memory, the guilt and the horror stay with her until her final days. The current doctrine of the Family Court to pick a winner and a loser, cannot be allowed to persist in today’s civilized society. The practice is barbaric and the gag on publishing court proceedings means that the public at large is not aware of the full horror awaiting fathers in the Family Court.

In the hope that legal reform will result from this Inquiry, I wish to apply for Shared Parenting and equal time with my children retrospectively, that is, modify my current Final Consent Orders to allow me to share-parent equally. I would also like my child support payments to be reviewed to allow both my former wife and I to be treated equally and share the financial burden equitably. This means that the onus would be on both of us as working professionals, to support our own households and our children, with minimal Government support. A sharing of the parenting payment may be a good starting point.

Thank you for the opportunity to present my case in support of Shared Parenting and Equal time between parents and their children.

Yours sincerely,

[REDACTED]