

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 127

Date Received: 24-7-03

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

July 21, 2003

Dear Sir/Madam,

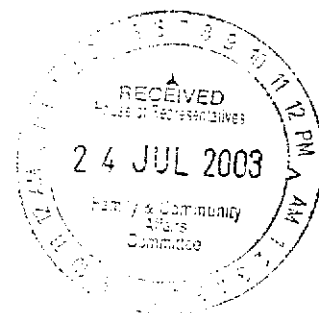
Re: Submission to Standing Committee on Family and Community Affairs / Child Custody Arrangements

Please find attached hereto and undercover of this letter my submission to the Standing Committee on Family and Community Affairs - Child Custody Arrangements Inquiry.

I have tried to make my points as brief and as concise as is possible.

I thank you and the committee for giving me an opportunity to make some difference.

Yours sincerely,



Submission to Standing Committee on Family and Community Affairs Child Custody Arrangements Inquiry

I confirm my understanding as the terms of reference as follows:

- (a) given that the best interests of the child are the paramount consideration:
- (i) what other 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 will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and
- (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- (b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.
- (c) with the committee to report to the Parliament by 31 December 2003.

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1. I am an Australian citizen born at Perth Western Australia February 9, 1958. I was schooled at Perth at a number of Primary Schools and Morley Senior High School. I undertook tertiary education at Perth Technical College. I have worked in the area of the media for almost 29 years. I am a Press Photographer.
 - 1.2 On 11 September 1994 my daughter Shamara was born. As I was not married to the mother at the time of the child's birth, the subsequent proceedings initiated by me in the Family Court of Western Australia for access, was filed pursuant to the WA legislation known as the *Family Court Act*.
 - 1.3 During a period of almost 3 years that followed the birth, I experienced first hand the workings of the system, as it is or at least as it was then. Proceedings could be described as acrimonious at best, so much so, that a trial for access {final orders} was only averted at the 11th hour the day prior to those proceedings coming on before the court. There were however many court appearances throughout the three years.
 - 1.4 During the period from the filing of the matter to orders being made by consent, I had my eyes opened to the way the court and the process operated. I was subjected to just about every trick in the book by a succession of legal representatives for the mother - six in all over a three-year period. As a result, I am convinced that the fact that my daughter still has access to and a relationship with me, her father, is little short of a miracle. It has only been my dogged determination that has given my daughter Shamara a father, a situation that I find obscene and perverse, a near travesty for my daughter. The entire process very nearly led to my daughter being denied a caring and loving father for no good reason.

2. Children's Rights

The right of a child to a caring and loving mother and father is a basic human right – a right from which all other human rights flow. The International Covenant on the Rights of the Child, to which the Commonwealth of Australia is a signatory, enshrines this as one of its precepts. One may very well ask the question why then are so many children separated from their fathers after the separation of the parents? It is one of the great failings of the law and by extension our society since Family Law reform was enacted in 1975. We are left with a number of generations of children who have never known their fathers even though their fathers would love to be a part of their lives. There are many reasons for this of course. Not all fathers want to take an active role in their children's lives. I would argue that the vast majority of fathers do however, and when that desire conflicts with the wishes of the mother, there are a range of weapons which are at the disposal of the mother and are readily and easily accessible during proceedings. The High Court of Australia in one infamous case expressed the opinion that access would be denied to a father because in

relation to allegations of sexual abuse, denied by the father, there existed "a lingering doubt" as to the father's innocents. This is in spite of the fact that, as has been mentioned in many other cases, allegations of sexual abuse are easily made, however are more difficult to disprove. This would leave one with the impression that the burden of proof has changed. That one is required to prove ones innocents rather than the crown proving the case beyond a reasonable doubt. However the test before the Family Court and in this case the High Court was the child's best interests. Was it in the child's best interests to allow the father continued access, albeit supervised, or was it in the child's best interests to prevent access? Sadly, the Court chose the latter.

3 My Experience

In my experience I was required to, for a time at least, take access to my daughter during a supervised access process with Anglicare. Whilst I believed supervision was unnecessary, I agreed to it so as I could see my daughter, then aged less than one year, and also so as I could have a report made by those who supervised the access as to the way I interacted with the child, my ability and my parenting skill level. Those who supervised the access duly made the reports and these reports were given to the court as evidence of my suitability to undertake access free of supervision. The first I heard from the mother's lawyers was to allege that I was having an intimate relationship with one of the supervisors. Not only was the allegation false, it was scandalous. This was an abuse of the process.

- 3.1 Allegations were made that I had, in effect tried to poison my daughter by giving her food that I knew would cause her to be sick and vomit. This allegation came in the form of a letter from one of six lawyers the mother hired and fired during a three-year period. This was, worst case scenario, an allegation of attempted murder. It was an outrageous allegation, was false and was again an abuse of the process as the writer and the mother knew the allegation to be false. The mother later withdrew the allegation.
- 3.2 I was confronted with a Psychologists report which made recommendations severely and unreasonably limiting the access even though the psychologist concerned had never witnessed my access, never read any report as to my access, never witnessed me and the child together, never talked to me and based her report entirely on what the mother has said to her. In short, it was completely one-sided and biased. This was another abuse of the process. The psychologist was subsequently the subject of an adverse finding by the board after my complaint in respect to her conduct in the matter.
- 3.3 I was subjected to violent behavior by another one of the mother's legal counsel in the presence of a registrar of the court and my lawyer. I wrote to the Chief Justice who passed the complaint to the Deputy Registrar. The Deputy Registrar in effect dismissed my complaint saying that proceedings in that forum, mediation, were "confidential". Domestic violence in the form of emotional and psychological abuse was a feature of my relationship with the mother.
- 3.4 The mother breached court orders time and time again and not only did the court allow this to happen, it encouraged further violations of orders. The mother was restrained from residing outside of [REDACTED] without giving me first 40 days written notice as she was required to do, though in violation of this order left, arguing that she did not know of the order then applied to have the matter transferred to the new location in country [REDACTED] which the court allowed! The mother was in effect, rewarded for her breach. This was another abuse of the process.
- 3.5 The mother filed court proceedings at this new location and in support of her application, filed an affidavit. I duly filed a reply. On the evening prior to those proceedings coming on before the court, I received another affidavit from the mother that was, in effect a reply to my reply and asked for further orders. This was another abuse of the process and was completely outside the rules of the court. The court allowed the application.
- 3.6 The mother would not allow me to see the child on access visits after I had traveled almost 5 hours in my car to undertake court ordered access. I was having to leave home at 5am in the morning, drive [REDACTED] some 4 and one half hours drive away once a month, take access for two hours as per the court and then drive all the way back. In the intervening fortnight, I paid for the child to travel with the mother or another by air after the mother complained that she could not travel in any other way. I had costs for access that ran into the hundreds of dollars a month, and it was at this time and after my costs for access skyrocketed, that the mother made application for Child Support. This was an abuse of the Child Support system and was so done by the mother to cripple me financially, making access impossible for me to continue to afford. I had previously made offers to pay child support though the mother rejected all my attempts saying that she did

not want to receive child support in any form from me. This was an abuse of the child. No adverse finding was ever made of the mother by the court in respect to this.

- 3.7 Prior to the mother's application to the Child Support Agency and the high costs for access, and whilst the mother still lived in P[REDACTED] I made an attempt to apply to the Child Support Agency to pay child support. I wished to make a financial contribution to my daughters needs, physical and financial. All previous attempts by me to get the mother to take my money were to no avail. This did not prevent the mother's lawyer giving to the court that I was not paying child support, failing of course to mention the fact that the mother was refusing to accept it. This was another abuse of the process and the court.
- 3.8 The Child Support Agency informed me that there was no provision for a payee or liable parent to make application to pay child support so I made a Statutory Declaration which was sworn and given to the then Department of Social Security. Six months later, when the mother for strategic reasons decided to apply for child support, I was forced to pay arrears after the Child Support Agency, due to its incompetence lost the original application by the mother. It seemed to me that the whole world had gone completely mad. I made a complaint to the Commonwealth Ombudsman's Office, which was upheld. I received an apology from the Child Support Agency and I further signed a Deed of Release, which in effect released the agency from any further liability.
- 3.9 I could go on but suffice it to say my experience with the both the Family Court and the Child Support Agency could be summed up as being high farce! At times I wondered if I was the star of a movie that was being made without my knowledge – a kind of candid camera show.
- 3.10 All of the above would be if not humorous to some, certainly bazaar if it were not so serious. As a result of the above, and the cumulative effect upon me, I was driven to near nervous breakdown and prescribed anti depressants by my doctor. I was forced to take sick leave from my employment and was frankly, lucky to keep my job. The effect financially upon me was devastating and I can tell you that thoughts of suicide passed through my mind on more than one occasion.
- 3.11 Perhaps one of your number can tell me why this all happened to me? Why our wonderful country gave to us all such a morally bankrupt system so easily abused and manipulated? Why a caring and loving father should be subjected to what I have been subjected to? Perhaps you can tell me how it is that a process or system can be so uncaring, unrecognizing, seemingly blind to the abuse I was being subjected to. It is more in spite of the Family Court rather than as a result of the court, that my daughter has been able to have access to and a relationship with a caring and loving father. The court has simply been a vehicle to be used and abused in a process steeped in bias and founded in social ideas which sit more comfortably in the 1960s and 70s rather than reflective of the reality of contemporary Australian society.
- 3.12 Recently I read a passage that summed up my thoughts in respect to the process, such as it is, the effect on us all including children and the environment that has allowed it to occur. It reads in part:
- "...Whilst it has long been established that both men and women perpetrate domestic violence in similar proportions, only men have been singled out for vilification and "treatment". This guilt by gender has led to an industry of false allegations of violence and child abuse made against men to be used in Family Court proceedings. Once the allegation is made, a man is guilty until proven innocent, removed from his home and family and treated as a third-class citizen. In many cases, innocent men have taken their own life as a consequence of this vilification. Dr Sarantakos likened radical feminism to Marxism, where ideology overrules experience. Just as communist states fell when their economies imploded, perhaps the current state of families in Australia will lead to the dismantling of our own Berlin Wall - the Family Court and the Child Support Agency. When that happens, it will be a triumph of common sense over ideology."* Brian Taylor Reliable Parents (Inc)
- 3.13 The above could be easily dismissed as the ranting of someone with an axe to grind, being far from what one may call politically correct. It does however in my view, put the finger right on some of the effects of Family Law since 1976 when radical reform was undertaken in this field. In short, we have a process that is easily manipulated, abused and perverted, leaving deep feelings of resentment, frustration and injustice as a result. This was precisely my experience with both The Family Court and the Child Support Agency.
- 3.14 Lawyers are a major contributor to the dysfunction of the system. It is not in a Family Court lawyers interests to settle matters amicably. More often than not, lawyers will attempt to inflame matters by broadening issues when they need not be broadened at all. The various judicial officers of the court know full well the courts failings however, it is far more convenient to say nothing, take the money, the car and

the publicly funded superannuation, look the other way and act like the three wise monkeys. I know of at least one case where a judicial officer of the Family Court [REDACTED] drove a Justice Ministry car, was involved in an accident and left the scene. Allegations were made of the same officer that whilst sitting on matters in the court, that he was unsteady, his speech was slurred and had red eyes. In short, he was drunk. This same officer would abuse parties before the court and others, so much so that court orderlies were given to apologise for his behavior. The particular officer resigned in disgrace after being asked to do so by the then Chief Justice of the Family Court [REDACTED]. More recently, another magistrate of the Family Court [REDACTED] was stopped by police, again in a Justice Ministry car, breath tested and later charged with driving whilst under the influence of alcohol. He was also traveling with a wanted person at the time – a person with bench warrants out for their arrest. Many judicial officers of the Family Court are simply out of control. [REDACTED] no judicial commission exists to bring accountability to the Family Court process, such as it is and its officers in this state.

- 3.15 The Family Court acts in a vacuum of non-accountability and is a club. Judicial officers from time to time gather and decide how various changes to the law will be interpreted by the court. It delivers conveyer belt "justice" whilst trying to give the impression that each case is judged on its merits. Various utterances of late by the Chief Justice of the Family Court of Australia, Justice Nicholson, show his contempt for the notion of shared parenting. Moreover, he was equally damning in his criticism when the Federal Government proposed changes to the law giving equal parental responsibility to both parents of a child or children. There is enough evidence to conclude that the Family Court has long outlived its usefulness. Compelling evidence exists that the whole process is in urgent need of reform.

4 Reform

- **The Family Court should be abolished** and replaced with boards that sit and will have power to send on matters to a court of equity such as breaches of their orders, consent orders or other matters. No lawyer involvement at all in matters relating to child access before the board sends a matter to a court of equity.
- **Monies paid for Child Support by liable parents should be tax deductible.** A liable parent who has not remarried is paying single persons tax, yet is supporting one or a number of children and his tax liability takes no account for that. I believe that this is the case in the UK. There exists no good reason why the same can not be effected here in Australia.
- **The liability should cease when the child attains the age of 18 years** in all circumstances.
- A parent must make an application to receive child support within a prescribed period of time from the birth of a child and/or separation from the other parent.
- **Rates should have regard for the age of the child.** ie Different rate for a toddler compared to a 17 year old.
- Rates should have regard for the liable parents' financial commitment to a new relationship and care and financial support of other children to that relationship.
- Officers of the Child Support Agency should act in good faith, giving accurate information at all times to clients of the agency.
- **Parents should have a presumption of equal shared parental responsibilities** in child's life with co-custody, residency and care and control of a child shared. This should be the starting point.
- A board or the court will protect the child's right to both a caring a loving mother and father. No party either the mother or father can act unreasonably to restrict or inhibit any access by either of the parties. In the event, the court or board will make a finding that the parent is not acting in the best interests of the child and for a first offence, warn and second offence fine and third offence, take whatever measure it deem necessary including removing the child from that parent who is in third breach of any order.
- **The Acts {Child Support Assessment Act} and the {Family Law Act} should both be repealed as a matter of urgency.**

Conclusion

Many children enjoy a close and loving relationship with their parents even though their parents have separated. However, there exists a great deal of dysfunction in our communities in respect to children. The Family Court has taken a view on many issues relating to the family children and alike, that sit more suitably in the past, taking little account for the reality of contemporary Australian society with all its complexities. In my particular case, a judge would no doubt argue that joint parenting would not be successful because of the poor relationship that existed between the child's mother and the father. To some extent that would be correct. Initially, joint parenting would have been inappropriate because little could have been agreed upon. It would be fair to say that in my case, the mother was trying everything she could to destroy the relationship between father and child, or to so restrict it, as to cause it to be dealt a fatal blow. To that extent, the Family Court gave a willing hand to the mother. In the event of a mother being possessive of a child or children, or overly and unreasonably restrictive in what access arrangements are made or that she will agree to, the Family Court and by extension the Child Support Agency are at hand to give good effect to that unreasonable behavior by the mother, as was clearly the case with me. I sincerely believe and I have absolutely no doubt that my case proves just how vulnerable the present system is to abuse.

My daughter is now aged almost 9 years and I must say that she benefits greatly from having access to her father. While I have been effectively cut from all decision making in the child's life, we have, nonetheless a very close and loving relationship which has endured all attempts by the mother to destroy.

Moreover, I believe that had our family law recognized the impotence of the father, rather than relegating him to second place in impotence in the child's life, my situation could have been avoided. Had the court given to the mother that her actions were not in the best interests of the child, all of the above may have been avoided. Had the Family Court taken my matter more seriously, instructing the mother that her actions were unacceptable and may very well have an adverse effect upon the child, then again, all the above could have been avoided. However it did not.

The Family Court should become more pro-active in protecting the child's right to a caring and loving mother and father. It should, upon application where clearly the parent with residency of the child is acting unreasonably by restricting access or breaching orders in relation to access, on its own undertaking change the residency of the child. If the court were to do this, much of the difficulties currently being experienced by non-residency parents in relation to access would no doubt evaporate. Sadly, much of this behavior on the part of mothers is an expression of power, of control. Take that power away in the form of an order from the court, and these power games will cease. This is unfortunately a simple fact of life in respect to human behavior and it is high time that the Family Court recognized the fact. A parent who behaves as I have mentioned above, clearly is not acting in the best interests of the child and rather than being in effect encouraged to continue in this way by non-interference by the court, the court should take a more active role.

The sad reality of the dysfunction of our Family Court is for everyone to see on a daily basis. I can only plead with the committee to make recommendations that truly will serve the best interests of children and not continue with a failed system that has long outlived its usefulness.

