

Submission No: 372

Date Received: 6-8-03

Secretary: [REDACTED]

24th July 2003

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

Dear Sir/Madam,

My experience with the Family Law of Australia began in January 1992, when I moved out of the family home and separated from my wife. Our daughter was 14 months old at the time. We were married in 1988. I am grateful that my case is not the worst I have heard.

In brief, due to a vindictive and bitter ex-wife, I have spent over fifteen thousand dollars on legal costs on a progression of defined contact orders since 1992. I have had to resort to this action, purely due to ongoing difficulties in maintaining contact with my daughter throughout her developing years.

In spite of establishing a practice of breaching court orders by my ex-wife, my application for residency in 1997 failed due to what I would consider the current legal system's apparent inability to individually assess each case on it's merits and correctly identify when apparent emotionally preferable falsehoods are being presented to it.

When I first sought legal advice in January 1992, I was told, 'there's not much I can do for you, but there's plenty I could do for your wife'. My solicitor began my introduction to terms such as residency/access/child support as a means of establishing a mechanism to maintain a relationship with my daughter. I believed him and began the process to finalise the legal aspects of the marriage and to try and get on with my life.

In the years that have followed;

- 1) I have had four separate legal processes to obtain Defined Access Orders,
- 2) I have lodged one unsuccessful Application for Residency,
- 3) I have defended myself rigorously against three separate AVO applications lodged by my ex-wife, as a means to deny all contact.
(Note: All AVO's were dismissed or withdrawn.)
- 4) I have lodged one unsuccessful Application for Contravention, in spite of admissions by the respondent.
- 5) I have succeeded in obtaining a judgement of Common Assault against my ex-wife, following a situation at contact changeover.

In 4) above, a Family Court Magistrate expressed a difficulty in finding a contravention to my defined contact orders, in spite of my ex-wife making admission to the court that she would not allow the contact to proceed, without any reasonable justification.

In this case I ask. What good is a Court Order that is not upheld by the Court in the face of a clear admission of guilt, or what good is a Court that would rather try to find a reason to not to make a judgement when the guilt is admitted?

Had equal parenting rights to my child been in the process of my marriage separation, I believe it would of completely changed the Family Law's perspective of my role in my daughter's life. It would of saved so much time, money and energy to have this as a starting point in trying to resolve residency and contact issues. Whilst I now maintain contact with my daughter by writing to her, I have not seen her for over eight months and only four times in the prior twelve months. She is now almost thirteen years old.

At the time of my separation, I received advice from other men that had gone through similar situations. They said it would be easier, for my daughter and I, for me to choose not to pursue a relationship with her. This was an option I did not want to consider, however, I realise now that under the current legislation, it was sound advice and will remain so unless changes are made to correct the current imbalance in the child's parenting rights through a marriage breakdown.

I have, what I believe to be a particularly hostile ex-partner. Her point of view was that she believed our daughter stood to gain no benefit by spending time with me. This issue has never been addressed throughout the years of counselling and legal processes. Again, if the law reflected an equal value in your child's life, such a hostile attitude would not be able to dictate processes to such a degree. As any typical father, I loved and valued the time and influence I had with my child, these feelings have survived, in spite of not receiving any support or recognition throughout my particular experience with the Family Law of Australia.

I would also support any changes that would recognise the child's rights in respect to maintaining contact with extended family members, particularly grandparents, aunts, uncles and cousins. This has been another source of angst whenever my family sought contact with their niece/cousin/granddaughter.

As far as the Child Support Agency goes. I can see a few anomalies under the current equation/assessment situation;

A single mother receives more in child support if they have three children to separate fathers than a single mother who has the three children to the same father. What is the message here?

I paid over \$400/month, for over five years, into a household of my daughter and subsequently , two other children and two other fathers who lived there at separate times and paid no child support.

My understanding of the current equation is to maintain the child in a standard that they would of enjoyed had the marriage continued, What a load of bollocks. There is absolutely nothing in place to preserve or protect any benefit or entitlement to the child

unless it is agreed to by both parents. That is fine in the cases where neither party is hostile, but it simply does not work where one or both remain hostile, and I would consider that it is these cases that some preservation of entitlement is most necessary and the child's interest's are to remain paramount.

Gambling was one of the main symptoms in my marriage breakdown with my ex-wife. When the fathers' of the other children in the home had ended their relationships with my ex-wife, they both told me that my child support payments were actually contributing to my child's neglect. They told me on separate occasions, that when they completed work and returned home, my ex-wife would leave the children with them, go out until early mornings and gamble away the child support payment. She told them it was her money, and she could do whatever she liked with it. The threat of withholding their children from them was enough to keep them quiet at the time.

I made several approaches to the Child Support Agency regarding alternate forms of Child Support payment. They advised that there was no other option for somebody in my position. They said I could pay more in any form I liked. Or obtain a Non Agency Payment form signed and agreed by my ex-wife. I obtained one signature for ballet class fees, but it never happened again. Once my ex-wife realised that her child support entitlement would be offset by the same amount as any non agency payment. I don't know too many gamblers who are going to prefer food/fruit/clothing/fee payments rather than cash.

My brief personal financial situation is as follows;

- I * I was retrenched in 1997 from a salaried position I had held for 11 years. had no arrears in child support.
- * In 2000, the CSA assessed my child support to be based on my income earning capacity, rather than the income figures that I had provided to them. I had not been able to lodge my tax returns since the time that I was retrenched, as it would of created a debt that I could not afford, due to being unemployed at the time. The assessed income for the 18 month period under consideration was twice my actual income. A fact that has since been confirmed by my lodged Tax Returns. It seemed that child support benefits payable were insulated from real world situations such as retrenchment/re-employment issues of the paying parent.
- * Upon verbal advice from CSA [redacted] officer [redacted] at [redacted], and the assistance of the [redacted] Chamber Magistrate, after confirming that this action was my only option, I lodged orders seeking to dismiss the assessed income which was now proven to be unfair, by my actual tax returns that had now been confirmed.
- * My ex-wife refused to attend the court at the time and my application was granted in her absence, the CSA assessed income order was dismissed and the child support debt of over \$5,000, at that time, was wiped out.
- * Six weeks later and upon my daughter's arrival on her first visit for over two months, my ex-partner's father handed over court papers appealing the [redacted] Court decision in the [redacted] Federal Court's. I told him at the time I was still looking for work and he laughed.
- * I successfully applied for Legal Aid to assist my defence against the appeal. However, the Federal Magistrate's Court found that I had coerced

the local magistrate into making the original decision, that the local court had not followed some necessary judicial process and the appeal was upheld with the assessed child support debt reinstated (now over \$6,000) in addition to two-thirds of my ex-partners legal costs being awarded against me. That was, the use of a barrister/solicitor/agent whilst I had legal aid appointed proxy who arrived on a bike. All due to my ex-partners refusal to attend the original hearing at [REDACTED]. At no time was my actual financial situation questioned.

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* I sought assistance from my Local Federal Member's, [REDACTED] office at [REDACTED] where they arranged a meeting with some CSA officers. The CSA officers advised that I should go back to court. My new wife, truly the innocent victim in all of this, was horrified that this was the CSA's advice after initially sending us on this course of action when I was supposed to be trying to find a job and get on with our lives.

* Had the magistrate at [REDACTED] not followed the original advice provided by the CSA of going to court. I would of simply accrued a child support debt based on an income that I have never earned. Instead, I am now faced with a situation of an additional debt of over \$5,000 of my ex-wife's legal costs of appeal. Further to that, the CSA advised to pursue even greater legal costs to try to fix somebody else's

mistake.

It's just not an option.

Whilst employed, I have been reducing my CSA debt albeit slowly. I considered it cheaper than the court alternative, my current debt is over \$7,000 due to this single issue.

My ex-partner has been lead to believe that she has an entitlement to it, by the CSA, she has involved our daughter in the dispute and it is now proven that I never had the opportunity to pay the deemed level of child support in that period. My ex-wife is still pursuing me for the legal costs.

It seems hypocritical that in order for me to receive Newstart assistance at the time, I had to be prepared to do any job that I could perform. Yet at the same time, the CSA considered the amount of child support payable to be an amount based on what I could/maybe/possibly earn and anything else was my choice. Where are my new family's rights in all of this?

It has been through my experience with the Family Law Courts and the Child Support Agency that has left an english speaking, caucasian, Australian born male raised with honest and christian values with a feeling of complete disillusionment of any worth or value under the current legislation.

I support any changes to the Family Law of Australia that will address the current inequity, against fathers, in parenting. Whilst nothing can change the past, I would welcome any change that would avoid any other fathers having to go through what I have had to, simply to maintain a relationship with their children.

A system that works in the difficult cases is required, not just the simple cases. I know my case is not gender specific and it would seem that the current system works for those that best (ab)use it, not for those that need and rely on it to perform it's function -

Looking after the children. When one sees the direction of youth of today, I hope any correction is not too late. Good on you for trying though.

Sincerely and most respectfully,

[REDACTED]