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Secretary:	

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

Fax: (02) 6277-4844

Dear Sir / Madam,

Re: Inquiry into Child Custody Arrangements

We refer to the above matter and the invitation of Mr. Alan Cadman, MP for submissions.

As a solicitor practising primarily in the Vietnamese community, I submit as follows:

1. Current custody arrangements certainly need reform as they are perceived in the general community as fundamentally skewed in favour of the custodial parent, thus creating much suffering for the non-custodial parent involved. This suffering is considerably accentuated for Vietnamese fathers who come traditionally from paternalistic and male chauvinist societies.
2. The currently prevailing notion that in a situation of separation of the parents, the children (if there are more than one child involved) should not be separated, for fear of alienating the children from each other (thus presumably against the best interests of the children) may need to be challenged. This notion gives rise to a situation where one parent, most probably the mother, would have custody (or in current legal parlance "residence") of all the children, leaving the other parent, mostly the father, with no children and a lot of bitterness.

3. A further consequence flowing from (2) above is that in the majority of cases, the parties have only the matrimonial home as the major asset. Since the custodial parent has custody of the only child or children, it follows that for some reasons the court generally decides that the mother (or custodial parent) should be given the house (so that the children could have a home/environment familiar to them, thus in their best interests). The father (or non- custodial parent) generally gets about 30% to 35% of the family assets. He further is responsible for child support through the Child Support Agency, until each child reaches 18 years of age.
4. Because the court generally operates on a concept that children are not “possessions’ on par with other worldly possessions, it generally tends to overlook the fact that precisely because they are even more precious than worldly possessions (say moral, spiritual or whatever), their loss would be even more distressing than merely losing a house or a car or any or all worldly possessions. Thus it would be understandable that a parent who happens to lose custody of his children, and consequently his house, his future, his “everything” would have the right to feel desperate. I believe that the concept of “winner takes all” should be avoided at all costs in family law.
5. There is anecdotal evidence that the rate of crime in the Vietnamese community has increased due to the number of males desperate after family law proceedings leaving them with nothing, sinking into drugs, drinking and gambling problems.
6. I believe that there should be a presumption that it is in the best interests of children that they should spend equal time with each parent, and that such presumption could be rebutted only in cases of clear evidence of child abuse, drug & alcohol addiction or mental illness endangering the children. Further employment, full time or otherwise should not be a perceived impediment to custodial rights. There are many circumstances where a working parent may be able to organize for satisfactory either paid or unpaid supervision of children in his/her care and custody.
7. This would avoid a situation where the custodial parent would wish to remarry either interstate or overseas. Somehow the prevailing judicial position is to err in favour of the custodial parent on the basis that because the children are familiar with the emotional or other support of the custodial parent, to allow them to be separated from such parent would be damaging to the children. Thus the non-custodial parent will be also deprived of the access granted in the first place.

8. I believe that if the interests of the children are to be paramount, then parents have to sacrifice their personal comfort, and at times happiness, for the sake of their children. Thus they should make living arrangements suitable either to the custody versus access arrangements imposed by the court or the shared equal custody, instead of moving interstate or overseas. The proximity of accommodation would also be beneficial to the children in a situation where the children are allowed to be split between parents. They would be able to visit each other liberally.
9. I also believe that unless grand parents expressly refuse contact, all grand parents should be granted contact (as a legal concept in addition to residence) besides contact and residence granted to each of the parents. This type of contact is extremely important for the Vietnamese community whose concept of the extended family and the greater role of grand parents are part and parcel of the culture. I submit that even in the general Australian community, in a situation where the nuclear family has been fractured, the healing role of grand parents could only be beneficial to the children.
10. In relation to the issue of "whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children", I do not clearly understand what the committee means by "existing child support formula". If it means the current financial arrangements as the one being administered by the Child Support Agency, then I do not think it is entirely fair for the non-custodial parent (or now non-residence parent) in that financial support is dependent, not on the need of the children or the need of the custodial parent, but on the earning capacity of the non custodial parent. Thus it is by definition totally unrealistic and unfair on this parent, especially if such parent remarries and have other children. There may be a need to reform child support with a view to take into account also the financial position of the custodial parent and the need of the children.
11. When I first started practising about 13 years ago, I was told by more experienced practitioners that in relation to custody and access, the court's position was that "by merely being a mother", a party would have an edge in the eyes of the court in family law proceedings. I believe that such reasoning if in existence is not only harmful to the children, but also the result of illusions, and resulting in untold real injustice on half of the population of separated parents with children as their most valuable and non-material possessions. Judicial thinking by and large is a product not only of the judicial officers' personal philosophy, but more critically is the product of existing legislative provisions. Thus

Please note that I am a general practitioner and not a family law specialist and I make the above submissions with the usual reservations.

A genomic map showing the arrangement of genes in the HLA-DQA region. The map includes labels for DQA1, DQA2, DQA3, DQA4, DQA5, DQA6, DQA7, DQA8, DQA9, DQA10, DQA11, DQA12, DQA13, DQA14, DQA15, DQA16, DQA17, DQA18, DQA19, DQA20, DQA21, DQA22, DQA23, DQA24, DQA25, DQA26, DQA27, DQA28, DQA29, DQA30, DQA31, DQA32, DQA33, DQA34, DQA35, DQA36, DQA37, DQA38, DQA39, DQA40, DQA41, DQA42, DQA43, DQA44, DQA45, DQA46, DQA47, DQA48, DQA49, DQA50, DQA51, DQA52, DQA53, DQA54, DQA55, DQA56, DQA57, DQA58, DQA59, DQA60, DQA61, DQA62, DQA63, DQA64, DQA65, DQA66, DQA67, DQA68, DQA69, DQA70, DQA71, DQA72, DQA73, DQA74, DQA75, DQA76, DQA77, DQA78, DQA79, DQA80, DQA81, DQA82, DQA83, DQA84, DQA85, DQA86, DQA87, DQA88, DQA89, DQA90, DQA91, DQA92, DQA93, DQA94, DQA95, DQA96, DQA97, DQA98, DQA99, DQA100. The map also shows the positions of various SNPs and their frequencies.