

Submission No: 679

Date: [REDACTED] 12-8-03

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

9 August 2003

Submission [REDACTED]

The observations and recommendations in this submission arise from my personal experience and the comments made to me by single fathers in a similar situation.

Briefly, my circumstances are that I am the father of a seven-year-old boy. His mother, my former partner, and I had separated before the child's birth. His mother was, and is, heavily dependent on pharmaceutical drugs and alcohol. My son was also born an addict and it was necessary for the local hospital to wean him from the habit over an 8-9 weeks period of treatment. Immediately prior to his birth, the local Child Protection office contacted my parents to ask whether, following my son's release, they would assume custody of him. They were advised that my son's welfare was at risk because of his mother's unstable behaviour. At the time, my working hours were too long to properly care for the boy

Bending to the mother's repeated promises to quit her substance abuse, my parents and I decided not to accept the department's proposal but, with myself, sought frequent access to my son. Further, we sought to have any custody order which favoured the mother, to be made conditional on her ability to provide him with care and nourishment and that she quits her substance abuse. The mother was represented at court by Legal Aid. Although working, I could not afford the required legal fees to advance my claim. Nor could my parents. Consequently, the mother gained full custody of my son and I was given but occasional access.

The mother's substance abuse did not diminish and I have reason to believe that much of my regular child maintenance payments go to feed that habit. My son is poorly fed; ill clothed and receives inadequate medical attention. I have since married and my wife and I try to compensate for that neglect whenever the child is with us. Although his mother seldom physically abuses my son, she constant harasses him and is causing him anxiety attacks. He admits to being fearful of her.

My complaints to the local Child Protection Office have been met with virtual indifference. Similarly, concerns raised to that Office by neighbours of the mother, the school and local police have been insufficient to persuade them to investigate the matter with any degree of diligence. Nor has it been moved by my son's expressed wishes to: a) be taken away from his mother and; b) live with my wife and me. A staff worker has informed me that, since the mother was originally given custody of my son and since he is not in immediate physical danger, the Office sees no need to act.

In the hope of initiating an investigation, I have recently expressed my concerns to the Director of Child Protection, outlining the "evidence" and listing those who are willing to verify my assertions.

Those experiences lead me to the following remarks:

1. While my son's mother easily availed herself of free legal representation in court, I was financially prevented from contesting her claims. My wages were poor but sufficient to disqualify me from the legal resources laid at the mother's feet. Similarly, I am reliably advised that, were I now to contest her custody, my legal expenses would cost between \$20,000 and \$30,000 with a 5% chance of winning (because Family Courts are averse to reversing earlier rulings). Again, the mother would be given free legal aid. The considerable inequality in legal power would merely consolidate an earlier – and, in my view, a mistaken – court decision

I believe that a more equitable system of settling child custody arrangements should be introduced in cases where one of the contesting parties enjoys a considerable financial advantage over the other. Moreover, I think there is merit in examining whether a system based loosely on arbitration is likelier to achieve a better outcome for the child of separated couples than an adversarial system, even to the extent where it operates in the Family Courts. So often, the child becomes an innocent means of avenging real or perceived wrongs.

2. Despite advances in most other areas of society, the Family Court remains shackled to the "father-hunter/mother-provider" myth. This is reflected in the preponderance of custodial decisions favouring the mother and, from my observations, is seldom subject to the mildest questioning. As to whether a father has the quality of character, capacity, ability, devotion, etc. to provide his child with a better life is rarely seen as having more importance than simply identifying the mother. Further, there are many instances in which a child's grandparents – if willing and able – would be more suitable to his/her upbringing than the parents. Lastly, the Family Court appears to be reluctant to give joint custody of a child to separated parents, although in many cases there is ample evidence to suggest both that the parents are equal in all respects of care, comfort and responsibility and that the child would not suffer the same distress. Again, those options are often constrained by the Family Court's formal, inflexible and one-dimensional approach to child welfare.
3. While acknowledging that Child Welfare workers bear onerous responsibilities, they are no heavier – or time-consuming – than many other areas of public service. The usual excuses of volume or complexity should not relieve a Child Welfare worker from performing tasks in a thorough, impartial and sympathetic manner. Instead, workers are dismissive of requests and complaints; they make little effort to monitor the welfare of children; they prefer to find diversionary supplements to redress parental neglect rather than finding the best options for a child's protection and development; they lack the most rudimentary of investigative skills and; they seldom initiate contact with concerned parents so as to explain their actions. Individual cases are distributed on a rotational basis. Consequently, there is little continuity in the progress of a case. Decisions are made, reversed, altered, postponed and abandoned simply because new case-workers have neither any idea about, nor have they attempted to familiarise themselves with, the background of the case under review.

4. There should be greater consultation between child welfare agencies and other governmental authorities, such as social services, schools and local police. Too often, those authorities hold information which is important to a child's well being but, owing to the segmented nature of departmental responsibilities, that information is not conveyed to, nor is it sought by, child welfare agencies. This type of compartmentalisation has been criticised time and again in Coroner's reports about the deaths of the children of separated parents. Further, information that is passed to a child welfare agency should be immediately acted upon, with written summaries of the action taken, when and who by.
5. The above point should also be used as a measure to assess whether the child maintenance payments made by the non-custodial parent are for the benefit of the child or the custodial parent. While there is considerable overlap, that money is often misused and is treated by the recipient parent as some sort of added income. As a personal example, I know that much of my maintenance payments are used by my son's mother to buy herself pharmaceuticals, alcohol, cosmetics and clothing. My son is fed by neighbours, is poorly clothed, is cold during winter and needs medical attention. As best as possible, my wife and I remedy these neglects during his weekend visits. The clothes we bought were taken from him by his mother and were not seen again. I suspect they were sold at the local community store. My wife and I pay for my son's medical bills, including the few occasions his mother takes him to the doctor or dentist. While quite prepared to assist the mother to improve my son's standard of living, I do not believe it fair that the financial commitment required of me by law should be simply squandered. Although the law obliges a separated parent to regularly provide for a child, there is no reciprocal obligation on the other parent to use the money for that same purpose.

Thank you for the opportunity to make this submission. I hope it assists your inquiry.

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