

A SUBMISSION

TO
THE STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS
ON

House of Representatives Standing Committee
on Family and Community Affairs

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Secretary:

CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

FROM

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1. This submission is presented from the perspective of two affected and aggrieved grandparents. It is in response to Item (a)(ii) of the Terms of Reference of the Standing Committee.
2. This paper contains observations and comments, as well as some suggestions that are admittedly simple and unsophisticated and may not conform to the present-day trends or thinking in the wider Australian society. But they have emanated from our trials and tribulations experienced during the painful separation and eventual divorce between our son and daughter-in-law, who had three children, and from the continuing pains we suffer from being deprived of any access to our grandchildren. Our plight may merit some notice during the deliberations of the Standing Committee.
3. A confidential ANNEX to this paper provides the contexts of most of our observations and comments. A brief introduction of our family background is also given therein. Though somewhat lengthy, the narrative could benefit the readers with better insight and appreciation of the issues involved.

Separation and Divorce

4. Divorce is a prevalent phenomenon in the Australian society, and it is unlikely to abate. It would therefore appear imperative that a couple contracting a marriage are made aware of their rights and obligations to each other, and more importantly the rights of the children they would bring into this world from their union. No child or children need to suffer because the parents discovered their incompatibility after the marriage, or because of the stubborn intransigence of one or both partners, or the unrelenting indoctrination of the children by one parent against the other.

Incorrect perception

5. Separations and/or divorces have many causes and consequences. Having migrated some 13 years ago from a small country, we have been able to observe incidences of divorce in our relatively modest community living in Australia. Causes of divorce in this community could be similar to those of the larger communities. However, one cause repeatedly observed was the practice of "importing" (in the absence of a better term) partners – whether a bride or a groom – from the home country. The Australian partner has acclimatized himself or herself with the local educational and economic opportunities, social customs, and life style generally. The joining partner have heard of all these, but often the luring and exaggerated versions of them. Their immediate, or sometimes extended families as well, are keen for a member to gain Australian citizenship so that he or she could assist some of those remaining behind in the home country to migrate in due course.

6. However, disillusionment with regard to opportunities and economic gains is not uncommon among the “imported” partners. Or there might even be the more basic incompatibility between the two individuals who have not known each other for long. These usually manifest in disagreements and family squabbles, which, if they remain protracted or unresolved, lead to separation or divorce. And by that time there could be a child or two arriving in the family. These children now become pawns in the relationship.

7. No doubt the Immigration Authorities in Australia and at posts abroad would be aware of such issues. Indeed they have toughened the conditions for spouse migrations of late. But they need to be more vigilant, perhaps through case by case scrutiny. A monitoring mechanism in Australia for such arranged unions, perhaps through community elders and support, in order not to impinge on individual or family privacy, could be helpful.

Caveats

8. Implied caveats are also practised among some separated/divorced immigrant couples. Especially where the mother has the custody of the children, they say to their father that should he marry another woman they would not want to see him again. It should be readily inferable that such a warning is not from the children themselves; rather they have been manipulated to say so. If the father really loves his children, his choice becomes extremely limited. He would perhaps have to wait until the children grew up and were able to judge in a mature way whether the caveat was justified. In the process they might also be able to conclude who between the mother and the father was in fact responsible for the breakup of the family years earlier. To resolve such caveats might be difficult, since tacit vindictiveness was usually the motivating factor.

Indoctrination of children

9. Rarely do children express a preference between the father and the mother to a counsellor or a mediator in custody matters. It is almost always “We want both of them”, unless there was a tyrant father or a negligent and uncaring mother. Therefore when a preference is indeed indicated, the background and the circumstances to such a choice should be thoroughly investigated and examined. This could also reveal other latent social problems in the family.

10. In our son’s case the children confronted their father vehemently, almost abusively, during their interviews with a Consultant Psychiatrist who was asked by the Family Court for a report on the family. The behaviour of the children was attributable to the new father-figure in a man the mother had befriended and manipulated. All three children were inseparably devoted to their real father though love, respect and need for security before the conflict. Therefore such a sudden change in them could not be explained in any way other than by the persistent indoctrination, relentless manipulation, open or implied threat, unsettling intimidation, and even abuse by the mother and/or her new partner. The Consultant Psychiatrist confirmed this view when she reported that the children spoke “in chorus” against their father; “they parroted”; there were “elements of rehearsal”; or simply “mother told me to say”. Given this deliberate strategy the mother employed, no father could win back his children.

Court counselling

11. Court counsellors no doubt work within the rules laid down for them in separation and divorce cases. These rules surely have enshrined in them due fairness, both implied and visible, to the contesting parties. The counsellors are all familiar with the norms, customs, and levels of understanding in the general Australian society. However, when dealing with ethnic immigrants – particularly the more recent arrivals – additional expertise would appear necessary and advantageous. These immigrants come from diverse backgrounds and with differing beliefs, customs, understanding and expectations. Basic awareness of, or familiarity with, these

differences is not always evident. The next generation of the immigrants would of course be better assimilated in the wider Australian society.

12. In our case we felt that such knowledge or understanding of the issues *vis a vis* our petition to the court was wanting. Firstly, the difference between "access" and "custody" was never explained to our grandchildren, despite our request. We were only asking for periodic access to children, not their custody. On hindsight it might not have mattered much, given the intransigence of the mother and her capacity to manipulate the children. But it could have been more helpful to make the children think of our request for themselves.

13. Secondly, it also appeared to us that some counselling personnel were convinced that we as grandparents were uniquely responsible for the breakup of the family and subsequent divorce. This was what our daughter-in-law had claimed, which was also "parroted" by the three grandchildren. Even the court papers that we had filed did not convince the counsellor, if they had indeed been read. Our assertion that another man – a Caucasian who was given shelter in our son's household when in dire need predominantly contributed to family breakup – remained unbelievable. We did wonder if the ethnicity of the intruder had anything to do in this regard?

14. The Consultant Psychiatrist's remarks in this regard were significant: "...I would expect the situation of family breakdown and involvement of the mother with another man (were) particularly difficult..."

15. Religious beliefs and practices as well as cultural background often are important considerations in a successful marriage. These aspects should be considered or accorded even a tacit recognition when mediating in separation/divorce cases. Overlooking them can be neither helpful nor considered as fair.

Faith as healer

16. We are adherents of Islamic faith and its tenets. Among our Prophet's sayings, universally known as *Hadith*, is the following:

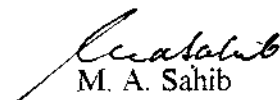
"Of all things permitted by Law, divorce is the most hateful in the sight of God."

Other faiths would surely have similar dictums to sermonize among their adherents. On our part we have also preached it to our two sons and their wives; but our success has obviously been limited. When the divorce of our son and daughter-in-law was proceeding we agonized helplessly for the sake of our three grandchildren – they were about to become innocent victims to their parents' incompatibility. The strength, or a lack of it, in their belief and adherence to the teachings of the religion they were born in exemplified this.

17. The Consultant Psychiatrist recognized this factor in a circuitous way. She wrote in her report: "...The mother and children have taken on more western views of what is to be expected and allowed while the father has maintained traditional (i.e. Islamic) attitudes and expectations."

18. There appears, therefore, a need to emphasize religious aspects to the prospective partners in a marriage. This could perhaps be achieved through religious leaders of all faiths at the marriage ceremony itself, or better still through sermons from the pulpit at periodic intervals. Passing references to family breakups and their consequences are no longer sufficient or helpful. More concerted efforts in this regard could possibly reduce the rate of divorces in the society.

4 August 2003


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