

Submission No: 770

Date Received: 8-8-03

Secretary: _____

SYNOPSIS

This submission speaks of personal experience of both my father and his sons under previous family law rules, and the unfortunate similarities that can still be drawn to my partner and his children under current family law. In response to the 'terms of reference' this submission advances the following.

1.
 - a) A commencing position of assuming shared care, affords children the best opportunity to gain a balanced upbringing and reduces the ability of either parent to use a position of power to laude over either their ex spouse or their children. It is accepted that circumstances where children are at risk with either parent, should not follow this arrangement.
 - b) Shared access should not be automatically assumed to require an inordinately greater level of co-operation than many other access arrangements. And that in fact many other access arrangements require much more frequent contact and therefore co-operation between parties than a simple week about shared arrangement. It is recognised that a shared arrangement may not necessarily take such a simple form and therefore may require higher degrees of co-operation. These are the circumstances for which courts may need to decide what is possible between the parties.
 - c) While human nature dictates that many parental dynamics will see one parent being the more dominant or the one with the 'power' position, the system should not help to facilitate this power discrepancy by affording greater access to one parent if it can be avoided. A child's feeling of safety is damaged by the sense that one parent has more power and control over their life than the other parent, thereby creating the child's need to self preserve by submitting to the parent in the 'power' position.
2. Extended family access inclusions will be necessary in some circumstances but are likely to be assessable on a case by case basis as to whether such a need exists. This will likely be necessary where parties have limited co-operation between one another, and/or where one parent has limited or no access with the children.
3. Child support arrangements need to be completely overhauled. The current system encourages any money focused parents to fight for access to their children on reasons of money rather than the preferable goal of time with their children. Therefore child support calculations should not be based upon terms such as residency but rather on the expenses incurred by each parent directly attributable to keeping and raising the children. Many permutations need to be considered but the author is not sufficiently versed to make extensive proposals on all of these, so makes only a few notes following.
 - a) Fixed percentages are too blanket and in no way accurately represent the variance in costs one parent may incur compared to another parent paying according to exactly the same percentage. It is recognised that some uniformity is necessary for practicality, but that the current uniformity is neither equitable for the parents or in the best interests of the children.

- b) Relying on the child support agency's discretionary powers does not work. It, like many other government bureaucracies is overly reluctant to make decisions that fall outside the basic formulae, for fear it may be challenged to justify its exercising of discretionary power - even when all the evidence is with it to be able to justify invoking such discretion.
- c) Not all non custodial parents do the right thing by their children, which makes for the difficulty in finding formulas to cover all circumstances. It is therefore proposed that family law should require each parent to provide children with all their basic necessities while in their care. This then provides a more equitable basis for assessing the costs incurred by each parent. This takes a more healthy societal perspective in assuming that a non custodial parent who does not provide properly for their children while in their care is *not* the norm. Thus the system is premised on the assumption that the non custodial parent more often does the right thing by their children and therefore incurs significant expense for their children while in their care.
- d) Family law could then make provision for restriction of access to any parent who fails to provide the basic necessities for their child while in their care. It is understood that considerations must also be made for a parent who is not working in order to care for younger children, but this should not allow a parent to choose to continue not working once children reach school age and expect the same level of heavy financial support from the other parent.