

Submission No: **931**

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Secretary: .....

  
18 August 2003

The Committee Secretary  
Standing Committee on Family  
& Community Affairs  
Child Custody Arrangements Enquiry  
Department of the House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam

Re: **SHARED PARENTING**

I wish to make a submission to the Senate Enquiry into "shared parenting".

I am a Family Law Solicitor and Accredited Family Law Specialist with 18 years experience in this area.

I write in support of an equal shared parenting presumption.

It is of course dangerous to generalise, though to make this submission I must make some generalisations.

I have found that the disadvantages with the present system are as follows:-

1. Children not having their desire for fairness between their parents met. Children must not see either parent as a second class citizen. In my experience, many children who are able to express a view say their desire is to spend equal time with their mother and their father. When one parent has the major care of children there is a sense, from a child's perspective, that one parent has won and another parent has lost. This can result in compensating behaviour by the children, such as being disruptive with the resident parent or informing the non-resident parent that they wish to live with them.

2. Under the present law we generally have a "winner". The winner has the children most of the time. The winner as a result receives child support and a pension. The winner receives a greater share of the property settlement. This "win-all" or "lose-all" (flowing from the residence order) results in the non-resident parent becoming bitter towards the resident parent, which has an adverse affect on the children. The "losing" parent burdens the children with their anger and sense of unfairness.
3. Under the present regime, one of the most difficult issues is a resident parent's wish to relocate. Relocation is sometimes used as the "final solution" by the resident parent with the aim of "getting on with their lives" without the interference of their former partner. Legislation must be introduced to elevate the consideration of "benefit to the child in having a relationship with both parents" as opposed to the "if the resident parent can't move, he/she will be unhappy and therefore the children will be unhappy". An equally shared parenting arrangement would not allow one parent to selfishly move away from the children's usual area of abode and relegate the non-resident parent to a "school holiday parent".

The benefits of a presumption of equal sharing of the residence are as follows:-

1. A sense of fairness children will have.
2. Children will be less likely to regard the resident parent as the "more important" parent and the non-resident parent as the "weekend – less important" parent.
3. Parents would be co-operative. One parent cannot as easily dictate to the other parent if that other parent has equal time with the children, lest they will receive the same treatment. More equality of "bargaining-power" forces both parents to be more co-operative.
4. The "all or nothing" effect of the present regime would be reduced.
5. Children would be advantaged by having meaningful relationships with both their parents, with both parents being involved in school, social activities and the "hard work" times and well as the "relaxing weekend" times.

6. I would envisage that many parents will recognise that a shared parenting arrangement will not work in their particular situation, however there will be greater capacity for the "working parent" to negotiate additional time with the children if there is a shared parenting presumption.
7. I find that working parents nearly always wish to have greater time with their children though are often met with the "alternate weekend, half school holidays" response from the other parent. That response is often not challenged as there is the real prospect of the Court simply ordering "alternate weekends and half school holidays contact".

The presumption of course would need to be rebuttable and the circumstances in which it would be rebuttable could be:-

1. Past inappropriate parenting by one parent;
2. Unsuitable residence or care arrangements;
3. Very young children;
4. Parents who reside in different locations preventing the children attending the one school;
5. Where one parent's working situation is such that they cannot in practice be a residence parent (in my experience most employers are willing to co-operate with residence parents and I could envisage that many joint resident parents could fashion their working hours to suit).

#### Child Support

One of the difficulties with residence/contact arrangements is the child support formula. In almost all cases where contact is being negotiated, the parties take into account the effect of an Order on child support.

In many cases, the resident parent refuses additional contact solely on the basis that child support will be reduced if the non-resident parent has the children for 110 or more nights per annum. In a number of cases I have also had non-resident parents negotiating to have additional contact merely to reduce their child support commitments.

The substantial access provisions of the Child Support Legislation which reduces the non-resident parent's liability if they have the children more than 30% of nights artificially affects both parties' decisions on what is the best contact/residential arrangement for their children.

My general impression is that the child support formula, particularly for non-resident parents whose incomes are between say \$50,000.00 and \$100,000.00, are excessive. For example, I have acted for a Police Officer who says the parties, during the relationship, kept meticulous records of their spending and he could show that the amount of child support he now pays for two children to his estranged wife, exceeds the amount the family of four spent on their living expenses during the relationship.

The formula needs to be reviewed to lower payments by payers in the above income bracket.

Yours faithfully

A large, solid black rectangular redaction mark covering the signature and any accompanying text or contact information.