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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1221

Date Received: 8-8-03

Secretary: [REDACTED]

Dear Secretary,

Submission to Child Custody Arrangements Inquiry.

Briefly, I am:

- male, 41 years old and the father of a 9 year old daughter. I enjoy contact with her each weekend, these arrangements secured without the involvement of the Family Court or any other organisation.
- A Crown Prosecutor. I was commenced practice as a lawyer (in Victoria) in 1986. I commenced practice as a lawyer in the Northern Territory on 1989. I worked with 3 Aboriginal Legal Aid services in the NT from 1989 to 2000 (based in Alice Springs, Katherine and Darwin). I worked with the NT Legal Aid Commission in 2000. I commenced duties as a Crown Prosecutor in January 2001 with the NT Director of Public Prosecutions.
- In my period of practice in Victoria I was principally a family lawyer. From 1989 to January 2001 I was principally a criminal lawyer but undertook considerable amounts of family law work. The vast majority of my family law clients in the NT were indigenous people, many from small towns or "remote" communities.
- In my current role as a Crown Prosecutor, and formerly in my role as a defence lawyer, I have been consistently challenged with the violent, often murderous, fallout from family disintegration.

In summary, my main points are:

1. That any move to establish a rebuttable presumption that the children of a separated couple would spend equal time with each parent would be highly regrettable.

2. That any such move would necessarily and significantly compromise the sound starting point that the best interests of the child are the paramount consideration.
3. That any move that effectively encourages persons other than the biological parents, such as **grandparents**, to secure formal contact arrangements to children would be **highly regrettable**.
4. That the Committee should ensure great focus is brought to bear on **assisting males** when their relationships break down. I am particularly **supportive** of recommendations 3 and 8. From my experiences in both the family law and criminal law jurisdictions, particularly in the Northern Territory, there is an urgent need for young people to be provided with appropriate relationship education. It appears to me that bad relationship practices, particularly possessiveness and jealousy, take hold very early. It is clear to me that men need more help than women following the breakdown of a relationship. Men are by far the greater perpetrators of violence during and in the aftermath of relationships and must receive more assistance designed to prevent this violence. Such men are, naturally, totally inappropriate persons to be caring for children.
5. That the Committee should consider whether a **jury system** might be worth looking into as part of the bid to ensure the best possible outcomes for the children of separated parents.

I expand on each of these points above as follows:

1. (a) It is both my personal and professional experience that following separation the child needs the security of a stable home base. It is virtually unthinkable that such a base would be provided in circumstances where the child was shunted between two homes. The best interest of the child lies in the stability and predicability afforded by living in the one major household run by the parent best equipped to run that household.
- (b) The idea that the child can reside in the one household and have its parents move in and out so as to equally share the care of the child may have a precedent but this would be just as disruptive to the child as the child packing up his or her bags to move every few days, week, fortnight, month, school term, half-year or year.
- (c) The "equal time" concept is not in the interests of the child. It is not hard to imagine the sense of **rootlessness** that would threaten a child as he or she made his or her way between the two dynamic household entities. Instead of just negotiating the vagaries of one household, the child would be asked to accommodate two such beasts. I accept that children can be flexible but setting a child the task of attempting to straddle two camps would be detrimental to the

child.

- (d) A great danger that lies in the establishment of a presumption of "equal time" is that it will give rise to **unreal expectations** for many men. My experience is that those parents that separate that genuinely have the interests of their child at heart and in mind and who are of reasonably sound heart and mind themselves can work out what is best for the child with little or no assistance. A combination of commonsense and decency and respect will overwhelm the inevitably difficult circumstances that surround a relationship break-up. It will be completely irrelevant to people so equipped whether a presumption exists or not. The presumption will become a weapon in the hands of the more dysfunctional parents. Those parents that are incapable of sensibly making arrangements for their children and are looking likely to be the "contact" parent will clasp onto this presumption. My greatest concern stems from the fact that it is men that are much more likely to come out of the broken relationship the more bitter and angry party. In the main women initiate the separation. Many men do not respond well to what they perceive as the inherent rejection. These men are often more concerned to strike back at the source of this rejection than anything else. At the worst end of this "strike back" we have the tragically high rate of men killing or being very violent or making harrowing threats to their former spouses and children. My contention is that the presumption will result in dysfunctional men becoming more aggressive in the aftermath of relationship break-up as they will perceive they have a "right" to defend. This defence will, tragically, in some instances, result in terrible physical / mental violence. In many more instances it will result in men maintaining a combative stance for longer than they do now. How much more difficult will it be for all concerned engaged in the various "pathways" to talk down bitter and angry men from the lofty heights of their expectations? My view is that such a presumption will delay the good effect of relationship break-up counselling, inhibit the chances of successful mediation and increase litigation. All of this will result in the lengthening of the period of stress and disorientation the child and mother will have to endure.
- (e) It is my submission that, in the main the **male anger** is largely not a product of the problems men say they encounter with the Family law "system" after separation. It pre-exists. This anger is certainly increased in some instances by experiences after separation but it is clear to me that men are angry whilst still in the relationship and in fact often cause the separation with that anger. This anger is largely the product of men failing to come to terms with social changes in recent years. The "traditional" role of the adult male has been changing at a dramatic pace. Many men are simply angry about where their lives have gone due to their inability to adapt to change in how relationships are conducted and change in their work places. Women appear to be better equipped to deal with change. Thus we get to the end of a relationship wherein the male has been angry, then gets more angry as it falls apart and then will often witness the wife, who feels liberated, make a much better fist of at least the emotional fall-out from the break-up. This "equal time" proposal is then thrust into the hands of a male desperately trying to cling onto something – the child – whilst also keen to try and inflict some hurt on his former spouse of whom he is resentful. I submit that the adoption of such a presumption will be the trigger to increased problems in this already extremely difficult area.

- (f) It is my submission that the adoption of an "equal time" presumption will amount to a **pandering** to those men incapable of seeing where their true duty lies – that is to do the right thing by their child. It will pander, frankly, to the quite paranoid notions held by the dysfunctional fathers. In my experience the fathers that are quick to identify anti-male biases in the "system" are those men that are most angry at the break up of their relationship, the more immature males and those that complain of other biases in other "systems". I have had too many clients who are in both the family law and criminal law systems at once and, yes, the (male) police have it in for them as well. I hasten to add that I am here referring to only a small percentage of males. However they are a very dangerous and destructive minority (and noisy and well organised it would seem) and appear to my mind to have had a disproportional impact on this inquiry already. These dysfunctional men need help as soon as possible – not a further ground on which they will feel hard done by.
- 2 (a) It is my submission that the paramount consideration being the **"best interests of the child"** is the right place to start. That should be the message that is not only continued to be put as the starting point but it should be the subject of **increased publicity and promotion**. As that simple but sound and appropriate message is further driven home it may be that the focus of the separating parents will be increasingly drawn to the child. The moment a presumption such as "equal time" or "shared parenting" obscures this fundamentally right message we are asking for big trouble.
- (b) The message needs to remain clear and simple. "The best interests of the child" is both simple and right.
- (c) A presumption of "equal time" inherently damages the primacy of the concept that must be right – what is best for the child. We know that what is right for the child after separation is most often a stable household with one of the natural parents, which is usually the mother because the mother is best equipped to properly raise the child. I agree that the non-residential parent should be encouraged to be as productive, capable and supportive a parent as possible – however that cannot be confused with "equal time". In my submission being a productive, capable and supportive parent is not a question of spending "equal time" with one's child. One can be all those things to a child and have nothing even approximating "equal time" with one's child. This presumption will promote the notion that the best interests of the child is linked to parents "sharing" or having "equal time" with the child. The message must be loud and clear – parent must achieve the mix of parenting inputs must be that which best serves the child – not contort the child into a time schedule designed to give parents "equal time".
- (3) (a) Please – do not encourage the grandparents or anyone else to get involved. Again I see this as a threat to the primacy of the ideal that the arrangements for the child be those that best serve the child. Inflating the hopes and aspirations of often meddling and in some cases angry grandparents will be counter-

productive.

(b) In functional families the grandparents know what their proper role is. They had their go at raising a family, now it is their children's turn. If their children are making a total hash of it, the functional extended family will make the appropriate adjustments.

(c) It is again a situation where any formalised promotion of grandparent's "rights" will put wind in the sails of only those dysfunctional individuals who lack the inherent claims to provide support to their grandchildren. These "inherent claims" are the claims that a grandparent has when it is clear that the grandparent simply must be properly be involved to some extent with the grandchild because that grandparent is such a positive influence / role model on / for that child. If dysfunctional parents cannot see the benefit of the child having significant contact with a functional grandparent well that problem should be sorted out on a case by case basis without the grandparent having any other drive to his or her case other than the inherent strength of that case.

- 4 (a) Men must become more adept at handling change in their lives. The sooner men are taught to **expect change and deal with change** the instances of men becoming violent, angry and bitter when change is thrust upon them will be reduced. Men are taught to resist change, to "tough" things out. This must be addressed. I believe that appropriate relationship / life education should begin at **primary school** level. The sooner young people are taught that they can expect that they might have two or more major partner relationships in their lives, that such relationships need not mean such a narrowing down of the range of one's other relationships, that the days are largely gone where one enjoys the one career in a life time, the better.

(b) Men coming out of relationships must have the opportunity to have very intense, very affordable assistance. It is my experience that women that come out of relationships often already have well-developed support groups - their friends. Men are often quite adrift. Top quality counselling must be on tap for those men who need it. This is vital.

- 5 (a) This jury idea has been a pet one of mine for sometime. I am positive that many of the men that so heavily criticise the current "system" do so because they feel that they never really get to tell their story, warts and all. I am of the belief that many men might benefit from having a forum where they can appear for themselves, with the aid of an interpreter if required, and address a group of people and let it "all hang out"! The man could tell the jury all that he feels he wants to about where he has been in his life, where the relationship went wrong and where he wants to go in terms of his life and the arrangements for the child.

(b) My idea is that a group of say six people (3 men and 3 women) with a variety of backgrounds and experiences would be convened to hear oral submissions,

completely unfettered by the rules of evidence, from both parties concerning, in the main, the arrangements for the child. I suggest that the parties would address the jury individually – that is in the absence of the other party. A dialogue between the jury and the party would be encouraged. The proceedings would not be transcribed.

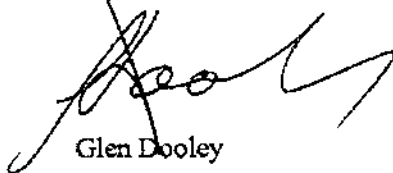
(c) I suggest that the jury not be drawn from quite a wide a range as a normal criminal trial jury is. I suggest that a substantial list of "appropriate" person be drawn up – people that are happy to sit on such a jury and people who are considered to be of sound judgement. I suggest however that the emphasis be on a wide variety of people so you might have a carpenter, a student, a car salesman, a person who performs home duties, a doctor and a politician all on the same panel.

(d) The jury would sit, in the overall scheme of things, between the mediation / conciliation tier and the judges. Thus if mediation failed the parties would come before the jury. Perhaps a day apiece could be set aside. The jury would make it's decision on the third day. A quick turnaround .

(e) If a party was aggrieved by the decision that party could then go before a judge. That party would be then responsible for the costs of both parties if the judge confirmed the decision of the jury.

(f) I appreciate that this jury idea is nebulous and would require a great deal more thought but I submit it is an idea worth further consideration.

I wish the Committee success at arriving at helpful decisions.



Glen Dooley

8 August 2003

(six pages in all).