

7 August 2003

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

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: **1343**

Date Received: **7-8-03**

Secretary:

Dear Committee

**Re Standing Committee on Family and Community Affairs
Child Custody Arrangements Enquiry**

On following pages is my submission.

Thank you for taking it into consideration.

I hope and pray that as a result of your findings you will introduce changes to the Family Law Act that there should be a presumption that children will spend equal time with each parent.

Yours sincerely

Mr John Sherwood Gray
126 Georges River Cres
Oyster Bay NSW 2225

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[REDACTED]

**Standing Committee on Family and Community Affairs
Child Custody Arrangements Enquiry**

I present my submission by first quoting the issue in question and then giving my comments to the issue.

Issue

a) Given that the best interests of the child are the paramount consideration:

i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and if so, in what circumstances such a presumption could be rebutted; and

The factors I believe that should be taken into account in deciding the respective time include,

- It is important for children, especially young children, to have emotional bonds with both parents, which can only be developed by spending time with both parents. There shall be no presumption that the placing of a child in the custody of a particular person will because of the sex of that person best serve the welfare of the child. No gender bias should occur.
- Both parents shall have equal rights to the custody and guardianship of the child. Neither parent has a greater right than the other to nurture the child. No parent shall take the child away from the other parent without the other parent's permission. If this happens then it is like child abduction.
- The equal rights shall remain until a court decides otherwise
- In dividing the time between parents the interests of the child shall be taken into account in such matters as,
 - the child's routines
 - the child's changing needs with advancing maturity
 - the potential for harm to the child arising from inconsistent activities, influences and living patterns.
 - to avoid constant movement from one household to another in a way that can be disorienting and destabilising for growing children
 - the parents work commitments
 - the amount of time each parent can actually spend in dealing with the day to day care of the child
 - the willingness of the parent to exercise his or her guardianship functions or obligations
 - the attitude of the parent to respect the other parents role, to avoid as far as they can any disagreement on matters about the child's routine and upbringing

- not to satisfy the aspirations of well intentioned parents rather than the needs of the child.

The circumstances I believe that a presumption of equal time should be rebutted are,

- Where there is a risk of abuse
- Where there is a risk of violence

In dividing the time between parents

In dividing the time between parents I believe the following should be assumed as the basis of the arrangements.

- The location that the child is living with both parents prior to the separation of the parents shall be assumed as that place the child shall continue to live. In such a situation the child shall live in equal times with both parents at each parents place. The amount of time the child shall spend at each parent's place shall at the early ages of the child be on a week or 2-week turn around basis. The living in one location and having regular and predictable comings and goings of both parents, by regular feeding and sleeping schedules, by consistent and appropriate care will help ensure stability for the child. At an older age the period spent at each parent's place can be changed by agreement between the child and the parents.
- If both parents wish to move away from the prior to separation location and both live in the same location in another area, then the arrangements for the child to spend equal time with each parent shall be as for the arrangement as if they were living apart and living in the prior to separation location.
- If both parents wish to move away from the prior to separation location and live in different locations which are at some considerable distance apart, then the location where the child shall live shall be at the location which allows the child to spend equal time with each parent considering the parents circumstances for employment in their chosen profession in that location.
- If one parent wishes to move away from the prior to separation location then the child shall remain with the parent living in the prior to separation location, and the parent that moves away shall have regular visiting access to the child.

I believe that in these arrangements stability for the child is ensured.

A key factor in having these arrangements is that it allows the child to have equal time with both parents unless one parent chooses to move away from the location where both parents were living. It does not have the presumption that one parent has the right to the child more than the other.

It makes both parents carefully consider and take responsibility on the effect that separation will have on the relationship that the child has with both parents, before one parent or both parents decide to separate.

It has been my observation in recent years that it is usually the case where one parent wants to separate and the other does not wish to, rather than the case where both

parents, initially at least, want to separate. This is clearly a communication breakdown, and maybe all that which is needed is for a greater effort to communicate. The courts try to do this after marriage breakdown; it would be good if it could be done well before it breakdowns.

At the moment, because the majority of mothers think that as they will almost always be awarded residence of the child in a separation, then they have almost no risk of losing their relationship with the child. Such an attitude is selfish and not in the best interests of the child. Such a mother needs to learn that in a marriage and with parenthood that parents have a responsibility to work at keeping a marriage, and not to assume that such a union can readily be broken without consequences to the child and the parents. Separation should not be an easy avenue for a parent to take and must always be an absolute last resort. If it should occur then the child should be given the right of equal time with both parents, which is what every child wants.

Issue

ii) in what circumstances a court should order that the separated parents have contact with other persons, including their grandparents

When the other person including their grandparents,

- have already played an important role in the life of the child
- would positively contribute to the quality of upbringing of the child

When the child wants to have contact with such other persons and grandparents

Issue

b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children

In the case of where the resident parent has majority contact with the child/children, my opinion is that the child support formula doesn't work fairly for the non-resident parent in relation to their care of, and contact with, their child/children. I base this opinion on the grief and hardship that I have seen it caused to many young men in this situation.

I believe that it is unfair on the non-resident (liable) parent because,

- It does not give due regard to the commitments the liable parent has to support himself or herself or any other person or child that the parent has a duty to maintain. The formula needs to change the method of calculating the exempted income amount.
- The costs of contact that the non-resident (liable) parent has should be based on an amount closer to the actual costs in maintaining contact.
- The child support amount payable should not be more than the amount needed to support the child. At present it is based on a share of the wealth of the non-resident (liable) parent, which means that the child could receive much more

than it needs for its upbringing. I think that the child support should be calculated on the average amount needed to raise a child, and if the non-resident (liable) parent is able to pay more for any extra needs of the child then this should be done on the basis of that parent wanting to do it and not being forced to do it.

In the case of where the care of children is divided or shared between parents, my opinion is that the child support formula does seem to be fair, in the sense that at least it acknowledges that each parent is assessed to pay child support. I still believe however that the child support amount should be calculated on not exceeding the average amount needed to raise a child, rather than only on a percentage that for high incomes can mean child support much higher than the average amount. The formula needs to be looked at in regard to the limit payable.

From,
Mr John Sherwood Gray
126 Georges River Cres
Oyster Bay NSW 2225

