GRAEME JACKSON
BARRISTER & SOLICITOR

◆ Your Ref:

◆ Our Ref: VES:JM

8 August 2003

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

Dear Sir/Madam,

We are writing in response to the mooted family law child residence/contact arrangements.

We are solicitors each of more than 20 years experience, practising exclusively in the area of family law. We are also separated and each have the sole care of children.

The suggested changes ignore the reality which is that in the vast majority of cases that reach the Family Court, it is the women who carry the legal and cultural charter of the welfare of their children. Of course there are exceptions and of course there are instances of great injustice to men. In our experience, they are few and far between.

If we were asked to nominate the area of behaviour which most distinguishes women from men in family law, we would have to say that most of our female clients have been in our view motivated by a genuine concern for the welfare of their children, that is, they have generally been able to separate their own interests from those of their children and have been prepared to fight for them. This feature is certainly not as readily discernable in the case of men who often appear to be motivated by a territorial need for victory that goes beyond the needs of their children.

This is not to say that men are ghastly creatures who demonstrate ill-intent to women and children. It is in our view a cultural and social phenomena for which we are all responsible and which we believe the mooted changes, if passed, will further exacerbate.

Our greatest objection to the current working of the family law system, and it is a significant objection, is that for all the lip service we give regarding the welfare of children which is of course at present the primary charter of the Court, we in fact focus excessively on satisfying the customers of the Court, being the adult parties to the litigation. In final hearings, our focus is not on ascertaining the truth so much as it is on re-creating reality within the rules of evidence. To

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impose the mooted burden of proof will perpetuate the focus on legal technicalities rather than the real issues regarding children that need to be addressed.

Our comments ought to be applied equally in support of the small minority of males who are primary carers of their children, have established a close bond with those children, and who work genuinely in their interests.

In an ideal world, it is preferable that children know and spend reasonable time with both parents. It is certainly open to each party to achieve this under the existing legislation. There is no burden of proof in favour of women/primary carers. There is however a recognition that children should not be wrenched from their centre of security simply to appease a disgruntled party to litigation. Coming from a very practical base, we can see that the mooted changes certainly create the potential for this to occur.

We are assuming that the detailed submissions put to the Canadian committee are available to your committee. We understand that many of the anticipated difficulties espoused by particularly womens' groups have come to fruition in the Canadian context. It would be both irresponsible and non-sensical for this country to ignore the reality of that experience.

It appears to us that the majority of our colleagues, both male and female are not in favour of the mooted changes. We suggest a detailed survey of the practitioners in the area might be considered by the Committee.

Yours faithfully,

Graeme W. Jackson **Vicki Sweet**