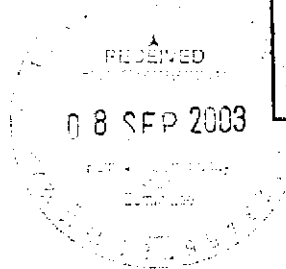


1st September, 2003-09-01

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House of Representatives Standing Committee on Family and Community Affairs	
Submission No.	1413
Date Received:	8-9-03
Secretary:	

The Hon Kaye Hull,
Parliamentary Secretary,
Parliamentary Inquiry into
Child Custody Issues,
Parliament House,
CANBERRA, ACT.

Dear Ms Hull,

RE INQUIRY INTO CHILD CUSTODY ISSUES.

I write to you on the above requesting support of the Inquiry for change to the present presumptions on Custody.

Naturally, this matter is not a single-issue topic. Custody is connected to other Matrimonial proceedings and I believe that in setting some ancillary matters out as well, the Inquiry will note a need for perhaps greater reform.

In support of this request, I offer my personal circumstances.

I was married in 1981 – had four children and was divorced in 2001.

I was a father who undertook a more than normal role in home duties, care and support for my four children. In summary my various roles were as follows:-

- Present at birth for all children.]
- Bathing, feeding, nappy changing, dressing, and all tasks required for young babies.
- Taking all children to kindergarten, making fancy dresses, assisting with projects, attending kindergarten functions, and taking children to play groups/gardens.
- Cooking, cleaning, getting children's lunches, assisting with dressing, bathing, clothes washing, ironing, singing bed time songs or telling stories etc.
- Taking to school, picking up and assisting with projects/homework and attending schools.

- Generally taking a greater than normal role in the home, cooking, washing, cleaning, bed making, nursing sick children and maintaining the home to provide a caring and loving environment.

All these tasks were undertaken over an 18yr period.

In 1999, the former wife took Family Court proceedings and further Magistrates Court proceedings to prevent me from returning home. The actions were all taken ExParty while I was overseas.

These proceedings did not take into account my role as summarised above, nor did they listen to or seek separate reports as to the children's opinions on what they preferred. The children were all over 11yrs at the time.

These proceedings also did not appear to consider that I am legally blind, and that the allegations raised by the former wife were largely unsubstantiated or stale. That in fact it was the children's wishes as expressed to me, noting that the eldest were 18, 17 and 15years old at the time, that they did not agree with the former wife's actions. In fact the former wife actively attempted to keep the children out of the action. There was no obvious access for my children to obtain independent advice.

In proceedings involving the children, the former wife agreed in Family Court proceedings that in respect to access, "that this be in accordance with the children's wishes"

Within one week of these Court authorised access rules, the former wife reneged on this arrangement to prevent the younger boy then 11 years from coming to my flat which was close to his school and home.

It took a further 9 months to have the matter heard in the Family Court. The former wife used all possible tactics to delay these proceedings.

The Family Court ultimately granted Orders in my favour in re, Contact but, at all times the right of my boy to be heard or have a greater say was blocked by the former wife. His wish was for far greater Contact – and still is. These Contact proceedings alone cost me in excess of \$10,000.

In respect to varying the current Orders, I am now told that this can only be done if expensive Counselling Reports are obtained. My boy is now 14yrs and will be 15yrs this month.

My boy is prevented by his mother from discussing any variance to the present arrangement and has no apparent rights to access counselling, or, no opportunity to be heard which he can initiate. He is afraid of punitive consequences if he raises this subject with his mother.

I am also of the view, that the former wife has used the presumption that the mother is the best person to care for the children and therefore by the custodian as an excuse to gain financial control over family assets. There is now accepted "standard" advice given to women that the tactic to gain the upper hand in matrimonial disputes, is to adopt this strategy – stay in the home, keep control over the children and rely on accepted decisions of the Court, that the wife in this situation will gain the greater percentage of property settlement.

Importantly, this tactic to exclude me from the home, also added to the presumption that she was naturally in this role and in the home with the children – I was out, and therefore she was obviously the caring parent. The facts in my case did not confirm this. –She was working – I was not. I had no resources – she did. It took two years for the Court to rectify this imbalance – affecting my capacity to claim a custodial role. This presumption was never challenged for several reasons. They were:

- First, The former wife's actual capacity to care in a custodial role was always assumed – just because she had them. The reality was that I, the father had a more caring role and a closer relationship to the children – especially the youngest. The former wife was not kind and exercised emotional cruelty.
- Second, I had no home – I was forced to live with my sister at the critical time making it appear that I was unable to offer a home – as a pensioner I had no independent means and in any event the former wife controlled all monies, and
- Third, I found myself excluded from the home without the opportunity to be heard and a further presumption that - this was her right to remain was never questioned. Fundamentally I was placed in a position of vulnerability that automatically raised questions as to my capacity. For me to have brought custody proceedings would have also complicated the proceedings substantially.

My conclusions are:-

- That the present presumption should be definitely changed and that in doing so both parties be required to seek clear arrangements that will involve children and custodial roles immediately on separation.
- That the presumption which runs alongside decided property decisions of the Family Court, creates an environment that suggests a more favourable property settlement will be achieved if the wife remains in the home. While it is not suggested here that a wife who is not working should not have financial security –if possible, the automatic presumption that custody will give a wife

remaining in the home a greater share, should be re—examined. Perhaps with further property settlement occurring when children are no longer in a custodial relationship to indicate to the parties that property rights are not connected to custody.

- That the above arrangements be compulsory – Court initiated and exclude lawyers.
- That a number of the legal processes currently required be removed so that Lawyers are not involved in children's Contact issues – when I was forced to bring proceedings for Contact, lawyers were involved as Court processes did not exist for resolution of this process.
- That when one party, in this case my former wife, adopts behaviour such as uncontrollable weeping, delay and constant adjournment of counselling, or active prevention of having the children involved, - this be taken into account, not be classed as "harassment" if she is required to continue with discussions, and it be made clear that a decision will be made arbitrarily if reasonable attitudes are not displayed.
- That children over the age of 8 yrs be given the right to be heard on Custody issues and that they be specifically designated an independent counsellor for this purpose.
- That review of existing Orders be made more accessible at the request of children- and that clear rules exist that prevent spouses from taking punitive or disciplinary action against children in their custody- direct access rules to a designated Counsellor should be an inviolate right of the child.
- That the ability for one spouse to obtain ExParty Orders be restricted to only acute, or dangerous situations that are actual and current.

Otherwise all Parties must be present.

In the event of your inquiry coming to Melbourne, I request the opportunity to be heard on these matters.

Yours sincerely,