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House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1581

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Secretary: [REDACTED]

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Committee Secretary
FCA

Dear Sir/Madam

I wish to make a submission to your inquiry, and apologise for the lateness. I was unaware of this inquiry until hearing it on evening radio very recently.

I do not intend to bore you with a sob story, but give a brief overview of my situation, and my layman recommendations.

I was in a relationship which ended for various reasons, not least of which was my partner claiming full Single Parent Benefits whilst I was still living with her, which when I found out and told her to change it, resulted in her telling me to leave.

At this stage I was doing a large-amount of overtime which had been agreed between the two of us, as I was building a house for my family, however this became an issue as well.

Ultimately, the pressure of the household, her and her mothers demands, allied with her fraudulent actions, resulted in me having to leave, with the Maternal Grandfather informing me "You will never see your boy again".

I was initially denied access by my ex partner, however this changed over a short period of time, due to it interfering with her social life, and subsequently employment. Unfortunately she would not then, and eighteen months later, still will not, come to an agreement over the child.

However since first court case 30 June 2003, ex partner has indicated a desire to come to an agreement, but apparently her lawyer has told her she is not allowed to???

Six weeks after split up, ie March 2002, ex partner was kicked out by her mother and moved 80 kms away, and I subsequently had approximately 62% by nights care of the child, with the assistance of my parents whilst I worked. This was at ex partners convenience.

Ex partner then commenced work, did not declare income to either Centre Link or Tax Department, and continued to receive full Single Parent Benefits, Family Tax Benefits etc, informing Centre Link and Child Support she was looking after our son full time, and also claiming full Rent Assistance, although she was living with four other people, all paying rent.

She in fact was caught by Centre Link over false claims and had to repay money with a warning, but then promptly continued to do it.

During this whole period March 2002 until June 2003, I had to fall into line with ex partners demands ie I ONLY had my son when she was working, or, if she decided to have a day off, I would have to deliver him to her with as little as an hours notice.

Ex partner continuously threatened me in various ways, not least of which, that she would give up work and I would not have access, or she would move to the country and again I would not have access.

I was subject to abusive phone calls at 3 am, and indeed any time of the day including at work, subject to verbal abuse from her at work, including in front of the public.

Ultimately, ex partner, fifteen minutes after dropping my son off to me, threatened me in my own driveway with taking my son back and I would never see him again, with calling the police etc etc. This was with loud shouting and swearing in front of our son. These threats, swearing in front of my son, screaming, shouting and abuse have continued from the day we separated.

Consequently as I had already had approx 62% care by nights, admittedly at the convenience of ex partner, I had no option but to go to court to reach an agreement to stabilise the situation for everyone.

Also in the matter of Child Support, which I will never deny my responsibility for, there appears to be a huge anomaly in the actual payments.

In my case, and I assume all, if I pay Child Support direct to the mother, I only pay for the days she has our son ie 18 days out of 30 at this stage. However if I pay it to Child Support Agency as the mother demands, I have to pay for the full month, as according to CSA, their computers cannot calculate the days. Obviously I find this unfair.

As well as that it appears there is no consistency with payment ie it is a percentage of gross wage before tax, but tax is then paid on the total, plus one parent can pay \$5.00 per month and another can pay \$500.00.

Again there is the major problem that I have to do as much overtime as possible to pay my bills, yet every cent of overtime is added to calculations for Child Support.

Problems

1. **No evidence** can be produced to the court until it goes to full trial.
2. I put in affidavit to the court outlining concerns.
3. Ex partner then put in three consecutive, totally contradictory, affidavits, every single paragraph of which were lies and are provable to be so.
4. **First** court hearing the official status quo was maintained, ie because I had stated 62% care and partner had stated 50% care, the magistrate could not make a decision as she can only balance affidavits, not hear evidence, so it became 50/50 care.
5. **Second** court hearing magistrate maintained the status, changed the days of access, and then reserved her final decision for several weeks.
6. **Third** court hearing magistrate indicated what her decision might be but then reserved her decision for another two days.
7. **Fourth** court hearing, Magistrate gave a custody order, which actually took one day a week off what I had previously, ie I went from 8 days a fortnight minimum to 6 days a fortnight. This was irrespective of the fact that case law states the status quo should be maintained until trial.

Her reason being the mother stated in her affidavit, that she did not work, irrespective of the overwhelming evidence available, that could not be produced until a full trial.

In this case the magistrate did make an order that the mother was not to work, as that was the basis of her claim

8. **Fifth** court hearing (reconciliation) is pending.
9. **Sixth** court hearing, probably full trial, if I can afford it, which is looking unlikely.

The point I particularly wish to make is that this has cost many thousands of dollars, certainly for me, presumably for both, although I assume Legal Aid has come to the party for my ex partner, due to her fraudulently claiming Centre Link benefits, no result is in sight, because without any doubt, ex partner will not agree to anything.

Apart from Affidavits, absolutely no evidence is allowed to be produced until a full trial anything up to eighteen months after this fifth court hearing (reconciliation).

This must be the only court in the land where no evidence can be produced, and no one can be charged with perjury. Indeed just the fact of submitting affidavits, which prove nothing, is an enormous, unjustified expense, as is the amount of Court Hearings and legal fees, not to mention effects on health over all this period of time.

One party can put in as many lying, contradictory affidavits, as they like, but no action is taken to either prove or disprove any allegations contained therein, by the court or anyone until a full trial, which by then has cost an exorbitant sum, which I suggest is beyond the capability of most fathers.

In my case I am one of the lucky ones, with assistance from my parents, although they also are starting to feel this.

There then also becomes the peculiar aspect of court where if too much evidence is produced, it may be looked on as being vindictive, irrespective of the reason for having a lot of evidence, such as the other party has been nothing but vindictive, rather than accepting the evidence as it stands.

Any other court requires all evidence to be produced to prove a case, why should the family court be different? Lies as opposed to evidence is another matter entirely.

Recommendations:

1. On separation, 50% share care automatically be granted to both parties, with either party wishing to dispute it, do so at their own cost. This should also include financial assistance for the defending party if they win, not just because one party can get Legal Aid.

This would also resolve to a certain extent, one party just fighting for the hell of it, in my case the mother has stated she intends to send me bankrupt.

This is imperative, as probably the majority of fathers do not have the finances after separation to pay for court, so they automatically lose, irrespective of the relative merits of either side. I acknowledge that some fathers are irresponsible as well.

2. First hearing should be heard as a full trial, or if this is not feasible, by the Court Registrar, with some evidence, or at least an indication of evidence available, being produced, irrespective of the Registrar's power to make a direct court order.

This would at the very least allow the Registrar to strongly advise either party to 'pull their head in', or come to an agreement or whatever, hopefully without it going further.

3. Second hearing if required should be a full trial straight away with all evidence able to be produced as in a normal court.

4. Charges be laid for perjury as in other courts. A penalty is not necessarily even required, the threat of charges and penalties would be enough to stop the majority of perjury that goes on.

5. Change the biased view that a mother is automatically the best partner for rearing the child. I am not sexist, however in my case, having seen the mood swings, threats, swearing, fraud, association with drugs, and my ability to provide in the long term for my son, this should be looked at.

What evidence is there to suggest that a mother sitting at home all day watching television, is a better parent/carer for the child?

6. The environment must be compared by a sensible, logical person, (not necessarily a Social Worker or similar, just out of school with no children), to advise the court which would be the most beneficial household for the child.

7. Take into account the relative merits, and availability, of having extended family such as Grandparents to assist, and once again their environment.

8. If both parties wish to come to an agreement, and one side's lawyer refuses, that lawyer be made by the court to advise the parties to reach an agreement.

9. *Extra overtime should not be taken into account when calculating Child Support, as many parents could not survive after separation without that overtime, or second job.*

For your consideration please

[REDACTED]