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**Submission: Inquiry into Child Custody Arrangements in the context of Family Separation**

We are private citizens. We make this Submission without representing any particular group or orientation.

We don't believe it is possible to legislate against the meanness or spite that informs some family separations. We also don't believe it is possible to legislate against people who, deliberately or otherwise, abusively involve their children in family separations and child custody cases.

Parents can bully their children into submission via a variety of highly charged and emotional means. Mothers can sway children against fathers, and vice versa. We don't believe that it is possible to create any form of legislation that will put a stop to such forms of abusive behaviour.

The law in general is designed to deal with 'criminal' behaviour, and though many might argue that what some parents do to their children in child custody cases is 'criminal', the law simply cannot be expected to deal with the vagaries of emotional manipulation and abuse.

This is why we believe that while 'rebuttable joint custody' sounds great in theory, in practice it may make little difference to current outcomes.

In practice we believe that those parents who communicate well and who have a firm appreciation of what is in the best interests of a child, will determine positive joint custody outcomes irrespective of any prevailing law. We also believe that 'rebuttable joint custody' will not necessarily ameliorate the situation of those parents who fiercely hate each other, who cannot communicate well, and who are determined to cut themselves, and their children, off from their respective spouses.

Some presumption of joint custody may be of psychological benefit however, as it may inhibit some parents from assuming 'ownership' of their children prior to and during a separation. It may make parents more amenable to thinking positively about shared parenting, and pro-active parenting plans.

Also, regarding the issue of how much *time* parents should spend with their children, 'quality time' is what's important to and in the best interests of a child. But this is a difficult concept, which is open to a variety of interpretations. No amount of legislating for joint custody outcomes can ensure 'quality time' for a child pre and post-separation.

We believe that even automatically appointing lawyers to represent children as an intermediary between parents in mediation is fraught. No lawyer is or can be a match for an intransigent parent who, acting irrationally, believes that they and only they know what is in the best interest of *their* child. Also, it would be quite easy for such a parent to sway any child against a lawyer, and even pressure the child to lie to the lawyer.

Recent changes in 'language' have also proved meaningless. No amount of talking about 'parental responsibility' or 'parenting plans' can make the slightest bit of difference to a parent whose emotional connection to their child is based on deeply felt and problematic notions of 'ownership'.

Any attempts to contain and significantly diminish the adversarial nature of the legal system involved must however be applauded. Too often, warring parties to a separation use lawyers to

enhance and consolidate their position as the wounded party, without any benefit or thought for the child.

Even legislating for compulsory family mediation will not, in our opinion, bring significant changes to bear. Successful mediation is always dependent on the good will of all parties, and the skill of the mediator. Without good will, mediation goes nowhere fast.

In our eyes, attitudinal change is what must be attempted, with early education being critical.

In schools, life style classes in senior years could include components on child rights and child custody issues. Acquiring Marriage Licences could be made subject to relationship classes, where such serious issues as child custody issues and Family Law are discussed. Pre and post-natal classes could include components that deal with potential custody issues and the emotional well being of children in divorces.

Attitudinal change is also necessary where mediation and the law is concerned. It is our understanding that in Swedish industrial law for instance, it is considered shameful to fail at mediation and to take matters to a court of law. The 'shame' is associated with the perception that failure at mediation is indicative of an inability to be fair and to communicate effectively.

We believe that if significant attitudinal change occurs via education, then other initiatives such as formal mediation requirements, prescriptions for joint custody arrangements, as well as changing the language of and adversarial nature of Family Law, will create a successful legal framework within which the best interests of a child can be achieved.

But, we cannot agree to the notion that public files should be made available on Judge's rulings in Family Court matters. This issue was raised in the media recently. (Age 4/8/03) We are old enough to remember the tragic bombings of Family Court judges in the 1970s. We believe family court judges are not the cause of the current problems that beset families, and are in a sense the least of its problems. No form of public disclosure, which can in any way threaten their safety, should be allowed.

Yours sincerely,

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