

Submission No: 927

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Secretary: [REDACTED]

13 August 2003

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

Dear Sir

Please find enclosed a private submission for the Inquiry into Child Custody Arrangements in the Event of Family Separation Committee.

I appreciate that the date has closed for submissions, however, I understand that late submissions may be accepted if they are received before the Inquiry starts. I hope that my submission will be received in time.

Yours sincerely

[REDACTED]

SUBMISSION FOR THE INQUIRY INTO CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION COMMITTEE

I am a father of two children, aged 12 and 14. Their mother and I separated three years ago and have been divorced for just over one year. We have had issues in resolving matters of child support, shared parenting arrangements/ residency and property settlement. I understand that the first two issues are subject to the Inquiry. My submission to the Inquiry is therefore based on my actual experiences.

In summary, the main points of the following submission are:

- (i) The “default position” for determining residency arrangements should be 50/50, with either party then making representations to the Family Court for any variation to that based on legitimate reasons or agreed grounds.
- (ii) The Child Support Agency should treat both parties equally and not have double standards.
- (iii) The formula for calculating Child Support should take into account circumstances where the shared parenting arrangements are less than 33% of the time for the paying parent.

The default position for residency arrangements

I believe that children require input from both parents into their upbringing and development. The current arrangements appear, from my observations, to provide the predominate residency to the mother as a default position, and require the father to take legal action if the parents cannot reach a mutually agreeable alternative.

I am about to undertake legal action seeking residency of my children. My solicitor has made it very clear to me that the onus will be very much on me to prove my case, i.e. the “default” position of residency with the mother will be the starting point of the court.

I can understand that in a small number of particular cases, eg where there are instances of child abuse (either physical or sexual), the interests of the children will clearly be with one parent (note, not always the mother). However, I would think these cases would be very much in the minority.

If both parents are agreeable, then arrangements can be made for shared parenting on a mutually agreeable percentage. I believe that such arrangements can be made now and would like to see this continue.

However, divorce or separation often means that the two parents cannot agree on a range of matters.

In summary, I believe that the “default position” for determining residency arrangements should be 50/ 50, with either party then making representations to the Family Court for any variation to that based on legitimate reasons or agreed grounds.

Child support Agency to treat both parties equally

During my dealings with the Child Support Agency, I have encountered three examples of where they have exhibited double standards.

Firstly, if my ex-wife tells them that she has been underpaid, they accept her advice on face value and send me a bill. I have then had to prove it to be incorrect. In the meantime, if I do not pay the amount allegedly owing by the due date, I am charged interest. If, however, I point out where I have been overcharged, she is given the opportunity to review the matter and offer her opinion before any adjustment is made. I have to pay the amount in the meantime and then hope to receive a credit when I am proved to be correct.

The second relates to overpayments and underpayments. Whilst no one from CSA has been able to clearly show me the following stance in any legislation or policy, I have been told by several officers the following.

If I, as the paying parent make overpayments, I cannot expect to be able to recover those overpayments, and certainly will not be in receipt of any interest on the overpayment amounts.

If, however, I make underpayments, I will have to make good those payments and will be charged interest for any overdue amounts.

The third example occurred during a review which I requested. I had to complete the required forms for the review, including details of my income and expenditures. My ex-wife was sent my details and asked to submit her response prior to the review hearing. She failed to provide a written response and provide details of her expenditure, yet the review was allowed and even found against me. I had little chance to counter any of her arguments, as I was not given access to the same details regarding her financial situation as she was of mine.

In summary, I believe that the Child Support Agency should treat both parties equally and not have double standards.

Formula for calculating Child support

The formula for calculating Child Support payments does not recognise shared care arrangements which are less than 33%.

In my case, I care for my children approximately 15 – 20% of the time. As I am under the 33% threshold, I receive no reduction in the amount of Child Support calculated.

This effectively means that I have to pay the same amount of child support as another person in the same financial situation as me, but who does not share in their child's care.

While the children are with me for the 15 – 20% of the time, I clearly have to meet expenses such as electricity, meals, laundry, and entertainment. However, I am effectively paying my ex-wife for these costs, even though the children are not with her for those substantial periods of time.

The formula is also calculated on the basis of overnight stays. My children also spend a number of days (during daylight periods only) each year with me, during which time I am again paying for meals, electricity and entertainment.

In summary, I believe that the formula for calculating Child Support should take into account circumstances where the shared parenting arrangements are less than 33% of the time for the paying parent.