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## Submission to Standing Committee on Family and Community Affairs

### *Inquiry into child custody arrangements in the event of family separation*

Submitted by [REDACTED]

*This submission is drawn from my experiences in the past six months of separation from my children. In this submission I chronicle the observations I have made regarding the effect that the separation has on the children, and on myself, and why I believe that the children have a right to the presumption of equal custody.*

#### **Executive Summary**

- One partner has no input into the raising of the children
- Children want both parents
- Children are forced to choose
- Modified behaviour with short term parent
- Role model of other parent is lost as short periods remove normal relationship behaviour.
- Short term parent adopts "good time" role
- Oscillate between suicide and violent option
- Despair affects parent to the detriment of all
- Court option costly and detrimental to all but legal fraternity

#### **Background**

I have three children, two boys aged 7 and 8, and one girl, aged 5. I separated from my De-Facto partner in January of this year after a relationship of over ten years. During the past six months, custodial contact was maintained with the mother, whilst the children resided with me for 5 nights a fortnight. The mother requested a change to 4 nights a fortnight to see how that would affect the children, to which I cautiously agreed in order to reduce strain on an otherwise stressful situation.

After a two month period, I requested the custodial arrangement to be increased to 5 nights a fortnight which was not responded to for a period of 4 weeks, and then only to say that it was still under consideration. A month later I threatened to not return the children until they had been with me for a full week, in order to ascertain the effect on the children in a shared custody arrangement. The following morning I received documents from solicitors stating that I could not have any custody of the children until I signed a release saying I would return them after the 4 day period.

## **Personal Level**

After consultation with a solicitor I determined that I had **ABSOLUTELY** no rights in relation to determining how my children are raised. My solicitor informs me that I have excellent custody access, and that if it went to court I most likely would have even less custody.

On a personal level, I was absolutely crushed, and at that point seriously contemplated **SUICIDE** to the point of organising to take the children out for one last fun-filled day before I would do it. If it wasn't for the support of some very good friends I would not be here to be making this submission today.

It is easy to see why such situations would drive people to **VIOLENCE**. I also seriously contemplated violence against the mother, as legal avenues had provided me with no path for **EQUITABLE** resolution. As a normally quiet, and non-aggressive person, the emotions generated were extreme and extraordinarily strong and almost overwhelmed me.

Despair affected my **ability to work**, concentrate, and generally maintain an existence, vital for financially being able to provide for the children.

## **Observations on Children**

The three children handle the separation in different ways. The eldest son has become much more withdrawn, and more manipulative, and violent towards those around. The middle child can be seen to be listening intently whenever any discussion of reconciliation is discussed. The daughter asks lots of questions, but does not seem overly affected by events at the moment.

## **Behaviour**

The children have always been well behaved around me, as I was required to take on the role of disciplinarian whilst living in the relationship, and that still continues when the children are staying with me. However, it can be seen that the behaviour patterns are more cautious when staying with me for such short durations, as it seems that all of the children are especially cautious at not doing anything wrong, possibly attempting to overcome some inner turmoil as to whether they were the cause of the separation. When they stayed with me for a 7 day period over the holidays it was noticeable how they actually managed to **RELAX** and behave **NORMALLY**.

## **Choice**

Children want both parents. There are many episodes where the children will refuse to make a decision about something that they would like to do for **FEAR** of offending either parent. Whilst it is obvious that the children would like nothing more than for both parents to reconcile, they also want to be with both parents, without the associated feelings of guilt. Currently this is not possible as the mother has total control over when the children are allowed to see their father.

## **Role Models**

Separation affects the childrens perception of how males and females behave in society. With limited contact one parent amends the way the interact with their

children to accommodate the shortened time frame, thereby introducing the concept of **GOOD TIME DAD**. The children become spoiled in their interaction with the non-custodial parent because essentially every minute of the time is spent playing, entertaining, and indulging in an effort to make the minimal contact time enjoyable for the child, and partly to bribe them in an attempt to want them to want to be with you. This effects the view that children have of the non-custodial parent, and presumably will adversely affect the way they perceive that the other parent should behave in a normal relationship.

Consequently, the children miss out on the input the other parent can provide in educational and personal roles because of the MINIMAL contact.

### **Court Option**

Whilst not wishing to remove the influence of the mother from the children, the other option is to go for full custody of the children. However, given the circumstances of both occupational requirements there is little chance of success in this avenue, with the only winners being the legal fraternity. I am loathe to expose my children to the level of settlement.

### **Research**

**S.A. Nunan. Joint custody versus single custody effects on child development. Doctoral thesis 1980.** California School of Professional Psychology, Berkeley, UMI No. 81-10142 Nunan compared 20 joint custody children (ages 7-11) with 20 age-matched children in sole maternal custody. All families were at least two years after separation or divorce. Joint custody children were found to have higher ego strengths, superego strengths and self-esteem than the single custody children. The joint custody children were also found to be less excitable and less impatient than their sole custody counterparts. For children under four at the time of separation the differences were very small.

**.A. Luepnitz. Maternal, paternal and joint custody: A study of families after divorce. Doctoral thesis 1980.** State University of New York at Buffalo. UMI No. 80-27618. Luepnitz studied single parent custody and joint custody. Most single parent children were dissatisfied with the amount of visitation they had, whereas the children of joint custody arrangements seemed reasonably happy with their exposure to both their parents. The quality of the parent-child relationship was determined to be better for joint custody. (The ncp-child relationship is described as more like an aunt or uncle - child relationship.)

**D.B. Cowan. Mother Custody versus Joint Custody: Children's parental Relationship and Adjustment. Doctoral Thesis 1982.** University of Washington. UMI No. 82-18213. Cowan compared 20 joint custody and 20 sole (maternal) custody families. Children in joint physical custody were rated as better adjusted by their mothers compared with children of sole custody mothers. The children's perceptions in sole custody situations correlated with the amount of time spent with their father! The more time children from sole maternal custody spent with their fathers, the more accepting BOTH parents were perceived to be, and the more well-adjusted were the children.

**E.G. Pojman. Emotional Adjustment of Boys in Sole and Joint Custody compared with Adjustment of Boys in Happy and Unhappy Marriages.** Doctoral thesis 1982. California Graduate Institute. UMI No. ? Pojman compared children in the age range 5 to 13 years old. Boys in joint custody were significantly better adjusted than boys in sole maternal custody. Comparing boys in all groups, boys in joint custody compared very similarly to boys from happy families.

**M.R. Patrician. The effects of legal child-custody status on persuasion strategy choices and communication goals of fathers. Doctoral Thesis 1984.** University of San Francisco. UMI No. 85-14995. 90 fathers were questioned regarding how unequal recognition of parental rights might encourage conflict. Joint legal custody was found to encourage parental cooperation and discourage self-interest. Sole custody in both custodial AND non-custodial status encouraged punishment-oriented persuasion strategies. Unequal custody power was perceived as inhibiting parental cooperation by BOTH parents.

**Extracted from :: <http://www.spig.clara.net/sp-arg.htm>**

The arguments for Shared Parenting which have been successfully used in UK courts are that:

- It ensures continuation of family life for the child, with the advantage of nurture from both parents rather than just one.
- It reassures the child that he has two parents, and although they live in separate places, he definitely has a home with both of them.
- It dispels the notion that only one parent is "caring" and that the other is "errant" or "absent".
- It ensures that one parent is not unfairly burdened with the responsibility of discipline whilst the other is relegated to (or marginalised as) the fun or contact parent.
- It provides the opportunity for children and parents to develop meaningful and lasting relationships - in place of the artificiality and frustrations of contact .
- It affirms the parents in their belief that they both have an ongoing role in their child's life.
- It places both parents on an equal footing with schools, doctors and the world at large - who might otherwise only want to deal with the residential parent.
- It confirms that no matter what, each parent wants to, and is able to, provide a home for their child.
- It reassures the child that in the event of one parent dying he still has a home to go to.
- Without such an order, if one parent dies, the child would not automatically go to live with the other parent, but would be left with whoever they were living with at the time or handed over to a guardian - a poor substitute for a natural parent.
- It enables both parents to claim the additional personal tax allowance (and possibly one parent benefit, family credit and additional child

benefit), thus increasing the income available to the children (only applicable for two or more children).

Extracted from :: <http://www.spig.clara.net/sp-over.htm>

Parents who desire shared parenting will frequently find themselves up against a whole range of false assumptions as to the needs of their children. These may be well meaning, but by depriving the child of the opportunity to maintain a full relationship with both parents they set the scene for heightening the anger, depression and deep sense of loss for both the child and the 'absent' parent.

It is ironic that shared parenting has been subjected to a level and intensity of scrutiny that was never directed towards the traditional divorce arrangement of sole residence to one parent and 4 - 6 days per month contact with the other. And yet there is a growing body of evidence that such post divorce relationships were not healthy for many children or parents and were in fact psychologically destructive for the children.

In what follows, the term 'father' is used to denote the non-resident parent, because he has historically had the problems of overcoing gender prejudice in child rearing, but it is acknowledged that in many cases the gender roles may be reversed.

### ***The arguments:***

#### **The need for stability**

It has long been identified that a child has a need for stability in their daily life in order to promote their development. This has been adapted to assume that after divorce the child will have *geographic stability* with only have one house, one toothbrush and one primary parent. It is argued that a child cannot successfully cope with the regular and frequent experience of visiting their other parent.

This argument is plainly false. Children need *predictability* rather than *geographic stability* - after all, intact families expect their children to cope with child minders, play groups, baby sitters and staying overnight with grandparents and friends. What is so different about maintaining the stability of a continuing and loving relationship with both parents - something which clearly cannot be achieved in a few hours a month ? As long as children *know* what is going on, they can cope with a wide range of situations.

#### **Men can't 'mother'**

It is frequently claimed that children (especially young ones) need to be brought up by their mothers. This argument comes

mainly from Bowlby's work on attachment theory which has now largely been discredited. Bowlby's work stemmed from the desire of governments to remove women from the workplace after the Second World War and make room for men returning from the battle field. The work, which is supported by few other studies, focused on children's relationships with their mothers, while father's roles were dismissed as "playing second fiddle" - merely providing economic and emotional support for the mother.

Schaffer is critical of Bowlby and asserts that *"the notion that the biological mother, by virtue of being the biological mother, is uniquely capable of caring for her child is without foundation"*. He contends that mothering is a function which both sexes are equally capable of performing, and stresses that fathers' relative lack of involvement in child rearing is essentially a cultural rather than a biological phenomenon.

### **Child anxious when separated from mother**

It has also been observed that children experience anxiety when separated from their primary caretaker. But because of the dominance of maternal caring, it was not acknowledged that children became anxious and unhappy when separated from their fathers too. This is then an argument for more overall contact particularly for young children who may become very anxious if the gaps between visits are too long.

If we are to place a value on the permanence of relationships we need to spend more effort on developing creative and productive arrangements which will serve the child's needs. For example, in addition to mid-week and weekend staying access, many infants and toddlers benefit from their parent's visiting playgroup or nursery for lunch or to generally help.

### **Children upset by seeing their other parent**

Likewise it is argued that children are upset by having contact with their other parent; the 'evidence' being that they are upset when they return to their residence parent.

Similar arguments were used to stop parents visiting their children in hospital - because it appeared that they 'upset' them. It was not until the 1950's that someone realised that the children were actually upset by being separated from their parents by unrealistic visiting hours (or even a total ban). Since then parents have been allowed unrestricted access to their children in hospital and even encouraged to stay overnight - much to the benefit of the children. The courts need to

understand this argument when applied to contact and shared parenting.

### **Child unable to cope with different attitudes**

Concern is often expressed about a child's ability to cope with differences in personality, style and attitudes of their parents after divorce. But the fact that no such concern is expressed in intact families shows this to be a specious argument.

### **Parents unable to co-operate**

It is frequently claimed that shared parenting should only be occur if there is a possibility that the parents will co-operate sensibly, the assumption being that divorced parents are unable to co-operate about anything, including parenting. This is supported by two somewhat erroneous and simplistic notions about divorce:

a) That all aspects of the marriage have failed and that the conflict which led to divorce was about parenting

Adults divorce for many reasons related to adult needs and dissatisfaction, but conflict over child rearing is not among the prevalent reasons appearing in the originating pleas for divorce.

b) That the anger will remain undiminished.

The evidence is that it does diminish within the first year. Therefore the courts must avoid making policies and decisions based on a small minority of parents who thrive on the aggression encouraged by the adversarial legal system.

### **Shared Parenting should only occur if the parents agree**

Basically it is argued that if the parents cannot agree there will be a hostile environment which will affect the children. Clearly there are some cases where this is so, but it is worth examining the situation closer.

Parents with sole custody orders are not immune from intense conflict which is witnessed by their children, and there is no evidence that shared parenting increases that hostility. It could be argued that any hostility which the children initially experience would be balanced by the opportunity to continue their relationship with both parents in a meaningful way.

Denying shared parenting solely because of one parent's opposition ignores the child's wishes and developmental needs.

There is thus a need to closely examine parental opposition to shared parenting on a case by case basis, remembering particularly the UK case of Caffell [1980] where the courts hoped that shared parenting would bring the parents together to co-operate for the benefit of the child.

### **Father's applications are vexatious**

Because of the 'natural' presumption that children should be in the care of their mothers, it is invariably the fathers who have to apply for shared parenting. Courts are adept at damning fathers, and branding them as vexatious just because they want to continue to have a relationship with their children. What should be considered is that, given the advantages to the child of shared parenting, the parent who presses for sole custody must by definition be showing herself to be unfit.

### **One parent has not accepted that the marriage is over**

Sometimes it is claimed that parents who desire shared parenting are still emotionally married, and are avoiding the reality of the divorce. Shared Parenting is then seen as an unhealthy pathological wish rather than a healthy desire to continue parental involvement.

It is thus important for absent parents to clearly state that they accept that the marriage is over. But even if shared parenting has elements of continuing attachment to a spouse it is not apparent how this could be detrimental to the child, unless the parent actively fosters the hope of reconciliation in the child.

### **References**

- Cannon, David; Joint Custody Fact Pack, FNF, 1988
- Kelly, Joan B; Examining Resistance to Joint Custody, in Folberg (ed) "Joint Custody and Shared Parenting", Guilford, 1991
- Schaffer, R.; Do Babies need mothers? in Schaffer (ed) "Mothering", Fontana, 1992
- Schaffer, H.R.; Making Decisions About Children, Blackwell, 1990

### **Conclusion**

There are numerous reasons why the presumption of equal custody should be given, especially in situations where both parties still reside in close proximity.

Emotionally the children need both parents to balance the respective negative influences both parents exert, and to reinforce the positive influences both parents can provide. They need to feel that both parents care about them.



Emotionally, both parents need to feel part of the lives of their children, in a normal and non-artificial environment.

My experience indicates that when the children stay longer, they relate and communicate better, and feel that the other partner is part of their life.

Whilst the children are not placed in danger, and parents live in reasonable proximity to each other, there is NO REASON why **equal custody** is not a **presumption** in law.