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“Separation and Divorce: Focusing on the Children” CCYP Conference

On 2 December 2004 the Centre for Children and Young People held a half day conference “Separation and Divorce: Focusing on the Children” which provided new insights from research on children’s perspectives of their parent’s separation and divorce that have implications for professionals working with children. The conference focused on how we might better promote children’s resilience within divorce transitions in practice.

Irene Harrington welcomed the conference participants to Country and the conference was chaired by Justice Beazley.

The following conference presentations were made.

Children and divorce transitions: Reviewing the risk and resilience debates
Dr Anne Graham, Centre for Children and Young People, Southern Cross University, Lismore.

Dr Graham’s powerpoint presentation may be accessed via the link below. The conference timetable did not allow for general discussion after Dr Graham’s paper.

[Dr Grahams paper](#)

Rethinking Children’s Involvement in Decision Making After Parental Separation
Professor Anne Smith, Children’s Issues Centre, University of Otago, Dunedin.

Professor Smith’s powerpoint presentation may be accessed via the link below.

[Professor Smiths paper](#)

See also:
Smith, A.B., Taylor, N.J and Tapp, P (2003) ‘Rethinking Children’s

Involvement in Decision - Making After Parental Separation' Childhood 10(2):203-218

After Professor Smith's presentation the following points were raised by the audience in discussion:

- The legal process is not clearly understood by parents-let alone children. The concepts are not easily absorbed by parents. The system does not sufficiently acknowledge the social and emotional context. That it's not 'any contact' that leads to good outcomes-it's about the quality of that contact. In NZ a presumption of shared care has been rejected although this is still being advocated in Australia.
- The level of contact/ instruction (or lack) that children's representatives have with the child or young person that they are representing.
- Alternate weekend contact is still standard in Australia because of pro-forma orders distributed by the Family Court as are directions that Family Court proceedings will not be discussed in front of the child or young person.
- Workers acknowledged that children often give a message not directly through words but by body language or play or other forms because if a child is fearful they are unlikely to verbalise that fear.
- What mechanisms are in place for a child to change their mind about a contact decisions: at the moment the system is not flexible enough to accommodate children changing their mind about access in a timely manner.
- It's often a difficult task for separate representatives to assess what children want as children can and do change their minds over the course of a matter being finally heard.
- Some lawyers queried whether it was in the interests of all children for their parents to speak with them about proceedings- there was a perception that a small percentage of parents are dysfunctional and manipulative- there is no capacity for children and young people to participate in the mediation process- before parents separate they ought to go to counselling to focus on the child and the effect that their conduct has on the children. It would be helpful for children to sit in mediation but again children are unlikely to say anything where parents are dysfunctional. An alternative view was that you can't change the parents but you may still be able to help the children by providing quality sources of neutral support and information. Sometimes lawyers think children are being manipulated but it remains difficult to conclude what children want without asking them.

Children's views on fairness of contact and role of overnight stays
Associate Professor Judy Cashmore, Faculty of Law, University of Sydney

[Fairness of contact and role of overnight stays](#)

See also:

Cashmore, J and Parkinson, P (2004) "Overnight Stays and Adolescents' Relationship with Resident and Non-resident Parents After Divorce" (in press)

Cashmore, J and Parkinson, P (2004) "Adolescents' Views on the Fairness of Parenting and Financial Arrangements After Separation, Family Court Review (in press)

After Associate Professor Cashmore's presentation the following points were raised by the audience in discussion:

- Whether parental consent should be required for children to take part in mediation. American guidelines require that mediators require informed consent of both parents to involve children in mediation (important to achieve best outcome for children in longer term). Counter viewpoint presented in article by Judith Mason where she argues that getting informed consent from both parents may be unethical- it depends on the child but children aged 12-13 shouldn't necessarily need parents consent to get involved because parents can act as gatekeepers.
- Frequency of contact may become less important if there is more research that focuses on the quality of contact not on quantity (See paper coming out by Bruce Smythe in Family Matters about options for kids in access orders).
- Persons working with children who are trying to ascertain their views need to become aware of indirect and different methods of engaging children in discussion about how they feel about parental separation.
- In relation to the preparation of Court Reports and children's representatives interviewing children in a couple of hours time slot- that information is quite limited in its utility- if that information was collated over a period of time, then it would be likely to be more useful information and the Court reporter/children's representative worker would develop a significant relationship with a child. However, if people acknowledge that children need to establish a relationship with adults who are representing their views a problem arises about who funds more time being spent on report writing.
- Whether schools are adequately consulted to give information that could be relevant to arrangements made for children. Participants noted that there is a continuum where at one end separate representatives do involve schools but at other end some child representatives had not ever seen the children that they are representing.
- Important for inter-disciplinary approach.
- There are complexities about dealing with children but if children have a good lawyer that understands them then that is enough- is not helpful to put more people between the child and the decision-making process (social worker, school counsellor, court counsellor)- is potentially systems abuse to keep interviewing kids. Noted with exception that children living in situations of trauma or extreme conflict at home may need more assistance with having their views ascertained.
- Different requirements apply for separate representative matters in NSW and Queensland- problematic for areas like Lismore where parents could potentially straddle the border.
- In relation to the extent that children's views are currently sought, one lawyer commented that the real need is to talk to, and hear from, children who are under 12 but older children are usually heard- orders really only apply up until a child is 12 or 13 when a young person makes their own decision about how to fit in seeing parents around what they're doing.
- One lawyer commented that it might be helpful for lawyers to put in clauses to have consent orders reviewed at regular intervals. Where the Court makes the orders they should direct that the orders should be reviewed at certain dates.

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