

***A Presentation By***

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A critique on two papers

- **Professor Barry Nurcombe** on **Parental Alienation Syndrome**

- **Justice Le Poer Trench** on **Shared Parenting**

*NATIONAL FAMILY COURT*

*JUDGES' CONFERENCE*

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*Modified Version*

## **PROFESSOR NURCOMBE'S PAPER**

I have addressed my task from the perspective of someone who has been involved with families in conflict for more years than I care to admit, and who has prepared in excess of a thousand Family Reports, with the aim of assisting the Court with decisions in relation to very difficult issues - the kinds of issues which we like to refer to as "intractable family court disputes". Unfortunately, to my great disappointment, I do not have the statistics at my fingertips to support this view, but my sense is that in a majority of these cases, there is some degree of parental alienation.

### **THE HISTORY OF THE CONCEPT:**

Professor Nurcombe's excellent and concise literature review took us to the landmark research in relation to Parental Alienation Syndrome. It provides a good start for understanding the concept of parental alienation and tracing through the progress which has been made in both understanding and defining that concept.

### **THE SOCIAL BACKGROUND:**

Professor Nurcombe referred to the social background to the phenomenon of parental alienation. A number of the issues raised struck me as being particularly relevant in the light of my clinical involvement with litigating families.

**Re-partnering** certainly is an issue which often triggers alienating behaviour on the part of one or the other or both parents. In my experience, this sort of behaviour can sometimes be demonstrated by the parent who is re-partnering rather than, as is more often the case, the other parent. A case which comes to mind is one in which there was a nasty dispute over residence. Initially it was the mother who seemed to be at fault, one of the children actually quivering and curling up in the foetal position whenever brought into contact with her. There were claims that the mother was abusive and it was only after a very courageous decision which placed the worst affected child in a transitional placement with a third party that we were able to understand, that the father and his wife had been indoctrinating her with all sorts of fearful information. For instance, she even believed that when she came to see me for assessment, there were cameras in my ceiling which could film her every thought, with the implication that there could be dire consequences for her if she so much as thought something positive about her mother. We psychologists like to promote the myth that we can read minds, but this was ridiculous.

There is no doubt that the **increased public awareness of sexual abuse** and **the readiness of people to report it** has also been a major factor in many cases of parental alienation of children in which I have been involved. These complaints range from concerns which I believe are expressed by conscientious, even if perhaps somewhat neurotic parents, to those which could be classified as delusional. Acceptance and even encouragement of

such concerns, from an ill-informed position, by over enthusiastic mental health professionals and other types of counsellors, often serve to initiate or entrench the alienation process.

As to the influence of "**no fault divorce**", it seems to me that in many instances the normal pain and anger associated with the breakdown of a significant intimate relationship, is directed at the other parent by attempting to deprive them of contact with the most precious people in their lives - their children. This, I think, is often because there is no other vehicle for inflicting what is seen as justifiable punishment, on the parent who is perceived as "guilty".

I am old enough and have worked in this area long enough, to remember when the "**tender years doctrine**" was most influential on the Court. These were the days when fathers were considered to be incapable of changing nappies or caring for young children without the assistance of a capable woman. For some, probably little has changed, but there is no doubt that many men have demonstrated that they are perfectly capable of parenting alone and are in fact doing so with at least as much success as their female counterparts. For many women this is an intolerable thought and a possibility which warrants the most drastic of action in order to protect their children from what they see as the incompetence and inappropriate risk-taking behaviour of their ex-partners.

The other side of the coin, of course, relates to the alienating father who simply cannot come to terms with the temerity of his ex-partner in actually leaving him - this incredulity existing despite his various forms of abusive behaviour during their relationship. He is usually totally without insight and in denial in relation to the latter, seeing only her inadequacies.

## **THE DEFINITION OF P.A.S. and DEFINING**

### **CHARACTERISTICS:**

Professor Nurcombe's coverage of the definition of Parental Alienation Syndrome and its defining characteristics relates to Richard Gardner's work and represents Gardner's view of the phenomenon, as a specific psychiatric disorder. I personally prefer aspects of the theoretical construct of Douglas Darnall, another of the leading proponents of Parental Alienation Syndrome in the United States. Darnall describes Parental Alienation Syndrome as existing along a continuum of parental alienating attitudes and behaviours and child involvement. Such a model sits better with my experience of alienating parents in my own practice than that of a syndrome, which, as Professor Nurcombe has pointed out in his paper, presents some inherent difficulties when applied to the legal context. The controversy about whether P.A.S. should be classified in D.S.M.IV continues to rage. In my view, however, this debate is not especially relevant for those of us working in the Family Court arena.

## **ASSOCIATED PHENOMENA:**

One of the necessary and identifying features of Gardner's Parental Alienation Syndrome is that the child actively contributes to the alienation in order to maintain his or her primary attachment. It is certainly my experience that far too often I interview stressed and conflicted children. Frequently, the relief on their faces is obvious when I tell them that their wishes are important and will be listened to and reported, but will not necessarily be followed. That is, that they are kids and so they are not expected to make really important decisions about what is best for them. Sometimes when given the opening, they will say that they do not want to make the decision or that they do not even want to discuss relative benefits of being with each parent. Of course, the difficulty for report writers under these circumstances, is that although we might be intuitively convinced that the child is telling us that the conflict is intolerable and that they want the decision made for them, they will rarely come out and actually say this. Hence, under rigorous cross-examination, the firmly held professional opinion that the child is under duress and perhaps being alienated against one parent by the other, sometimes cannot be stated unequivocally or backed up with clear evidence which would withstand a challenge.

Professor Nurcombe also comments in his paper that "when with the target parent, the child may begin to relax, but then "tighten up"". This is an observation I have often made during assessment interviews and observations. Frequently, when one parent is within view, the other parent

will be ignored or there will even be resistance to going into a room with that parent. However, once out of view of the first parent, the child will, over variable periods of time, "thaw out" - demonstrating affection towards and engagement with the parent in question - usually the non-residence parent - only to become quite aloof, refuse physical contact and avoid even saying goodbye at the conclusion of the session, when they know they are about to be reunited with the residence parent.

## **LEVELS OF SEVERITY:**

Reference has been made by Professor Nurcombe to classification of the severity of Parental Alienation Syndrome in terms of mild, marginal and marked. Others have categorised severity as mild, moderate and severe in relation to the child's alienation and also - in terms of the alienating parent - as naive, moderate and obsessed. Naive alienators alienate almost incidentally. Moderate alienators do too, but with more destructive impact on the children. However, they are still able sometimes to moderate their behaviour when the negative effects on the children are pointed out to them. Obsessed alienators are blatant in their efforts to destroy the relationships between their children and the target parents.

There is a group which I think might not fit the classification of Parental Alienation Syndrome, despite looking like it does. For this group, separation is in its relatively early stages and apparent alienating behaviour seems to be

associated with the shock and need for adjustment associated with the family breakdown. Given time and support, the parents and children with healthy personalities seem to recover and "move on". Perhaps those who don't, start to move along the alienation continuum I have already referred to.

## **THE PSYCHO-PATHOLOGY OF P.A.S.:**

This brings us to the psychopathology of Parental Alienation Syndrome. There is no doubt in my mind that in cases of severe alienation, or where the alienating parent could be classed as an obsessed alienator, psychopathology - often extremely serious psychopathology - exists for the alienating parent and also often for the children. These parents become so convinced of the validity of what they are claiming about the vileness and evil of the target parent, that for them the end justifies the means and they will use any means at their disposal to keep the child away from the target parent. It must never be forgotten that these people can be lethal in their actions and that they can rationalise anything they do. They can even generalise the vitriol and hatred which they feel towards the target parent, to include anybody perceived as supporting that parent - lawyers, report writers, judicial officers, family members, even contact centre staff. In the most extreme examples, these people would prefer to kill their children and die themselves, than to countenance the possibility of their children being exposed to contact with the target parent.

## **EMPIRICAL STUDIES:**

Moving to a few comments about the research studies reported by Professor Nurcombe, the findings of the empirical study by **Dunn and Hedric (1994)** point out that the target parent might have poor parenting skills. This almost goes without saying, but it does create a difficult dilemma for report writers, other expert witnesses and for the Court, in deciding whether a change of residence is warranted on the basis of the child's being deprived of access to normal healthy relationships with both parents. Ultimately, it is likely that a value judgement will have to be made which cannot be based on the results of psychological research. In these instances those of us making recommendations to the Court as well as those of you making the decisions, need to be aware of where our biases lie.

## **EXPANDING THE PARAMETERS OF P.A.S.**

### **(CARTWRIGHT 1993):**

In reference to **Cartright's 1993** research, the point is made that alienation can be promoted by conflicts other than about residence and contact (for example, about child support). I believe that financial motivation is often what drives alienation of children against one parent. After all, the parent with whom the children live, clearly needs more in terms of property and financial support than the one they don't live with. This is especially the case if they are not having any contact with the other parent.

## **LEGAL RECOGNITION OF P.A.S.:**

Professor Nurcombe makes the comment, "Professionals may become aligned with one or other side" (for example, the treating clinician who acts as an expert witness). I **have** to say something about this, because it is a "hobby horse" of mine. I personally try to be very strict about not carrying out assessments when I have been involved in conducting therapy, and vice versa. Despite this clear cut distinction, however, there have been a few occasions when I have been inveigled into "blurring the boundaries". I have usually regretted it.

As much as I do believe that some over-zealous therapists confuse their role with that of an advocate and are too ready to rush to the assistance of their client, whom they see as the more worthy parent, I believe that it is more often a case of these people reluctantly being sucked into the dispute and not understanding the system nor the manipulative lengths to which some individuals will go to achieve their ends. The practice of some lawyers to subpoena every professional they can find who has ever been consulted by the other side, often does not assist, in my view. No doubt none of us would be inclined to attend a doctor or a therapist of any kind if we thought that there was a significant risk of these consultations becoming the subject of discussion in open court.

## **PARENTS BEHAVING BADLY:**

Comment needs to be made about the recently completed Brisbane-based research by Professor Sandra Berns through Griffith University, which is reported in an article "Parents Behaving Badly : Parental Alienation Syndrome in the Family Court - Magic Bullet or Poisoned Chalice". Professor Nurcombe has summarised the most salient findings of this research. To my mind, the most significant relates to Parental Alienation Syndrome apparently not being a gendered phenomenon. It is interesting to note that Gardner acknowledges the current trend for a relatively even split along gender lines. He says there has been a change from what used to be largely female dominated Parental Alienation Syndrome and he attributes the change to men's increased custodial role and consequently greater opportunity to alienate. Professor Berns also found that, whilst allegations against the mother were slightly more common than allegations against the father, only about half of those involving the mother were substantiated, whilst all of those against the father were substantiated. This is not especially surprising to me. Although some of the nastiest cases of parental alienation of which I am aware have involved alienating mothers making bizarre claims of sexual abuse against the fathers, which are ultimately found by the Court to be spurious in origin, some of the most determined and obsessed alienators I have come across have been male and they have demonstrated what I consider to be totally unrealistic expectations about how women should behave - in particular, how they should run their homes, look after their men and treat their children. Berns's research also alerts us to the self-serving use by some fathers of

allegations of parental alienation against mothers, in order to defend allegations of sexual and other abuse against themselves. Care must be taken to not dismiss allegations of abuse too readily. They could be genuine. The child could be at risk.

## **SUMMARY:**

I note the results of Professor Nurcombe's retrospective research, based on his own clinical cases, and his summary that there are no significant differences between marked cases and the rest in regard to age and sex of child, number of children, years of cohabitation, years after separation at which the alienation occurs, or maternal history of sexual abuse. I find myself needing to ask whether perhaps these subgroups are really parts of the same group at different stages along a continuum of severity which, when unchallenged, leads over time to complete alienation, as in the severe or marked cases. Such an explanation would not explain the trend for marked cases more often to involve male children, but perhaps a larger sample would not demonstrate this greater male involvement. It would also not explain the fact that the number of years after separation does not seem to affect severity. Clearly, we need more research.

In addition, Professor Nurcombe's summary indicates that marked cases are more likely to involve alienation by the mother and allegations of sexual abuse. I wonder if this result is reflecting a tendency which I have observed in

my own practice, for allegations of sexual abuse to often emerge "down the track" after other attempts to thwart contact have been unsuccessful. I have further noted that in these cases there is often a tendency for the allegations to not only emerge after there has been litigation ongoing for some time, but also to become more bizarre over time. In one case which springs to mind the paternal grandmother and various other members of the father's family were also accused of sexually abusing the children in question. This in itself is not especially unusual in my experience. What did end up being somewhat unusual was that it was claimed that the children were also being taken by the father during contact, to be abused by various other men who were members of a paedophile ring, and that one of the members of this ring was in fact the Child Representative. Interestingly, these two children were ultimately placed with the target parent, the father, and when the family was reviewed by me some six months or so after placement, the mother had split up with her new husband and was saying that she did not know what got into her and that she believed the children were doing well with their father. She relocated to facilitate more involvement with the children, and as far as I know, the dispute has gone away.

I would like to leave you with some suggestions which I think are important, and hope are helpful:

- Be alert to the early signs of alienation and act quickly and firmly, making it clear that sanctions available to the Court **will** be used if the Court's authority is ignored;

- As much as possible keep cases which have the hallmark of alienation, before the one judge;
- Think outside the square. Think laterally and creatively in terms of solutions for children caught up in the parental alienation process;
- Be courageous. Change of residence will be the most appropriate course of action in some cases and it might involve some short term emotional trauma for the child;
- When alienation is suspected, no matter how serious the allegations, do not stop contact with the target parent unless there is clear incontrovertible evidence that the child is at risk. Even under these circumstances, there might be some justification for supervised contact. Once contact ceases, even for a short time, it is usually difficult to ensure that it resumes without the child enduring considerable emotional trauma. In my experience, such cessation of contact is often "the thin edge of the wedge";
- Don't fall for the alienator's scheme of stalling for time - especially when contact with the target parent has ceased;
- Ask questions of your expert witnesses. If you know and respect your report writers then err on the side of trusting their judgement. Much of

what they convey to you might have to be implied, especially if there are concerns about repercussions for the child if their comments are reported;

- On the other hand, be careful about accepting the expert evidence of professionals inexperienced in forensic work or who have seen only one parent;
- Remember the potentially lethal nature of parental alienation in its extreme forms, when being perpetrated by an obsessed alienator;
- Make it more a matter of course than an exception to require children to be within the precincts of the court when a decision is being delivered which could bring about a change of residence;
- And, do your best, but in the end don't be too hard on yourselves. We can only work with what we're given. Although we'd all like to fix every situation for every alienated child, we are going to be able to succeed only to the extent allowed by the personalities of the parents and the damage already caused to the children.
- However, having said that, if you **are** into self flagellation, I could recommend a recent article by Richard Gardner entitled "The Role of The Judiciary in the Entrenchment of the Parental Alienation Syndrome". I downloaded my copy from Gardner's web site on the Internet.

## JUSTICE LE POER TRENCH'S PAPER

### INTRODUCTION:

Discussions about parental alienation and intractable residence disputes lead quite naturally, I think, into a discussion of shared parenting. Tony Hobbs, chartered clinical and counselling psychologist, Department of Law, University of Keele in the U.K., states in the May 2002 edition of the journal, *Family Law*, that there is "a need for radical reform in the way that the courts award residence". He suggests that just as alienating parents use a process of triangulation, whereby they deflect anger towards the other parent via their relationships with their child or children, they also use the Court in a similar act of triangulation.

The use of the courts to overcome impasses in intractable disputes could, Hobbs asserts, be stopped by altering the status quo. He suggests that following separation, rather than requiring court action for contact between the children and either parent to be maintained or commenced, contact should be shared **unless** there is a valid reason to the contrary, court action being utilised only in cases where such a valid reason to prohibit or restrict contact exists. Once established as the legal norm in society, such a presumption of shared parenting could, according to Hobbs, be expected to benefit the emotional wellbeing of the vast majority of children (and their parents) post separation; to reduce drastically the number of legal disputes over children; and to improve the ability of children of separated parents to

relate more successfully to their own offspring. However, he also suggests that courts and associated services would need to be capable of swift action in order to determine the veracity of allegations suggesting that a shared arrangement is not appropriate. He expresses the hope that the system would be so freed up that there would be sufficient resources available to allow for this necessary swift response capability. These are perhaps fanciful suggestions, but perhaps not.

## **UNITED STATES OF AMERICA:**

In the United States, the situation in relation to physical custody of children is changing rapidly and it varies from state to state. As you would know, the Americans distinguish between joint legal custody and joint physical custody. Joint physical custody refers to the time the child spends with each parent, such time varying from being relatively moderate, say every other weekend to half the time. A wide range of time sharing options are utilised, such as alternate two day periods, equal division of the week, week about, alternate months, and even alternate six month periods.

Thirty-five states plus the district of Columbia have statutes that explicitly **authorise** joint custody as a presumption or strong preference, joint custody being joint legal custody, which may or may not include the presumption of joint physical custody. Where the latter applies, parents are faced with having

to rebut the presumption of joint physical custody in much the same way as recommended by Hobbs.

Obviously, this would probably be an onerous task for a litigant in person and this was one of the reasons given to me by a well known Oregon family lawyer for not having a joint custody presumption in states such as Oregon and California, where the power of the individual as opposed to the State is held especially dear.

Ultimately, in the U.S.A. as here, the best interests of the children remain the paramount concern, but the spirit of many of the relevant statutes is clearly to emphasize the ongoing involvement of both parents in every aspect of parenting, including physical care.

## **REVIEW OF LITERATURE:**

Justice Le Poer Trench has provided you with a well researched overview of literature and evidence on the subject of shared parenting, with particular emphasis on joint physical custody. As far as I can see, the main points of interest to emerge from these studies are the following:-

1. Boys benefit from high level contact with non-residential fathers when there is a low level of conflict, but are harmed in high conflict families;

2. Adolescents' wellbeing is enhanced by dual residence arrangements in low conflict families, but reduced by dual residence in high conflict / low co-operation families;
3. More frequent child - non-residential parent contact is associated with improved child support compliance. Since inadequate income is a major cause of harm to children in separated families, this could be a very significant plus in favour of more equitable shared residence arrangements;
4. Joint custody can be a very positive solution for families where both parents chose it voluntarily and where it suits the child, but when imposed by the court the children can suffer serious psychological injury.

## **ARGUMENTS IN FAVOUR:**

Proponents of shared residence claim the following advantages:-

1. **Increased satisfaction for children** - a study by Susan Steinman, "Joint Custody: What We Know, What We Have Yet To Learn and The Judicial and Legislative Implications in Joint Custody and Shared Parenting" (pp111, 115 Jay Folberg Ed., 1984), found that with joint custody children received a clear message that they were loved and wanted by both parents and that they had a sense of importance in their family. They had

the knowledge that their parents made great efforts to jointly care for them, both factors being important to their self esteem. They also felt they had the psychological permission to love and be with both parents, effectively eliminating loyalty conflicts only seen in children who are caught in the cross fire of their parents' ongoing battles. Also, the potential for Parental Alienation Syndrome is said to decrease with shared parenting arrangements. My own experience is that children often say, "It's fair" – to have half the time with Mum and half with Dad.

2. **Less paternal drop out.** Shared residence is argued to give fathers greater opportunities to remain active in their children's lives and to make important parenting decisions, thereby commanding greater respect from their children.
  
3. **Less re-litigation** due to increased satisfaction. In 1986, Debra Anna Luepnitz found that 56% of parents with sole custody decrees re-litigated some aspect of the award at least once, but that none of the parties to joint custody agreements returned to court. Justice Le Poer Trench has questioned the validity of these results.
  
4. **Increased compliance with child support orders.** This is an important issue, since inadequate child support is associated with poverty in female headed households and also with decreased self esteem and aspirations for children. Studies have demonstrated that joint custody awards are positively and significant correlated with increased child support payments.

The explanation is that these types of shared parenting orders reduce the resentment and anger fathers often feel towards custodial mothers, and therefore lessen their need to punish mothers by withholding support.

5. **Increased independence for mothers.** Although shared parenting results in women having to give up some of the control and power they would normally exercise over their children, as well as their autonomy as parents, it also potentially frees them from dependency on their ex-partners, which at times stifles them as well as their children.

6. **Decrease in the divorce rate.** Some devotees of shared residence argue that the possibility of joint custody may actually keep parents from divorcing because fathers, in particular, permit themselves to grow more attached to children when they do not fear a complete break with them on divorce. With increased emotional ties, divorce becomes less likely according to this way of thinking.

Joint custody presumptions, which may be rebutted with evidence of abuse or extreme conflict, assume that it is in the child's best interests to have two parents. The research, unfortunately, is quite equivocal on the subject.

## **RELEVANT CASES:**

Justice Le Poer Trench has referred us to landmark decisions involving reference to shared residence:

1. **In Padger and Padger**, various requirements for shared parenting orders are noted, including good communication, trust and mutual co-operation. It struck me that such a standard would effectively eliminate shared parenting for the vast majority of families I see who are litigating children's issues, and many would say that's a good thing. However, I am of the opinion that **whatever** orders are made in relation to these people, arrangements have a high risk of failing to protect the child or children from parental conflict.
  
2. **In Forck and Thomas**, the importance of geographical proximity is raised, as well as the fact that re-partnering of one or both of the parents can destabilise joint arrangements. I would add that re-partnering has a capacity to destabilise any arrangement and frequently destabilises more commonly ordered arrangements such as residence to one parent and regular fortnightly weekend contact to the other.
  
3. **In the case of B and B** in 1995, it seems to me, as a non-lawyer, that the Full Court reaffirmed that children should have a meaningful relationship with both parents and that both should be involved in their care, but also indicated that if countervailing factors were considered to over-ride this factor, to ensure that the best interests of the child remains the principal of over-riding importance, then the former could be disregarded. In effect, there was affirmation of the importance of considering every dispute

according to its own unique combination of factors – something I believe every good independent report writer and every good judge already does.

## **PRE-CONDITIONS:**

I note Justice Le Poer Trench's reference to the pre-conditions for workable joint custody orders according to Shepis and Formica. These are:-

- geographical proximity;
- mutual trust;
- the ability to communicate;
- the ability to supervise;
- the ability to co-operate;
- the ability of the child to cope; and
- compatible parenting values.

Apart from the pre-conditions of geographical proximity and the child's being able to cope, I am unable to relate these criteria to most of the people I see who are looking for a way through the Family Court system.

## **THE DILEMMA:**

Justice Le Poer Trench finally posed the dilemma faced by the Court. He makes the point that the Court rarely makes Orders to address parental conflict at the same time as it makes final Orders which will expose children to

that conflict. He asks, "**WHAT CAN A JUDGE DO IN SUCH A CASE?**" I have a few ideas.

It is my opinion, although I can't back it up with statistics, that in the matters which litigate all the way to a trial, we are looking at two parents where one or the other or both is more often than not personality disordered. Add to that co-morbid factors of mental illness such as depressive, anxiety and psychotic disorders, drug abuse, and violence, and the chance of these people really co-parenting in a shared residence arrangement with relatively equal time division, is very slim indeed. Unfortunately, I don't think it goes without saying that they are likely to co-parent any more effectively in a more accepted residence-contact type arrangement.

The oft-quoted 1989 research by Johnston, Kline and Tschann, is used to justify not even considering a shared residence arrangement in families assessed as having highly conflictual parental relationships. However, care needs to be taken to understand the meaning of **conflict** in the terms of this particular research. Parental conflict was measured by a behavioural scale comprising eighteen items to demonstrate how disagreements between the parents were managed during the twelve months prior to administration of the scale. The scale was administered to both parents at the commencement of the research and also at follow up some two and a half years later. Behaviours which influenced the rating included "verbal aggression", such as insulting comments, swearing, sulking, stomping out, doing something to spite the other, and threatening to hit, as well as "physical aggression", such as

throwing or smashing objects, pushing, slapping, kicking, beating up, threatening to attack and actually using a knife or gun. The researchers found that not only was there a direct relationship between the level of parental conflict and the children's level of emotional and behavioural disturbance, but children were also more disturbed as transitions between parental residences increased. They argued that more verbal and physical aggression was generated between the parents when the children had more frequent change-overs of residence. They also found that the more often children in distressed families had contact with both parents (at the same time), the more problematic their adjustment was, regardless of the level of inter-parental aggression.

My view is that the best thing the courts can do in many of these cases, and I certainly would not suggest that it should be in all of them, is to keep these people apart - especially when the children are around. We know that it is a positive thing for children post parental separation to observe their parents co-operating and co-parenting. However, with the kinds of people I am talking about now, my strong belief is that it is better for the children to **never** see them together than to see them bickering, abusing each other and possibly even being physically violent towards each other. Contact centres have had a wonderful role to play in assisting with this, and it is to be hoped that the kind of support they can provide will continue to become more available and more sophisticated in its professionalism.

I do not think we should give up on shared-care. Consider a situation in which Orders require children, for instance, to have a week about shared residence arrangement which involves their being dropped at their school by one parent on a Monday morning, collected that afternoon by the other parent and dropped to school on the following Monday morning. If:-

- the parent who is the residence parent attends all activities with the child that week;
- both parents arrange separate appointments with teachers and receive separate report cards and notices from the school and in relation to extra-curricular activities;
- and there are orders as to the extent and nature of extra-curricular activities, with both parents to support those activities;

then I suggest the parents need not be in contact with each other and consequently should not experience greater conflict, than if there were pick-ups and drop-offs at school every fortnight on a Friday afternoon and Monday morning. The major significant difference relates to the extra-curricular activities and the need for agreement on same. Truly creative orders could address these difficulties.

## **MY RECOMMENDATIONS FOR SHARED RESIDENCE:**

I have recommended evenly divided shared residence on a number of occasions now. Some applications which I think are most appropriate include the following:-

- With pre-school children, where both parents present as equally viable primary care givers, but where the chance of resolution is slim and the matter is at an interim stage. In these cases, it seems to me that unless both parents are kept involved in the child's life to a significant degree, the attachment of the young child to one parent might be compromised, in which case a decision with regard to residency is being made on grounds which are not tested and often heavily influenced by the opinion of a sole Family Report writer. I for one have never sought a de-facto judicial role. Recommending a relatively equitable shared residency arrangement is a way of keeping both parents "in with a chance", whilst also being able to review how each copes with significant blocks of time living with the child. This evidence can then be provided to the court should the matter proceed to trial.
  
- Other situations in which I have recommended shared arrangements have been those in which it is my opinion that the children are basically being perceived as prizes, in that parents who are still in the throes of disputing property see them as the key to obtaining the lion's share. In some of these cases, it has been my view that removing the children from the financial equation will force resolution of property issues according to other criteria, and by so doing, take the pressure off the children.
  
- In my view, certain criteria should exist before truly equitable shared residence is even considered for school-aged children.

- Parents should live in relatively close proximity to each other and to the children's schools, extra-curricular activities and friendship groups.
- They should also possess a certain level of financial security - sufficient to allow for virtually all of the children's needs to be met in both households. I have often said in reports that children should not have to "carry their swags" from one house to the other. Virtually everything except the school uniform which goes back between the two houses, and certain school requirements, should be provided at both residences.
- Issues such as where the children will be educated, what religion they will be brought up in, the name they will be known by and which doctor will treat them, might also need to be addressed in Orders. However, I do not see that this differs significantly from the situation with other types of residence and contact arrangements, where long term parenting issues are jointly decided.

We know that people who make their own residence and contact arrangements are often able to sort out co-operative shared parenting arrangements which suit both parents and which work effectively for the children. In some of these arrangements, the children do go between houses - sometimes in a strictly organised manner and at other times on a more ad-hoc basis. The reading I have done on the subject does not suggest that the children are especially harmed by the instability or inconvenience,

provided both parents are capable of meeting their basic physical, educational and emotional needs and provided the children do not become embroiled in the conflict.

If there is nothing inherently destructive about shared arrangements and the major concern is the conflict, then it seems to me that the primary issue for the court is how to manage and hopefully reduce that conflict. I believe there is a number of ways to do this.

One strategy to consider is the making of orders which provide a means of negotiating disputes which might arise in the future. Possibilities include attendance at counselling or mediation, or even arbitration, arrangements being made through the parents' respective solicitors if necessary. I agree with Justice Le Poer Trench's suggestions for adjourning and making interim rather than final orders at times and I have sometimes recommended this. I have also recommending maintaining the involvement of the Child Representative to follow up the success or otherwise of shared arrangements.

Also, we might need to educate people on the art of shared parenting. No doubt this is already happening in parent-training programmes, but perhaps it should be addressed more specifically. One step-mother told me she had bought so many replacement lunch boxes and drink bottles that she had an image in her mind of a room at the natural mother's house which was filled to the ceiling with lunch boxes and drink bottles. Arrangements often break

down over simple issues like this, which might be remedied with training in organisational skills.

I am very interested to note Justice Le Poer Trench's reference to research by Kelly and Emery – "Children's Adjustment Following Divorce: Risk and Resilience Perspective". This research suggests that the way to maximise the chance of success with shared parenting is to contain parental conflict, promote authoritative relationships between children and both parents and enhance economic stability. Kelly and Emery claim that even in high conflict families children can thrive in "parallel care" – that is, where arrangements allow each parent to parent to a significant degree and to do so independently of the other parent. This certainly ties in with my thinking on the subject. It also ties in with what we know about people's adjustment following the end of a significant relationship. Emotional disengagement promotes better adjustment. At times ex-couples need total physical disengagement in order to achieve the emotional detachment necessary to promote their own healthy emotional development, this also being necessary for the healthy emotional development of their children.

Of course, unforeseen difficulties can always arise later in relation to such matters as re-partnering of the parents or desire by one or the other or both to relocate outside an agreed residential area, but such difficulties could arise no matter what residence and contact arrangements are in place.

Ultimately, application of common sense is most important in making the best decisions regarding residence. No amount of psychological research can substitute for a careful consideration of the combination of factors peculiar to the family in question. For instance, if the children are school aged and the mother lives at Redbank Plains whilst the father lives at Northgate (about 40 to 50 kilometres away), a week about arrangement is most unlikely to work. However, a shared residence situation whereby the children live with one parent during the week and spend all weekends or two out of three weekends with the other, is likely to work, especially if the residence parent likes to party on weekends. The children could even travel by train on the Ipswich-Caboolture line, with or without a parent as chaperone if the car breaks down.

In short, my view is that some of the resistance to shared parenting is unreasonable, in that it seems to assume that Orders for residence and contact of the more standard variety are in all cases working in a way which ensures that the best interests of the children are catered for. This is clearly not always the case. Perhaps there needs to be more creativity in coming up with tailor-made solutions which protect the child's right to have close, meaningful relationships with both parents in as conflict-free a manner as possible.