

The Children's Cases Project in the Family Court of Australia: A study of impacts on parenting capacity and child well being¹

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The Children's Cases Project: Background

In February 2004, the Honourable Alastair Nicholson, then Chief Justice of the Family Court of Australia issued a new Practice Direction for children's cases presenting to the Court. This new approach, The Children's Cases Project (CCP), focuses on the interests of the child and the parents' or caretakers' proposals for the future of the child, rather than the past history of the parties' relationships.

The Children's Cases Project (CCP) set about providing a supportive, consensual and less formal process for separating parents to follow, to maximise their chances of settling their dispute effectively, and without full adversarial armoury. A key feature of this process was its endeavour to provide a faster resolution of the presenting matters, facilitated by less formal and less costly procedures.

The essence of the reform goes beyond the expedition of settlement, to address and accept a new order of social responsibility for ensuring that parenting relationships and family adjustment after separation are not further eroded through adversarial processes. Indeed, a resolve to re-focus parents on the developmental issues at hand is dominant in the CCP model, both in its pre-court processes and in the active child-focused partnership between the social science expert and judge allocated to each case.

The current study

¹ The full research report can be downloaded from the Family Court of Australia's website.

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This small study explored impacts of this less adversarial approach on parenting and post-separation family adjustment, for parents and children. Specifically, it sought to explore those variables most likely to buffer children's adjustment to conflicted divorce: the nature of the co-parenting relationship and parents' capacity to provide less acrimonious care for their children post court⁴.

Methodology

Confined by time and an absence of baseline data, a comparative, retrospective design was formulated around a semi-structured personal interview. The aim was to contrast the experiences of parents who participated in the Children's Cases Project (n=49) with those of a similar group of parents who had experienced the mainstream Family Court process (n=35). Specifically, the interview probed their functioning as parents, their relationships with their ex-partner and with their children, three months post court. The interview was structured around the concepts of the post separation parental relationship, acrimony, conflict management, and perceptions of children's well-being, together with perceptions of change agents within the overall process, and included three formal scales.

The proportion of applicants to respondents in each group was similar, with 59% of applicants in the CCP group and 56% in the Mainstream group. Demographics and the complexity of presenting matters were similar for both groups.

Summary of Findings

The resulting data suggest significant differences in core outcomes, and point to aspects of the CCP Court process that stemmed the flow of damage experienced by litigating families within an adversarial system.

Notwithstanding the limitations of a small retrospective design, both the qualitative and quantitative data here suggest that the CCP is associated with greater protection of parental capacity than is the case with the Mainstream approach. As defined by the quantitative data and narratives of participants in this study, the CCP can be summarised as a process that created "no further harm" to the nature of their co-parenting relationship, and to their children's adjustment, post court. In some cases,

⁴ As summarised in McIntosh, J. (2003)

the CCP process fostered a degree of improvement in the psychological hostility and acrimony felt for the ex-spouse, as their child's other parent.

The dominant experience of parents who participated in the Mainstream court process was significantly different in a number of respects: As a group, they experienced the court process as neither reparative nor mitigating of further damage to the co-parental relationship. Indeed, they reported further antagonism to an already damaged co-parental capacity.

With respect to conflict, both actual and psychological, three months post court, the CCP group reported significantly lower acrimony, and lower conflict, in contrast to the Mainstream court group. Associated with these findings, the CCP group reported better emotional functioning of their children, and far greater satisfaction of parents and children with the post-court living arrangements.

The qualitative data support a picture of the CCP process "reaching" the parent, and their remaining parental capacities, during a time of significant stress, to redirect their co-parenting behaviours and attitudes. CCP parents reported a substantial and predominantly positive impact of the 'person of the Judge', who was seen to be present as a benevolent rather than a punitive authority figure in the case. The dominant experience of a humane and supportive CCP Judge contrasted sharply, indeed almost completely, with the experience of the Mainstream Judge. In a fundamental re-interpretation of Judicial posture within a CCP case, the CCP Judge was predominantly experienced as a respectful, child focused and supportive person, enabling a higher level of reflection, and mitigating against attack - counter attack processes by parties and their legal representatives.

Ultimately, reactivity and defensive exclusion were more successfully kept at bay through such a process, allowing more room for the mind of the parent to be present. In this sense, it appears that the CCP pilot has successfully traversed a middle ground between the application of 'black letter law' and mediation processes which are inherently therapeutic. While a significant finding in its own right, this equally points to the importance of the personality and skill of the Judge, in being able to sustain an educative stance and a much higher level of personal connection than has traditionally been the case.

It might be said that, through the eyes of the parents who participated in this study, the core impacts of the Children's Cases Pilot process centred around the creation of "no further harm" to their co-parenting relationship, nor to their children's adjustment. Importantly, they report lower conflict and acrimony with their former partner post court. In many cases, it is a process that seems to have allowed a degree of recovery from the psychological hostility felt for their child's other parent.

In the end, the study provides cautious optimism for the Children's Cases Project process, from the perspective of its capacity to better respond to and safeguard the psychological vulnerabilities of the co-parental relationship, post separation than has been the case in the traditional, adversarial Family Court process. Through its active child focus, personal attunement, accessible, educative and flexible approach, the Children's Cases Project was more likely to protect and promote the very same qualities in parents who attended it.

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