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Running head: REASONS FOR DISPUTES IN HIGH CONFLICT FAMILIES

**Reasons for Disputes in High Conflict Families**

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### Abstract

Ongoing high conflict disputes between parents about the arrangements for children after parental separation are costly for parents and for the court system, and damaging to children. This study involved 80 parents (45 families) who attended a contact orders program following disputes over contact, mostly by court order; 20 parents participated in an in-depth interview. The key issue in the disputes for these parents was concern about the child's safety and well-being in the care of the other parent, with over half the children involved under the age of 5 at separation. A second issue was children's resistance to contact, especially on overnight stays and where the child was not close to that parent. Other issues such as the presence of new partners and disputes over money appear to have inflamed the dispute but were not the key reported reasons for the dispute.

Key words/phrases: Parental separation, high-conflict families, contact disputes, child protection.

### Reasons for Disputes in High Conflict Families

Litigation is expensive for clients who are represented by privately funded lawyers. It is also very stressful. It should not be surprising therefore that litigants in family law proceedings who proceed to trial and adjudication are typically “one-shot” litigants. However, a minority of parents are repeat players (Johnston, 1994). They engage with the court system over and over again. For these parents, disputes about the parenting arrangements are typically followed by complaints about contravention. There may be legal disputes about child support as well. As long as both parents continue to be involved in caring for their children following parental separation, there are endless further opportunities for conflict about the children.

The issue of ongoing disputes between parents is an important one for both governments and court administrators. Repeat players in the family court system, many of whom are likely to be unrepresented, consume a great deal of time for the courts (Neff & Cooper, 2004). Self-represented litigants in particular impose added burdens on judges. Time and effort devoted to the repeat players delays the opportunity for others to have their “one-off” cases heard by a judge. The high conflict cases thus raise issues about access to justice for other families who are waiting behind them in the litigation queue. They also raise issues about the impact of these disputes on the children involved. There is a widespread acceptance that children suffer from ongoing conflict between their parents and in some cases the harm can be long-term and very serious (Ayoub, Deutch, & Maraganore, 1999; McIntosh, 2003; Trinder, Kellet, & Swift, 2008). The diminution of conflict between parents following separation ought therefore to be a primary goal for public policy.

While there is an increasing focus on “high conflict” families, Birnbaum and Bala (2010) observe that there is no clear or workable definition of “high conflict” in the social science literature,

that research on this area is largely theoretically based, and that there is a lack of empirical research. They note also that the term has been used to describe a variety of cases that ought properly to be differentiated, including cases where there are high rates of relitigation, anger, distrust, difficulties with communicating about the children, serious domestic violence issues and alienation of a child. There are also various different aetiologies of conflict between parents after separation (Hopper, 2001).

While contact<sup>1</sup> is not the only issue on which conflict may occur, it is a major source of conflict and the one most likely to lead to further involvement with the court system if the dispute cannot be resolved. In the last ten years, Australia has developed special programs to assist families where there are high levels of conflict. These are known as Contact Orders Programs. They are designed to assist families where one parent has made an application to the court seeking a remedy for contravention of orders for a child to spend time with a parent. Admission to the program is usually by court order. The structure of the program differs from one place to another but generally the program uses a variety of child-focused interventions including group work, education and counselling (Attorney-General's Department, 2003). In this article we present empirical findings concerning the dynamics of the contact disputes that brought one group of families into such a program.

### Method

Participants were recruited through one of the first and now well-established Contact Orders Programs in Australia, the *Keeping Contact* program in Parramatta, Sydney, New South Wales. This program is run by UnitingCare, a mediation and counselling service, known at the time as Unifam. Baseline data were collected for 80 parents involved in the *Keeping Contact* program and in-depth face-to-face interviews were conducted with a sub-group of 20 parents after they completed the

program. The interviews explored the history and nature of the parents' disputes, and their experience of the court system, including the contact enforcement system.

### *The overall sample*

Following ethics approval from the University of Sydney Human Research Ethics Committee and discussion about the ethical and practical issues with UnitingCare staff, baseline data were collected from 80 parents referred to *Keeping Contact* who agreed to complete a preliminary survey at the time of their first visit after acceptance into the program. The questionnaire comprised 30 questions asking about their reasons for coming to the program, their perceptions of the issues in dispute (including any earlier court action and orders), their perceived relationship with their former partner and with the children, the current contact arrangements with the children and any changes since separation, as well as their views of what the children wanted and their own expectations of the *Keeping Contact* program.

These 80 parents were from 45 "families", including 35 "former couples" and almost evenly split between resident parents (39, 49%) and non-resident parents (38, 47.5%); a further three (two fathers and one mother) were in shared parenting arrangements. Most resident parents were mothers (32/39) and most non-resident parents were fathers (33/38). The average time the parents had been separated before they went to court was 5.7 years ( $SD = 2.9$ ); the median was five years. Just under two-thirds had been married (65%). Of those who had not been married, two had never lived with the other parent.

Three-quarters of the 80 parents reported that their referral to UnitingCare's *Keeping Contact* program had been court-ordered or "court-recommended". Some indicated that their former partner had been ordered to attend the program but that they were there to assist in resolving the dispute. The other parents said they wanted to avoid further court action or to sort out their problems.

There were 82 children involved in these disputes. Most families had either one child ( $n = 20$ , 44%) or two children ( $n = 18$ , 40%); the others had three ( $n = 5$ ), four or seven children ( $n = 1$  each). The majority of the children were very young when their parents separated. Over half were under 5 years of age (60.3%) and more than a third (26/72, 36%) were 2 or younger; the ages of children at separation were not known for 10 children. Nearly 90% were under 8. Their average age at separation was 3.8 years ( $SD = 3.8$ ) and 9.0 years ( $SD = 3.2$ ) when their parents were interviewed after the disputed contact.

Given the high level of self-reported conflict between the parents ( $M = 4.2$ ,  $SD = 1.15$  on a 5-point scale, where 1 = 'very little conflict' to 5 = 'a lot of conflict') and the fact that they were referred to the *Keeping Contact* program because of their inability to resolve contact issues, a considerable incidence of reported violence might be expected (Kaganas, & Day Sclater, 2004; Moloney et al., 2007). One parent in just over a third of the cases (17/45) indicated they had been or felt threatened by their former partner but only seven of the 80 parents indicated they had a current restraining order (Apprehended Violence Order) against the other parent.<sup>2</sup> Six were resident mothers, and the other was a non-resident father. Two other parents said their applications had been unsuccessful and one father said the application against him 'failed'. In 15 cases at least one parent indicated they had major conflicts with the other parents 'often' or 'sometimes', and in another 7 cases, serious verbal arguments at this level of frequency.

#### *Interview sample*

In-depth semi-structured face-to-face interviews were conducted with 20 parents after they had completed the program. The interviews explored the history and nature of the parents' disputes, their experience of the court system, including the contact enforcement system, and their response to the program of therapeutic mediation. There were 12 fathers and 8 mothers including two former couples

in this interview group. Nine fathers were non-resident parents, two were in shared care arrangements, and one was a resident father. Most of the mothers were resident parents or in shared care arrangements. Just over two thirds of the interviewees had been married (14/20), a similar proportion to the overall sample.

The 26 children who were the subject of the interviewees' disputed arrangements were, like the overall sample, generally very young at the time their parents separated. Over half ( $n = 15$ , 58%) were under 5, and one in five were infants under 12 months of age. At the time their parents went to UnitingCare, they ranged in age from 1 to 17 years, with an average age of 8.4 ( $SD = 3.6$  years). Eight were single children from the relationship. The precipitating issue in half these cases was fathers wanting overnight contact with their children. In some cases, fathers' claims for overnight stays when the children were older were resisted by mothers and reportedly by some children. Seven children had not had any overnight stays with their father but under the agreed arrangements or orders, the amount of contact was to increase and to include overnight stays as they got older.

Overall, the interview group of parents and their children were similar to those in the overall sample who were not interviewed; there were no significant differences in any of the key background factors, including the number and age of their children and the time since separation, or the presence of new partners or the level of conflict. The interview data provide the basis for some deeper qualitative analysis of the patterns of the disputes and underlying issues, especially among those with a higher continuing level of conflict. The results that follow are based on both qualitative and quantitative analyses of the interview and survey responses and include quotes from both the interview and survey data (derived from NVivo coding).

It should be noted that these data have the following methodological limitations. They are self reports, without any verification or corroboration of their content or accuracy. The participants are



not representative of all high conflict separated parents, but were recruited from those parents attending a contact orders program and are not necessarily representative of those attending the program, being a sample of parents who agreed to participate in the survey or interviews. Nonetheless, self-report data are valuable in their own right, providing a legitimate (and the only) means of exploring the parents' beliefs, feelings and perceptions, which are presumed, in turn, to be driving the conflict and underpinning their behaviour.

## RESULTS

### What was the substance of the disputes?

The contact dispute that led parents to be referred to the *Keeping Contact* program typically involved breaches and contraventions of previous court orders concerning contact, often requiring further action for enforcement of orders. The disputes were generally quite complex, with claim and counter-claim about the denial of contact or breaches of the contact orders or agreed arrangements. In two-thirds of the cases (31/45), at least one parent indicated that contact (face-to-face and telephone) had been denied. In 27 of these 31 cases, the parent complaining about denial of contact was the non-resident father, but three were non-resident mothers. One father was in a shared care arrangement.

Both the fundamental nature of the parenting arrangements and the frequency, type and flexibility of the contact arrangements were commonly disputed issues. Seven cases involved contested residence and four involved relocation disputes. Disputes about the frequency and flexibility of the contact arrangements were even more common. In just over half the cases, one parent was seeking more time with the children (24 cases, 53%) and in about a third (16 cases, 35%), one parent was wanting more flexible arrangements; flexibility and increased time were joint issues in 12 of these cases. Some parents wanted extended hours or days, especially on holidays, or more

telephone contact when the children were not with them, and others wanted (more) overnight stays. In eight cases, the dispute followed or revolved around disputed shared care arrangements.

The interview sample highlighted the particular claims for extended contact in relation to overnight stays and the role that played a role in escalating the dispute. In half of the interview cases, the precipitating issue was fathers wanting overnight contact with their children. Some of these children had not had any overnight stays with their fathers but under the agreed arrangements or contact orders, the amount of contact for some children was expected to increase and to include overnight stays as they got older. In some of these cases, the father's claim for overnight stays was resisted by the mother, and in others reportedly by some children. One father with young children about to start school said that his push for overnight stays triggered the dispute:

She argued that I'd never taken care of them in the entire years before we separated so I didn't know how. She said I was violent, abusive, drank too much, drove too fast, couldn't cook, couldn't clean, couldn't feed them. What else? Two heads. Green skin. Things like that.

**What were the major concerns of resident parents about allowing contact, or increased contact?**

Parents who were resisting the other parent's claims for contact or for more contact reported three main issues. These were concerns about the parenting style and capacity of the other parent, including allegations of abuse and neglect, the unsettling effect on children who had little or no relationship with that parent, and the presence of new partners Table 1 provides a brief summary of the frequency of the main concerns and issues coded from the parents' responses to the survey and interviews. As Table 1 shows, there were a number of cases in which there were other issues such as child support, or attributed personality problems.

*Multiple issues were the norm. A notable feature was the number of parents who cited*

*their children's wishes as the driving force or justification for their stance in the dispute. On the basis of the perceived wishes of their children, the parents who were resisting changes were mostly wanting to retain the status quo (16 cases) against a push for more time by the other parent; but in 12 cases one parent was wanting to reduce the amount of time and in several cases end the children's contact with the other parent. A significant number of parents (11 cases), however, said they were not sure what their children wanted. Concerns about parenting capacity and children's safety*

By far the most common reason for disputes about contact was that one parent had concerns about the other parent's capacity to look after the children, either in relation to concerns about the children's safety in the care of the other or issues about difference in parenting style. In only one of five of the cases were there no concerns about parenting style or safety nor allegations of child abuse and neglect by one of the parents. These concerns must be understood in the context that so many of the parents separated when the children were very young.

*Differences in parenting style and concerns over parenting capacity.* Both resident and non-resident parents commonly cited differences in parenting style as being central to the dispute, including differences in health care, schooling, discipline and tolerance for risky or more "adventurous" behaviours. This was an issue in over two-thirds of the cases (32 cases, 71%), though both partners mentioned it in only four of the 35 "former couple" cases. In most cases where both parents were participants, only one raised it as an issue. Nearly as many men as women indicated they had concerns about the parenting style and capacity of the other parent (20 mothers and 17 (mostly non-resident) fathers). In a few cases, parents in the interview sample, when specifically asked<sup>3</sup>, were willing to say the other parent was a good parent and loved the children despite differences in their parenting styles. For example:

Well I know she loves the children very much, that's why we have all these arguments about parenting styles. But I think she prefers to be a friend of the child as opposed to a parent who can be a friend. ... She has weird priorities. (Resident father)

In other cases, the parents' complaints concerned inappropriate parenting or other behaviours or the other parent's failure to provide the care they considered appropriate. For example, one mother said she was concerned about the father's "grumpiness" and his "dangerous abusive driving". Other parents complained about the children being allowed to stay up too late or the other parent not showing the level of care, consistency or interest in the child's extra-curricular activities they believed they should. Clearly several mothers were suspicious of the level of care their child received in the care of the other parent, particularly in one case where the child had some medical problems and in another where the father had gone against the mother's wishes and had the child immunised while in his care.. One mother was concerned about the father's physical care and his "anger management problems", "not loving the child" and scaring him.

He does not feed him sufficiently – he is 'starving' on return and very thirsty – whereas I always have food/drink in car. He scares Nick with threats of harm to him and me. Nick is scared of him. I worry that my son is being taught that it is OK to be scared of 'big people'.

Another mother implied that there were other suspicions in her mind about the child's physical care and his behaviour when he returned to her:

And then, when you see him coming back, he's more or less leaping... and the things go through your mind, 'what's going on, who's he with, who's looking after him, are his needs being met?' ... I don't know - because he goes on the Friday afternoon, he comes back in the same clothes Saturday afternoon. All you know is that he gets his bottom changed. You don't know when he's had something to eat, when he's had his last sleep or what was the

last thing that he's had.

Another mother was less concerned about the father's physical care of the children than his emotional "care", to the point where she thought the children need to be monitored when they were with him.

Physically, I've got no doubts he'll make sure that they're well fed and looked after, bathed and cleaned and stuff, but emotionally, no, I mean, he just doesn't realize stuff, he doesn't get it, you know? And the thing is my daughter's developing now and she's ten. You know she wants her privacy in the bathroom. He comes in. ...He just doesn't realize that.

A father too was concerned about his daughters being trained by their mother to keep secrets. This concern was reportedly supported by the child psychologist to whom he had been taking one of his daughters.

She [child psychologist] was saying that this perpetual necessity for secrecy is actually extremely dangerous for the girls because they're being trained to keep secrets, which can then leave them highly exposed to inappropriate activity by people who wish to prey on children. So that's another massive concern I'm dealing with. (Non-resident father)

*Allegations of abuse or neglect.* Overall, in over two-thirds of the cases (32/45 cases), one or both parties indicated that there had been allegations of abuse or neglect or inappropriate behaviours. In all except two cases, these had been reported either to the police or to the child protection agency (then known as the Department of Community Services or DoCS). In two cases, they were dealt with as part of the court process without being reported elsewhere.<sup>4</sup> More than half the allegations were made by mothers against fathers (19/32) or in one case, a member of the father's household. Seven fathers made allegations against mothers or in two cases a member of their household, including a new partner. There were mutual allegations in another six cases; these included physical abuse and

smacking, and concerns about the child's safety or emotional well-being, especially in relation to the denigration of the complainant parent.

There was a near-significant trend for children who were reported to the child protection agency or to the police ( $M = 8.8$  years,  $SD = 3.2$ ) to be younger when their families began the UnitingCare program than those who were not reported ( $M = 10.8$  years,  $SD = 3.1$ ;  $t(42) = 1.99$ ,  $p = .053$ ). There was no difference in the children's ages at separation.

In some cases, the concerns at face value were serious and related to behaviour that was perceived to be neglectful or abusive. Four cases concerned allegations of sexual abuse, including one mother who referred only to her suspicion about abuse and her insistence that any contact be supervised. In two cases, the mother alleged abuse by the child's father; in one case, the father accused the mother's new partner, and in another, a 5-year-old told her mother that her father's new partner's 11-year-old son had fondled her in the bath.

There were eight allegations of physical abuse. Five were made by mothers complaining that the father hit or smacked the children. This included a father who allegedly hit the children on the soles of their feet to avoid obvious bruising, and another who "was hitting into them and throwing them against a brick wall and holding them up by their faces". Two fathers complained about the behaviour of the mother's new partner, with one father alleging that "the step-father has hit the children and is verbally abusive, controlling and manipulative". Several cases involved mutual allegations about altercations at hand-over that led to the police being called when there was "a [physical] tug of war" involving the children or the child being removed and locked inside one parent's house.

Apart from the allegations of physical and sexual abuse, the largest group of complaints or allegations that were reported to either the police or to the child protection department involved

complaints about inappropriate parenting or behaviour that exposed the child to danger. The main issues here were the other parent's mental health, drug use, the presence of weapons, and emotional abuse which included exposure to violence and the denigration of the complainant parent.<sup>5</sup> Several mothers were concerned about the impact of the father's drug use on his driving or supervision of the child. They also referred to emotional abuse and children's exposure to domestic violence. One, for example, said her former partner "has a personality disorder and is mentally unstable". She said she and the children had been subjected to emotional abuse and that she was "anxious about their emotional/mental welfare".

I mean he's taken them into police stations and read statements out to them and they were sitting there and came back totally stunned.

Few of the parents who made the complaints said they had any resolution or even any follow-up from the police or from the child protection department. In most cases, the parent who was the subject of the allegation, mostly fathers, denied them and indicated that they had been vindicated by the outcome of the inquiry or by the lack of interest or by an "official" response by the police or the child protection department. In response to allegations of sexual abuse in one case, the accused father said that there had been police involvement, and after "reporting no issue on four separate occasions", the case had been dropped. Another reported that:

None of the allegations against me or the kids' grandparents were founded or true. They were made up stories.

One mother who reported her concerns to DoCS and the police on several occasions about the children being present where there were weapons and drugs said that she had been told she was "being paranoid – I have no real proof". Several others said they were "still waiting" for a response

from the child protection agency (DoCS). One father reported being told that his allegation was tactical or a “tit for tat” allegation.

I’ve spoken to DoCS and all that, they’re just saying ‘Well it’s tit for tat - she could say the same thing about you’. Yeah, she can but I’m living it. (Non-resident father)

The extent to which these parents’ complaints were a cause or a symptom of the dispute is unclear. Either way, there was a clear lack of trust between parents about the parenting capacity of the other parent - whether or not those concerns have a real basis and could be substantiated. There was, however, no significant association between allegations of abuse or neglect and denial of contact. In 20 of the 31 cases in which contact had been denied, there were allegations of abuse, neglect or inappropriate parenting (mostly against fathers) but there were also allegations in 11 of the 14 cases in which there was no denial of contact. There were only two of the 45 cases in which there was neither denial of contact nor allegations of abuse. Thus while child protection concerns were a reason for the conflict, they were not necessarily associated with a denial of contact.

#### *Children not wanting (more) contact*

One reason for the dispute given by parents in a very substantial number of cases was the children’s behaviour or reported views about the time they spent with their other parent. In 26 cases, parents, mostly mothers whose children lived with them all or most of the time, indicated that their children did not want more contact and in some cases wanted less (see Table 1).<sup>6</sup> In some cases, this was related to the interest the other parent appeared to show, especially when there were new partners or children involved, and in others the concerns were related to the reported lack of a meaningful relationship with that parent. Mothers in these cases referred to the unsettling effect the required contact with the other parent was having on the children.



*The unsettling effect on children who had little or no relationship with that parent.* Seven resident parents in the 45 cases referred to their children not wanting or refusing contact as one of the primary problems. These parents, all mothers, indicated that their main reason for being referred to the program was to try to support their children and obtain some resolution that met their children's needs. In all but one case, these children were the only child of the relationship. All the children were four years old or younger when their parents separated; six of the eight children were younger than two years of age and two were born after their parents separated. At the time of the dispute, most of the children were ten years of age or older so had lived with their father for only a small part of their lives, if at all. Two of these children had seen little of their fathers, and their mothers' comments indicated some resentment that they now wanted to re-enter their children's lives. The mother of a 6-year-old who was born after her parents separated said:

Her father didn't want anything to do with the child until she was 2½. ... I looked after the child, he did his own thing. ... She always doesn't want to go – she tells me I'm sending her away because she's bad. She thinks she has done something wrong to be sent there.

Another mother of a 13-year-old who separated from the father when the child was very young said:

The father has been out of my son's life for the last nine years. My son wants no contact with him. ... I'm here to support my son's wishes.

This matter went to court for the first time about 10 years after they separated.

In most of the cases (10/11) where mothers were reporting that their children did not want contact with their father, the mothers said they had talked with their children about the issues; so also did 15 of the 18 fathers wanting more time. In several cases in the interview sample, however, it was clear that it was the child's behaviour and the mother's understandable reaction to their child's distress that was the driving force behind her concern about the impact on contact on the child. Such

reactions were, however, not restricted to cases where the child had limited time living with the other parent. In the following example, a young child who had been in shared care was distressed about being separated from his mother in a stressful context where an AVO was in place and there was little or no communication between the parents. The mother reported the child's distress and the context in these terms:

James has become very clingy to me where, he's saying "no" ... I'd say to him "come on you've got to put your shoes on" and those sorts of things, and you know, "is there anything you want to take with you?" like a book or car or whatever. And he'd be saying "no". He's been like that for the past 2, nearly 3 months. So then I'd get him ready still, and he's still screaming no and "mummy, mummy, mummy" and then I'd walk him out, carry him to the door, then I'd make him walk down the stairs and we'd watch him walk over towards Aaron and where he's parking, that sort of a thing. And I also requested with Unifam that because of the AVO, we don't communicate, we do a -- basically got this communication book.

*New partners.* There were new partners for one or both former partners in 60% of the cases overall (27/45), and in two-thirds of the interview group (12/18 cases, 67%) (Table 1). While there was limited evidence overall as to the effect of new partners on the dispute in many of the cases in which only survey data was available, the interview data paint a somewhat different picture, indicating that it was a significant issue for some mothers and some fathers in that group. Five mothers and two fathers were quite explicit in naming the issue, and saw the new partner as having a significant adverse effect in several ways.

The most common complaint concerned the time the other parent spent with the children when the new partner was there, and the child's reported discomfort with this. In several cases, the children's resistance to contact, according to their mothers, was that the children were unhappy with the father's new partner or with the little time they were able to spend with their father, especially

alone. One mother spoke of both her own resentment and her daughter's unhappiness that her father was not spending time with her daughter when she was staying there:

I wouldn't mind him having as much time as he's got, but he doesn't spend it with her, and that upsets her a lot. It's usually his wife that has her, or she's in before and after school care... she would rather be here, and she's often said to me 'Why can't I just go there every second weekend? I want to be at home with you.'... She just says 'Well, what's the point? Spend the time with me and that's cool I'll come here, but if you're not going to spend the time with me, I'd rather be home with mum.'

Several mothers in the overall sample as well indicated their resentment that fathers were paying less attention to the children, not spending time with them and leaving the children in the care of the new partner although they were seeking more contact.

And particularly, with poor Michael, he goes to his Dad looking forward to seeing his Dad, and then he doesn't get to see him. You know, he sometimes comes home and says, 'I had a good time but I didn't get to see Dad'. (Resident mother)

He used to take them like to swimming lessons and stuff like that, that was really good in the beginning, until he moved in with her, of course. (Resident mother)

She'd gone from this carefree relationship with her dad, to one where there's now this third person who controls things and, I think she just wanted the old way back. (Resident mother)

Children's perceived discomfort with the new partner was reportedly referred to in family reports or the court process in several cases.

The second theme concerned the perceived threats that a new partner posed to a child's safety. One father was so concerned about the safety of his 5-year-old son with the release from jail of his former partner's new partner that he was seeking primary care of the child. New partners were not always seen as threats, however. In one case the presence of the father's new partner was seen as increasing the child's safety.

Until Susan came on the scene, there's no way that I would have felt comfortable with her going off overnight. Up until then he never asked for overnight contact – he knew himself it was too risky. If she couldn't wake him when he was in a drunken stupor ... and, if he was going to be drinking when she'd gone to bed, and she was with him, who knows what could have happened, you know?

... after we'd met Susan we thought, it's probably not a bad thing, because at least if he does get drunk, there's another adult there and, she seemed pretty sensible and intelligent. ... That's when we were happy for overnights to start because we knew that there was someone else around.

In this case, however, the mother reported that her relationship with the father's new partner deteriorated after he married again, and the child objected to staying there.

A third theme was conflict about the parent sleeping with a new partner when the children were there. Several mothers indicated that they were unhappy about the children being there when the father and his new partner were "sleeping together". For example, one mother said:

She just moved in and now he's having sex with her and she's staying overnight on the Thursday night access, and I'm going, 'Why don't you ask your dad if you could just not have her there?' But no, he has to have her there. (Shared care arrangement)

Another mother who said she was Catholic refused to allow the child to stay overnight with the father's new partner until after the father's wedding.

A fourth theme was that one parent was unhappy with the presence of the other's new partner, a complaint reported by both mothers and fathers. One mother, for example, commented on the father's change in behaviour after one of her new relationships became more serious. The father demanded to have their son overnight, which he had not done before. After three weeks, this proved too hard for him and he changed his mind. Conversely, several fathers interpreted their former partner's unhappiness about contact between the children and his new partner as jealousy and several referred to their unwillingness to have their child cared for by another woman.

Just the fact that I had another girlfriend and she didn't want someone else to become his mother or that's what she said.

A final theme in complaints about new partners was that the new partner had caused or exacerbated the conflict. Several mothers indicated that the new partner had caused the dispute by encouraging the father to have the children stay overnight and interfering in the "negotiations" and in the court process. One mother, for example, indicated that initially there had been very little conflict, mainly because the father's work did not allow him to see much of the children. After he re-partnered, however, she suggested that his new partner influenced him and that "a lot of the fighting and disputes during the court thing was through her meddling". She also believed that the new partner's motive for wanting more contact was to reduce child support payments.

It was not only fathers' new partners who were accused of fomenting conflict. Several fathers also stated that the mother's new partner had fuelled the dispute by being part of the court process and by initiating or instigating violence. Two fathers attempted to take out restraining orders against the new partner.

*Other aspects of the conflict between the parents*

While these three factors – concerns about parenting capacity, the child not having an established relationship with the other parent, and the presence of a new partner – were the main reasons given for arguments about contact, many of the parents had multiple grounds of conflict, often reflecting a long history of disputation. Finances, for example, were a common ground of complaint. Overall, complaints about money were raised more often by resident than non-resident parents (19 compared with 9 non-resident parents). Again arguments over money may be either a symptom or an additional reason for the overall disputes between the parents that flare in relation to contact. Such arguments are hardly unique to contact disputes but they may provide one more arena where hurts, blame and concerns over unfairness are keenly felt.

Disputes between parents are likely to be exacerbated and more difficult to resolve when one or both parents see the other as having perverse motivations and as engaging in unreasonable and unwarranted behaviours. Continuing high conflict is of course likely to increase and entrench those attributions. There were three themes that emerged in the parents' explanations for the behaviour of the other parent. These were a need for control, a wish to hurt, and mental health and personality problems.

In terms that were resonant with the feminist literature that links domestic violence with a sense of entitlement and need to exercise control (Dutton, & Goodman, 2005; Stark, 2007), several mothers who had sought or obtained restraining orders referred to their former partner as wanting to continue to have control or power over them. One resident mother, for example, explained his behaviour as a reaction to her own changed behaviour in standing up for herself since she had been to counselling and was in a new relationship.

Adam basically says something and he thinks I should obey it, so I understand why he's

abusive because I suddenly changed and I'm more assertive and I'm saying 'no'. So I understand why he gets upset. ... I think it's about power. He thought that he had control over me and then he discovered there was another man in my life and he feels the need to punish me. And it's all tit for tat and punishment stuff.

Other parents saw their former partner's behaviour as simply being a way to hurt them.

I don't even know why his father applied for the orders and the contact. I acknowledge that I would feel like this anyway, but I really feel that it's to get at me. (Resident mother)

Tara's not a bad person, she's a good mum, but she wants to use Amy to get back at me, that's all it was. (Resident father)

One father also interpreted his former wife's behaviour as a reflection of her unresolved feelings about their relationship and her resentment that their son liked his new wife.

One of the things that came out of the family report, she said to the psychologist that I am trying to destroy her life - that was her words. And when the psychologist mentioned this to me, I just laughed. I said, 'I have enough trouble keeping my life going without...'. It's just the furthest thing from my mind. And yet, in her mind, everything I do is out to get her and it couldn't be further from the truth. I just ... in all honesty, I just want her to get on with her life. Live. Be happy. Because if she's happy, maybe she'll make my life a bit happier, you know?

Thirdly, several parents referred to the other as being unreasonable to the point of being mentally unstable. One mother, for example, referred to her former partner's complaint to the child protection agency about her parenting as the "unsubstantiated ravings by someone with diagnosed

personality disorder narcissism/obsessive". In addition she explained his motivations as being controlling, greedy and unwilling to take responsibility:

Apart from total control and his pound of flesh, ex wants the house sold for as much money as possible and no responsibility for anything.

Several fathers also referred to their former partners as having had post-natal depression. The perceived efforts to alienate their children from them were explained both in terms of mental instability and a wish to hurt and control them.

*The financial and emotional impacts of the dispute*

The ongoing conflict between parents can exact a terrible toll both financially and emotionally. The legal costs varied from minimal financial outlays for those parents who were supported by Legal Aid throughout, to over \$1 million for one party in one case, and over \$300,000 for the other party. Sixteen parents had legal aid at some stage, and some parents were self-represented. One father was declared bankrupt as a consequence of the legal costs. Several parents who mortgaged their houses lost their home because they could not meet the expenses. One father, for example, who lost his house as a result of his high legal costs, said:

We have no money, like we live week to week, there is nothing left. Like we haven't got money for Christmas, birthday presents, our budget is so tight.

Parents in the interview sample were asked about the effect of the dispute on them and the extent to which they thought it had an impact on their children. The emotional costs weighed heaviest for some, but not all parents. Most indicated significant concern about the signs of their children's distress. They spoke of the children's awareness of the conflict between them and their divided loyalty and the need to keep those aspects of their lives separate. They referred to behavioural aspects such as clinging and screaming at separation, a 10-year-old starting to wet the bed again, a 14-year-



old who was on anti-depressants, and another child having seizures that were attributed to stress. The most negative comments came from parents who believed that the other parent was deliberately “brain-washing” and “alienating” the children from them. The emotional impact on children was an important factor for many parents in weighing up the costs and benefits of continuing the fight or not.

### Discussion

All the parents in this study had been referred to the *Keeping Contact* program because they had been unable to resolve the dispute between them and their former partner over contact issues. However, the contact issue was often simply the surface problem - there were various issues and complaints which appear to underlie or lay at the heart of the parents’ dispute. Working out what were the causes and what were the symptoms of the overall dispute is very difficult. Nonetheless, an important distinction needs to be made between issues that appear to have been at the heart of the conflict and issues which seemed to inflame the conflict.

#### *Causing and inflaming conflict*

There were two main issues which appeared to be at the heart of the conflict for many resident parents who either denied contact or who resisted the non-resident parent’s desire for greater contact. These were concerns that the child (who was often very young) would not be safe or otherwise looked after adequately in the care of the other parent, and a perception that the child did not want to go on contact visits.

While a recurring theme in this research was the impact of new partners on the dispute, on further analysis that impact was multifaceted. Safety concerns, together with children’s discomfort with a new partner, were two of the main reasons why new partners were perceived to be problematic.

A particularly significant finding of this study was that the children were so young at the time of separation. Nearly 40% were two years of age or younger. About a fifth were under one, 60% were under 5, and 90% were under 8. This is consistent with the findings of the earlier Australian study on “intractable” or “complex contact cases” (Australian Law Reform Commission, 1995). In that study, a sample of cases identified by the court staff as being “difficult” or “intractable”, with contravention applications and restraining orders, was compared with a random sample of more “run of the mill” cases. One of the key differences was the significantly greater proportion of children two years of age and younger in the difficult cases compared with the comparison cases (24% compared with 6%).

One explanation that emerges from this study for why high conflict cases disproportionately involve very young children is that parents have heightened concerns about the safety and wellbeing of young children given their inherent vulnerability. It is not clear whether these concerns were warranted or not. The presence or perceived presence of personality disorders is likely to exacerbate parental concerns about the safety and well-being of their children in the care of that parent or intensify the suspicions that parents with a personality disorder have of the other parent.

There were a multitude of other issues that appear to have *inflamed* the conflict. New relationships, for either parent, may inflame conflict, as the “old” partner finds it difficult to accept the children being in the care of the “new” partner. This may be particularly acute when the children are young and seen to be vulnerable and need more intimate care. Other sources of dispute included money, the continuation of unresolved relationship issues, and differing expectations of family life, as reported in other studies (Bainham, 2003; Day Sclater, 1999; Smart & May, 2004).

In the current study, disputes over money were clearly a key issue in inflaming the conflict. Disputes emerged in particular in relation to child support payments and other expenses, and, for a few fathers, the fairness of property settlements. For some parents, despite the separation of contact

and child support in policy and intended practice, there seems to be a clear equation between the two. Again this is a common and quite long-standing finding and a belief that is difficult to shift (Bradshaw et al., 1999; Buchanan et al., 2001; Smart & May, 2004). In these studies, some resident parents who had provided all the care for children since birth or who were unhappy with the level of child support implied that the other parent did not deserve contact. Equally, some non-resident parents who were paying child support believed they had a right to see the children they were supporting. The other often related complaint concerned the misuse of the money that was intended for the children and the alleged dishonesty of the other party, again part of the suspicion and accusation between the parties.

While issues about old relationships, new relationships and money no doubt exacerbated the conflict among those in this study, and made it much harder for parents to establish a cooperative or even business-like relationship, these were not the core issues which led to denial of contact or disputes about contact.

#### *Children's wellbeing in the other parent's care*

By far the most significant issue for the parents in this study was concern about children's safety and wellbeing, particularly where children were below school age. Where there were concerns about the parenting capacity of the father or significant concerns about abuse and neglect, mothers were understandably unwilling to allow the children into their care, and certainly without supervision. Some fathers had similar concerns about the mother.

In a high proportion of cases in this cohort, there were allegations of child abuse and neglect, consistent with other studies of high conflict families and those who contest children's issues in the courts (Brown et al, 1998; Moloney et al., 2007; Smyth et al., 2007). However, the concerns about children's safety and wellbeing related to a much broader range of behaviours than would justify

referral to the police or a child protection agency. They included, for example, issues concerning children's safety because of a father's driving habits or a mother's worry that a young child is not being fed and cared for properly in the father's care. Other concerns arose from a parent's intake of alcohol or use of drugs. Likewise, Maccoby and Mnookin (1992) in their landmark study of 1,124 families in California found that a major reason for high levels of conflict between parents was pervasive distrust about the other parent's ability to care for their child adequately. Thirty per cent of mothers and 23% of fathers expressed concerns about this, and this increased the likelihood of legal conflict. More specifically, 8% of the mothers and 4% of the fathers were worried about the other parent's abuse of drugs or alcohol, and the effect this might have on their capacity to care for the children. Similar findings were made in another US study of contact problems (Wolchik, Fenaughty, & Braver, 1996).

There is a focus in legislation around the western world on a history of violence or child abuse as factors in determining parenting arrangements after separation (Parkinson, 2011; Trinder, Firth, & Jenkins, 2010). Such a focus in legislation or practice will capture some, but not all, of the concerns a parent may have concerning their child's safety and wellbeing. This may be illustrated also by Buchanan and Hunt's study of interviews with 100 parents in England who were litigating over parenting arrangements. Child protection concerns were mentioned in only 11% of the court-ordered welfare reports, with the involvement of child protection services in only 4% of cases, but 86% of cases involved concerns about the parenting behaviour of the ex-partner (Buchanan & Hunt, 2003). These concerns included mental illness (26%), alcohol abuse (21%), and drug abuse (11% of cases). Almost half the parents expressed a concern of some kind about the child's safety.

*Children's resistance to contact*

As in Pearce et al.'s (1999) study in Britain, a second significant factor in disputes was children's reported resistance to contact. Mothers spoke of resisting the father's desire for contact because the child did not want to go, and overnight stays were a particular trigger for conflict and ground for contention. Mothers reported good reasons why children did not want to go on contact visits. They indicated that in some cases, children did not want to go because they perceived their father to be disinterested in them, delegating time and care to a new partner or to an after school care program. In other cases, they suggested that fathers were seeking contact after playing little part in their children's lives for some years. Children who did not have a close relationship with that parent were reportedly not interested in spending time with him on a regular basis with little previous history of doing so.

The younger the child, the more difficult it is for their views to carry weight with courts (Parkinson & Cashmore, 2008). Claims that a child is resistant to going on visits may be met with allegations of alienation, as they were in several cases in this study. Nonetheless, these cases formed a pattern that was quite distinct from many other cases of children who resist spending time with a parent. These were children who, in two cases had never lived with, or according to one parent had never had a meaningful relationship with, the adult who was now seeking to enforce contact orders or who were not experiencing a meaningful relationship when ostensibly in that parent's care. Courts cannot by order create meaningful relationships between parents and children; they can only create or maintain the circumstances that make meaningful relationships possible. Where the foundations for a meaningful relationship simply have not been established and especially where this is combined with significant concerns on the part of the resident parent about the point of establishing such a

relationship, it is not surprising that children would be resistant to regular "visits" to their other parent.

### Conclusion

Traditional modes of dispute resolution, such as mediation, court-based conciliation and negotiation between lawyers, are unlikely to help high-conflict families. The participants in this study had utilised such processes and they had not resolved the conflict. The underlying issues of children's safety and wellbeing, especially with a young child and with older children resisting contact, may need to be addressed by appropriate investigation and therapeutic intervention.

There is a need for more resources to be made available for the investigation of child protection concerns. In some of the cases in this study, the complaints to the police or the child protection agency would not appear to have been of sufficient seriousness to warrant investigation or response in terms of the usual mandate of these organisations. A complaint of alleged abuse may not have been sufficiently severe to warrant the investigatory resources of the police in order to determine whether there should be a prosecution; a safety concern may not have been sufficiently serious to justify protective action being taken by the child protection agency through the Children's Court. However, it was often sufficiently serious that the lack of validation or resolution of the safety concern was a major factor in the continuing conflict between the parents.

Parents reported that their safety concerns were sometimes disregarded because it was a "family law dispute". In some cases, the level of conflict between the parents may well have been a reason for the report to the child protection authorities and there may have been little substance to the complaint. On the other hand, if there is no follow-up, it often will not remove the suspicions or complaints of the reporting parent and may lead them to take action to remove the perceived risk to the child in a way that breaches court orders. For the parent who has been accused unjustly, there

may be real resentment both toward the other parent for making such an allegation and toward the system which provides no redress or means to clear themselves. It also feeds accusations of “alienation”.<sup>7</sup> In cases, where there is substantial risk and no follow-up, it leaves children in an unsafe environment.

In 2002, the Family Law Council recommended that the government should establish a Federal Child Protection Service to investigate complaints of abuse arising in family law proceedings and which have not been investigated by the relevant child protection authorities in the Australian States or Territories (Family Law Council, 2002). In an important inquiry in 2009, a former Family Court judge, Richard Chisholm, recommended that in every case coming into the family courts, there should be a risk assessment (Chisholm, 2009). Neither of these recommendations has been accepted to date. Yet unless there is some investigation that can provide the court with a professional assessment of the safety concerns that a parent has, then the issues may come back to the court again in the form of a complaint of contravention of orders. More importantly, children may remain at risk.

Expending investigatory resources on these cases is not only justified by the need to resolve issues concerning the safety of a parent or the children. That is vitally important, of course, but it is not the only issue at stake. There is also a need to take actions which will reduce the levels of conflict to which children are exposed, for the detrimental effects of conflict on both children and their parents is a public health issue (Buchanan & Hunt, 2003, p. 379). That means that a safety concern may need to be properly investigated in order to reduce as far as possible, the likelihood that the unresolved safety issue will be a continuing source of conflict between parents who have ongoing contact through the parenting arrangements for their children. A report from an independent person may, for example, lead a parent to change his or her behaviour in ways that reduce the level of risk,

or may lead a court to make parenting arrangements that more effectively secure the children's safety.

Of course, there are issues about the appropriate targeting of resources. The evaluation of the 2006 reforms by the Australian Institute of Family Studies (Kaspiew et al, 2009, p. 28) found, in interviews conducted on average 15 months after separation, that 4% of fathers and 12% of mothers were concerned about their personal safety, and 15% of fathers and 18% of mothers expressed concerns about the safety of their child — either alone or in addition to concerns about personal safety. However, this was far fewer than reported a history of physical or emotional abuse.<sup>8</sup> The focus of investigatory resources needs to be on those cases in which a parent expresses serious ongoing concerns about the safety of the child in the other parent's care, whether or not the concern is about family violence or child abuse, and the case has not been resolved after family dispute resolution and conciliation in the court process. Priority ought to be given to cases in which a child is under 7 or in which the safety issues have arisen in defence to an enforcement application, or where there has been a recommendation made for investigation of a safety concern by a family dispute resolution practitioner who has seen one or both parents for the purpose of assessing suitability for mediation.

This study also points to the benefit of earlier therapeutic intervention with some of these parents. They were referred to this program typically after court orders had been made with respect to the parenting arrangements and after problems had emerged with adherence to those orders. Earlier intervention, focused on changing behaviour rather than reaching agreement on the parenting arrangements, might have been very beneficial in many of these disputes, for example in addressing mothers' concerns about the way the father treats the children or about him sleeping with a new partner. At least some concerns about children's safety might have been addressed through



therapeutic interventions as well, by allowing strategies to be put in place that could have provided more reassurance to the parent with concerns about the child's safety. Furthermore, both resident and non-resident parents might have benefited from parental skills training, and advice on how to manage conflict with the other parent better.

The programs offered by Family Relationship Centres, which typically involve parenting education seminars, may go some way in this regard. Child-inclusive mediation, offered in some Family Relationship Centres, may also have a role to play in helping older children to be heard when they have issues with the non-resident parent, as long as the parent is capable of hearing what the child has to say (Parkinson & Cashmore, 2008).

The Family Relationship Centres are also well placed to act as triage services, directing parents who need more intensive therapeutic interventions than can be provided in a standard mediation setting (Salem, 2009), a role that they are already working hard to fulfil (Kaspiew et al, 2009). Early referral by family dispute resolution practitioners to programs such as *Keeping Contact*, drug and alcohol services or other interventions appropriate to the case, may represent the 'stitch in time' that saves much conflict through the courts down the track.

There are no magic wands to solve the problems of high conflict families. There are, however, interventions that may well make a considerable difference with highly conflicted parents who are prepared to listen and to change.

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Author notes

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## Footnotes

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<sup>1</sup> The terminology to describe parenting arrangements for the parent who is not the primary caregiver varies from one jurisdiction to another, with terms such as access, visitation and contact being most commonly used. The *Family Law Act 1975* currently uses the terminology of orders that 'spend time with' a parent. This article uses the term 'contact' for ease of description. The primary caregiver is called the 'resident parent'. This is the terminology that was used prior to July 2006.

<sup>2</sup> These figures need to be treated with some caution, however, because the question in the survey asked about *current* AVOs and several parents indicated in both the survey and interviews that they had had AVOs against the other parent; one mother indicated that her former partner had said "if you don't drop the AVO, I'm not doing mediation".

<sup>3</sup> Parents in the interview were asked to rate their own capacity as a parent and that of their former partner on a 5-point scale (1 = 'a person who has some trouble being a parent' through 3 = 'an average parent, a better than average parent' to 5 = 'a very good parent'). Perhaps not surprisingly all except two parents rated their own parenting capacity as better than that of their former partner; their own ratings ranged between 4 and 5 and that of their former partner between 1 and 3. No statistical analysis was carried out on these ratings because of the small sample size.

<sup>4</sup> The 20 parents who were interviewed provided more detail about the substance of the allegations of abuse or neglect or incidents involving the children in which the police were called. In the 18 cases, there were 13 cases (72%) in which either or both parents alleged abuse or neglect of the children by the other or in two cases, by another member of their household. In 10 of the 13 cases, the allegations were made by mothers against fathers and appear to underlie their objections to the children being in shared care or having contact with their father. In three cases, the allegations or

concerns about the children's safety were mutual even if only one parent had made a report to an external authority. Only one case involved a one-sided allegation by a father against a mother's new partner.

<sup>5</sup> While the numbers are very small, there appears to be a pattern in the interview group, in line with other research and much more extensive empirical studies, of some coincidence between domestic violence allegations and child abuse and neglect concerns (for example, Smyth et al., 2007). In nine of the ten cases involving allegations of violence or applications for an AVO in the interview sample, there were also concerns about the children. In some cases, these concerns arose directly from the children's exposure to violence between the parents, but in most there were other concerns as well. In the cases in which there were no allegations of violence or applications for a restraining order, only half the cases involved concerns about the children.

<sup>6</sup> On the other hand, a number of parents (mostly fathers) were seeking more time with their children, and reportedly in 18 cases on the basis of their perceptions that the children wanted more time with them – or more flexible arrangements.

<sup>7</sup> We had no data on substantiations.

<sup>8</sup> The AIFS evaluation (Kaspiew et al, 2009, p. 26) indicated that 26% of mothers and 17% of fathers reported being physically hurt by their partners. A further 39% of mothers and 36% of fathers reported emotional abuse defined in terms of humiliation, belittling insults, property damage, and threats of harm during the course of the relationship.



Table 1

## Main concerns and issues

Differences in parenting style / concerns over parenting capacity or child's safety in other parent's care (33 cases)	20 mothers (17 resident) and 17 fathers (2 resident) reported differences in parenting style; 15 mothers (11 resident) and 17 fathers indicated worried often, sometimes or almost daily about the safety of child in other parent's care; in 7 cases, mutual concerns
Child abuse and neglect allegations (32 cases)	19 mothers made allegations vs father or member of household; 7 fathers made allegations vs mothers or member of household; 6 cases where mutual allegations by both parents vs other
Parent's reports that children do not want (more) contact (26 cases)	24 cases where mothers report children want no contact (2 cases), less (10 cases) or same (12 cases) amount of time with father; two cases where resident fathers report children want same (1 case) or less time (1 case); Child's non-existent or limited relationship with other parent (7 cases)
Parent's reports that children want more contact (18 cases)	16 cases where fathers report children want more time or more flexible time with them; similarly two non-resident mothers
New partners (14 cases)	27 cases where one or both parents have new parent; 12/18 cases in interview group Coded as a significant issue for 9 mothers and 5 fathers in 14 cases overall.
<i>Other issues:</i> Child support and other expenses (23 cases)	16 resident parents (14 mothers) and 6 non-resident fathers reported child support as issue in dispute and 13 resident parents (10 mothers) and 4 non-resident fathers referred to other money issues eg property and expenses for children
Perceived motive of other parent to hurt, control Attributed personality problems (8 cases)	3 mothers and 2 fathers explicitly referred to other parent's need to control or hurt them; 3 parents (1 mother and 2 fathers) referred to mental health problems.

