



FINAL REPORT TO THE FAMILY COURT OF AUSTRALIA

The Children's Cases Pilot Project



*An exploratory study
of impacts
on parenting capacity
and child well-being.*

Jennifer E. McIntosh, Ph.D.

MARCH 2006

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CHAPTER 1. INTRODUCTION

1.1 The Children's Cases Project: Background

In 1975, the Family Court of Australia opened its doors under the banner of the 'Helping Court' – a family court that would place an emphasis on counselling and 'conferences' as venues for resolving disputes over children and assisting families in transition. However, as the rules that govern adversarial processes became enshrined, and significant delays became the norm for the resolution of anything but relatively straightforward cases, some of the early vision of the Court's founders dimmed³. While attempts were made to introduce new initiatives along the way, and new rules and procedures were modified, the adversarial process was not fundamentally altered. Parents in such a system emerged from lengthy, costly and often bitter legal processes with escalated acrimony around their children's needs⁴.

Indeed, the past 15 years' divorce research has heavily implicated adversarial legal processes in family disputes in the exacerbation of parental conflict. Concurrent with this, the serious impact of ongoing parental conflict on children emerged with alarming clarity⁵. As such, a tension, bordering on an ethical mandate, emerged for dispute resolution to move beyond 'black letter law', to processes that could embrace both the legal *and* psychological complexities of family separation.

As noted in overseas settings, some attempts at less adversarial processes have tended to be 'add-ons' to the adversarial framework, rather than truly challenging the dominant culture of adversarial dispute resolution. In recognition of this, the Canadian Family Justice Review Working Group⁶

³ L. Moloney (personal communication)

⁴ Emery, R.E., Laumann-Billings, L., Waldron, M., Sbarra, D.A., and Dillon, P. (2001). Child custody mediation and litigation: Custody, contact, and co-parenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology*, 69, 323-332

⁵ See McIntosh, J. (2003). Enduring conflict in parental separation: Pathways of impact on child development. *Journal of Family Studies*, 9 (1), 63-80.

⁶ Birnbaum, R. and McTavish, W. (2001) Post separation visitation disputes: Differential interventions. Report to the Family, Children and Youth Section, Department of Justice. Canada

advocated that the Court system stop 'managing cases to trial' and start 'managing cases to settlement'⁷. In Australia, Dewar (2005)⁸ observes a system which is now moving beyond the presumption that the best way to deal with dilemmas confronting Family Law is to add yet another rule or regulation. Rather, what is called for is a fundamental redefinition of *how* disputes are handled.

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: 'to examine a new way of conducting Family Law litigation that is intended to alleviate some of the problems associated with the current adversarial system of determining a dispute.' (Practice Direction 1.2).

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.

Several core features of the program are :

- Cases become eligible to enter the Project only when mediation has been unsuccessful or is inappropriate.
- Some technical rules have been altered to assist in achieving a better child focus, (for example, the admissibility of hearsay evidence).
- The presiding Judge is charged with an active role in relation to the conduct of the hearing (including deciding the issues to be determined, the evidence that is called, the way the evidence is received, and the manner in which the hearing is conducted).
- Parties in children's cases are able to participate in the Project irrespective of whether they are represented by lawyers or not.

⁷ Cameron, N. and McHale, J. (2006) A new justice system for families and children. AFCC News, Winter.

⁸ Dewar, J. (2005) "Legislative change". Paper presentation, The International Forum-Family Relationships in Transition: Legislative, Practical and Policy Responses. December 1-2. Canberra.

Another 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 Children's Cases Project (CCP) in Australia similarly has set about providing a highly 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. 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.

1.2 The current study

The genesis of this study lies in the Family Court's desire to explore the ways in which this less adversarial approach may impact on parenting and post-separation family adjustment, for parents and children. In addition to the process information yielded by a major evaluation of CCP procedures and efficiency⁹ (the Hunter study), the current study 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 court¹⁰.

⁹ Professor Rosemary Hunter, Griffith University, Queensland

¹⁰ As summarised in McIntosh, J. (2003)

CHAPTER 2. METHODOLOGY

2.1 Study design

The need for this current research was conceived after the principal evaluation project began, and as such, this is a small sub-study which sits beside the larger Hunter study. The study described in this paper explored associations between parenting, conflict management and children's well-being after separation, and links to the less adversarial court process as defined through the pilot CCP model, conducted in the Registries of Sydney and Parramatta throughout 2004 - 2005.

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 with those of a similar group of parents who had experienced the mainstream Family Court process. The main thrust of the study was to gather qualitative data from parents about their perceptions of the respective impacts of the two Court processes. Specifically, the interview probed their functioning as parents, their relationships with their ex-partner and with their children, three months post court.

In order to maximise the data from this small study, three quantitative scales were embedded in the interview. Together with core comparative and content analyses of the qualitative data, these data provide the quantitative component of the report.¹¹

2.2 Participants

Initial recruitment into the Children's Cases Project was guided by Family Court mediators and registrars who identified all 'children's matters only'

¹¹ Wherever 'significance' is reported in this paper, it refers to the results of the appropriate statistical analyses for that set of data, significant at the .05 level.

cases, where the pre-court resolution phase had been completed, and the case had entered the determination phase. Consent of both parties was required to enter the CCP. The Hunter evaluation study, due later this year will carry full details of participation rates.

Two groups of parents were then recruited to this study, drawn from all CCP cases and mainstream Family Court cases completed over an eight month period. Within three months of completion of their matter, subjects were approached via a letter sent from the Family Court, outlining the study. Participation was voluntary, and the matching of couples was not sought. A token remuneration was offered for completion of the forty-five minute interview. Twenty-five percent (25%) of parents approached returned their consent form and the majority of these followed through to an interview. While the nature of any sample biases are unclear, it is likely that those who agreed to participate may differ in important ways to those who declined. Equally, those who chose CCP may differ from those who preferred Mainstream FC. These issues will be considered later in this report.

The samples comprised 49 adults from the CCP and 35 adults from the Mainstream court system. Of these, 6 grandparent matters were removed from the main data and treated separately, resulting in 45 CCP parents and 34 Mainstream parents.

Table 1: The interview respondents

	Children's Cases (CCP)		Mainstream FC	
	N	%	N	%
Mother	24	53 %	22	64 %
Father	19	42 %	12	35 %
Stepparent	2	4 %	0	0 %
Total	45	100 %	34	100%

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. Similarly the distribution of cases across the two registries of Sydney and Parramatta was roughly equal.

2.3 Research interview

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. Key questions around which the interview was designed included:

- How do parents, as parents, experience the two different court streams?
- Considering each court process separately, what impacts, if any, can be identified on subsequent parenting alliance and capacity to manage conflict?
- What are parents' perceptions of the impacts of a less adversarial process on their children's well-being?

Parents were asked to discuss :

- The nature of their recently completed court matter
- How they understood the decisions to have been made
- Residence and visiting arrangements, and their satisfaction with these, pre and post court.
- Their perception of their children's satisfaction with the living arrangement decided in court
- The perceived impacts of the court process upon:
 - them as a person, and as a parent
 - their children
 - their parenting relationship
 - their relationship with their children.

Parents also completed the following research measures:

- Acrimony Scale (Emery, 1982)¹²,
- The Conflict Scale (McIntosh, 2004), and
- The Emotional Symptoms sub-scale of the Strengths and Difficulties Questionnaire (Goodman 1997)¹³.

The interviews took place by telephone, with a member of the research team, all of whom were trained counsellors and therapists, and generally took sixty minutes. The interviews were conducted within three to four months of completion of the court matter.

¹² Emery, R. (1982). "Interparental conflict and the children of discord and divorce." *Psychological Bulletin*, 92(2): 310-330.

¹³ Goodman, R. (1997). The strengths and difficulties questionnaire: A research note. *Journal of Child Psychology & Psychiatry*, 38 (5), 581-586.

CHAPTER 3. RESULTS

3.1 Children and family size

Eighty-one (81) children were represented in the CCP sample, and eighty-eight (88) children in the Mainstream FC group. The average age of the children in the CCP group was 7.6 years and was 8.4 years in the Mainstream group, with a non-significant trend for the Mainstream group to have slightly larger and older families.

3.2 Reasons for going to court

Parents' reports on the reasons for going to court were similar across the groups, as shown in the table below.

Table 2: Parent report of the reasons for attending court

	Children's Cases	Mainstream FC
Primary residence	55 %	53 %
Increased contact	31 %	26 %
Resumption of contact	6 %	12 %
Supervised contact	4 %	8 %
Enforcement of contact	4 %	0 %
Total	100 %	100 %

3.3 Complexity of presenting issues

Of interest is the question of the complexity of the issues facing the court in the two groups. As all CCP parents can proceed through this process only by mutual consent, a question arose during the course of the study as to whether the CCP attracts the same level of complexity as the Mainstream court.

While this study did not set out to explore this question specifically, it was

possible to conduct post hoc analyses on the interview narratives to explore the issue. Complexity was assessed broadly along the lines outlined in the table below.

Table 3 a: Complexity of primary presenting issue: Parents' account

Complexity:	Children's Cases	Mainstream FC
Low-medium complexity (single issue, first presentation to court)	35 %	39 %
Moderate-high complexity (relocation, lengthy litigation, mental health of parent)	39 %	33 %
Extreme complexity (DOCS, multi-issue, extreme violence)	26 %	28 %
Total	100 %	100 %

Table 3 b: Complexity of primary presenting issue: Emergent clusters from parents' accounts

Dominant features of complexity:	Children's Cases	Mainstream FC
Chronic repeat litigants over contact and residence	15 %	23 %
Relocation	15 %	6 %
Recovery orders	5 %	3 %
Mental health of parent	15 %	10 %
Multi issue with Child Protection involvement	15 %	20 %
Domestic violence (extreme)	4 %	6 %
First presentation and no single outstanding matter of complexity	35 %	39 %

NB. Columns do not tally to 100 due to fundamental overlapping features in some cases

The two groups in this study share an overall pattern of complexity, with some trends toward divergence in their specific presentations. In this sample,

greater chronicity of litigation in the Mainstream group is evident, suggesting that the CCP parents have been engaged earlier in their litigation histories, indeed as is a stated aim of the program. There were a greater proportion of relocation issues and mental health issues in the CCP group, and greater proportion of multi-issue, Child Protection matters in the Mainstream group. The tenacity of these results from a small sample need to be examined within the broader evaluation currently being conducted. For the purposes of this study however, it is important to recognise that the two court systems were dealing with matters of similar complexity.

3.4 The decision making forum

Parents in this sample reported that determination of their matter was equally distributed across forums, as illustrated in the table below:

Table 4: Determination of court matter

	Children's Cases	Mainstream FC
Outside court, by mediators, lawyers	36.4%	34.3%
By the Judge	63.6%	65.7%

3.5 Living arrangements

There were no significant differences¹⁴ between the two groups in the distance between parents homes post court, as outlined below.

Table 5: Distance between parents' homes post court

	Children's Cases	Mainstream FC
Short distance	44.2%	31.4%
Moderate distance	25.6%	34.3%
Lengthy journey	30.2%	34.3%

¹⁴ Pearson Chi-Square= 1.411, degrees of freedom = 2, n.s.

The table below outlines quite a different pattern of contact post court for the two samples.

Table 6: Parents' overnight contact with their children, 3 months post court

	Children's Cases (N = 45)		Mainstream (N = 34)	
	Mum	Dad	Mum	Dad
Never / Rarely	2.3 %	9.1 %	21.2 %	28.1 %
< 12 x year	2.3 %	6.8 %	6.1 %	12.5 %
1 - 4 x month	20.5 %	45.5 %	6.1 %	18.8 %
Several x week / Daily	75.0 %	38.6 %	66.7 %	40.6 %

In this sample, fathers who had gone through the CCP process reported significantly more frequent contact with their children than fathers in the Mainstream group. Despite relatively equal geographic distances (see Table 5 above), 30% of the fathers in the Mainstream group, in contrast to 18% of the CCP fathers, rarely or never had the overnight care of their children. In starker contrast, mothers in the Mainstream group had little or no overnight care of their children in 21% of these cases, with only 2% in the CCP sample. Some of these statistics are accounted for by a greater proportion of Child Protection matters in the Mainstream group. Furthermore, Mainstream children spent greater periods of time in the overnight care of another family member, in most cases, with a grandparent (CCP = 10%, Mainstream = 29%).

Unfortunately, data about pre-court contact patterns were not available to this study, so it is not possible to determine the differential impacts of the two court processes on rates of overnight care. However, these early findings point to the importance of doing so. A future research question may be: 'Does the CCP court process produce a differential outcome in real terms for the overnight contact between parents and their children, or to what extent do

discrepancies reflect the nature of pre-court contact arrangements?’

3.6 Satisfaction with living arrangements

In terms of parents’ *satisfaction* with their living arrangements, CCP parents reported greater improvement in their contentment with living arrangements post court from their pre-court situation. Where forty percent (40%) of the Mainstream group reported decreased satisfaction with living arrangements from their pre-court status to post-court status, 20% of the CCP parents reported this, and overall post court ratings of satisfaction with their children’s living arrangements were significantly different, with the CCP parents more satisfied¹⁵. There was a trend across the two groups for higher satisfaction with outcomes in the lower complexity cases.

Table 7: Parents’ reported satisfaction with living arrangements, pre and post court

		Satisfaction before court	Satisfaction since court
Children's Cases	Mean*	2.9	3.4
	N	45	45
	Std. Deviation	1.6	1.5
Mainstream FC	Mean*	2.3	2.4
	N	35	35
	Std. Deviation	1.6	1.6

* The above findings are measured on a 5 point scale, where 5 is very satisfied, 3 is neutral, and 1 is very unsatisfied.

¹⁵ (t = 2.8, 2 tailed, p = .01)

Of interest, when asked how happy each of their *children* appeared to be with the post court arrangements, the CCP group reported significantly higher levels of contentment, from each child¹⁶,

Table 8: Parents' perceptions of children's happiness with their living and visiting arrangements, post court

	Mean	N	Std. Deviation
Children's Cases	3.7	45	1.2
Mainstream FC	3.0	33	1.3
Total		78	

As above, children's happiness with the living arrangements was rated on a 5 point scale, where 5 is very satisfied, 3 is neutral, and 1 is very unsatisfied. The above findings refer to the mean score of all children from each family.

3.7 Magnitude and management of conflict

The magnitude of conflict reported in the relationship prior to separation clustered at the higher end of the spectrum for the CCP parents, but overall was not significantly different between the groups.

Table 9: Parents' rating of marital conflict, pre-separation

	Children's Cases	Mainstream FC
Low	30.2 %	31.3 %
Moderate	14.0 %	25.0 %
High	27.9 %	18.8 %
Extreme	27.9 %	25.0 %
Total	100 %	100 %

¹⁶ (t = 2.6, 2 tailed, p = .01)

The post separation conflict profiles of the two groups are of interest. Pre-court, fifty percent (50%) of parents in the Mainstream group reported having had violence intervention orders in place, compared to twenty-seven percent (27%) of the CCP group¹⁷. Post court, there was no significant difference between the two groups on prevalence of intervention orders, (10% CCP and 15% Mainstream).

Controlling for the greater proportion of pre-court AVO's in the Mainstream group, the CCP parents reported significantly lower levels of overall conflict with their ex partner three months after court¹⁸. In particular, they cited lower levels of verbal conflict.

On the 25 item Acrimony scale (Emery, 1982, op cit), the CCP group reported significantly lower levels of psychological hostility in their relationship with their ex-partner than the Mainstream group, three months after court¹⁹. The results below are means along a four point scale, where 4 is acrimony 'Almost all of the time', 3 is 'Much of the time', 2 is 'Some of the time', and 1 is 'Almost never'.

Table 10: Parents' mean Acrimony scores, post court

	Mean	N	Std. Deviation
Children's Cases	2.3	45	.52
Mainstream FC	2.7	34	.56
Total		79	

Specifically, the CCP group reported experiencing significantly less difficulty²⁰ with the following issues:

- *Is contact a problem between you and your former partner?*
- *Are you happy with how often your children see your former partner?*

¹⁷ (t = 2.2, 2 tailed, p = .03).

¹⁸ (t = -2.1, 2 tailed, p = .04).

¹⁹ (t = -2.1, 2 tailed, p = .03)

²⁰ (p < .05)

- *Are your children harder to handle following contact with your former partner?*
- *Does your former partner say things about you to the children that you don't want them to hear?*
- *Do you say things to your children about your former partner that s/he doesn't want them to hear?*
- *Do you have angry disagreement with your former partner?*

Clearly the question needs to be asked about whether these findings reflect a differential effect of the CCP process, or whether the nature of the acrimony between the two groups was somehow different to begin with. Narrative patterns in the interviews suggest that the latter is not the case, but this remains to be confirmed by future studies.

Elsewhere, reliable evidence confirms that a settlement process designed to impact on the co-parenting relationship can and will do just that, and that settlement processes that bypass the co-parental relationship within the dispute will leave unaltered or will indeed exacerbate the psychological hostility each parent feels for the other. In Emery's classic longitudinal study²¹, Family Court cases were randomly allocated to mediation or mainstream court process. Parents allocated to mediation achieved significantly greater and more sustained reduction in their levels of post settlement acrimony, compared to the mainstream court group.

Contrasted with current Australian data on post separation acrimony²², these groups remain in relatively high levels of acrimony. Given all that is known about the detrimental impacts of parental acrimony upon children's

²¹ Emery, R.E., Laumann-Billings, L., Waldron, M., Sbarra, D.A., and Dillon, P. (2001). Child custody mediation and litigation: Custody, contact, and co-parenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology*, 69, 323-332.

²² A study of the impacts of two forms of mediation in the community sector (McIntosh, Long and Moloney, 2004, *Journal of Family Studies*). In this study, 'Acrimony' data are available on over 200 Australian parents three months after their mediations. For the purpose of this discussion, the author selected from that sample only those high conflict cases mandated by the Family Court to attend mediation (n = 28). The CCP level fell between the community sample and the Mainstream level.

mental health, it is of concern that the levels of acrimony remain so high post court, for both groups, but particularly for the Mainstream group.

Findings of this current study confirm that the CCP pathway is associated with outcomes of 'no further harm' to parents' levels of hostility and lack of regard for their ex partner. It is worth keeping in mind that there may be higher ground still to be achieved through a court process that actively targets improvement of the parental relationship.

From a qualitative angle on the question of parental management of discord, parents were asked to reflect in the interview on the nature of their separation conflict and its impact on their children. Many offered insightful remarks, such as:

'I'm seeing it in my daughter. She doesn't have much faith in marriage, she is anxious about friends' family problems, she is alert to it, even if there is nothing there.' (Mainstream mother)

'It was frightening for her. I've tried to minimise it for her, but there are times when it was unavoidable, like when he was in my home, standing over me. I'd scream to alert the neighbours that I was in danger. That's alarming for a baby to watch a father standing over a mother. She says she is scared of her father, but she can be happy in his presence.' (Mother in Mainstream group)

'She recalls her parents fighting towards the end of the relationship. She was stressed that her family was falling apart. She couldn't understand what was happening and why we couldn't be together, she realises she doesn't have a 'nice' family, and would like one.' (Mother in the CCP group)

In this post court interview, fifteen percent (15%) of the Mainstream parents denied any impacts of their conflict on their children, while only four percent (4%) of CCP parents did. There were substantially more references in CCP

parents' narrative to an awareness of the impacts of conflict on their children, and connections were frequently made in that group to specific conversations with the Judge and the Mediator about the importance of sheltering their children more effectively from their conflict. For example:

"It hurts kids, scars them for life. It hurts them to see parents fight in front of children. It affects them a lot. I didn't know it at the time but do now, since court. I heard what they all said, the Judge and the lady. I don't know what else to say" (Father in the CCP group)

Only one father from the Mainstream group acknowledged a greater awareness of the impact of conflict since court, and linked this to the family report conducted during the court process:

I don't know if I was blind or stupid but I never considered that in yelling and screaming at her what the kids were doing – that kills me. I read in the report they were upstairs cowering – that hurt. That really hurt. (Father in the Mainstream group)

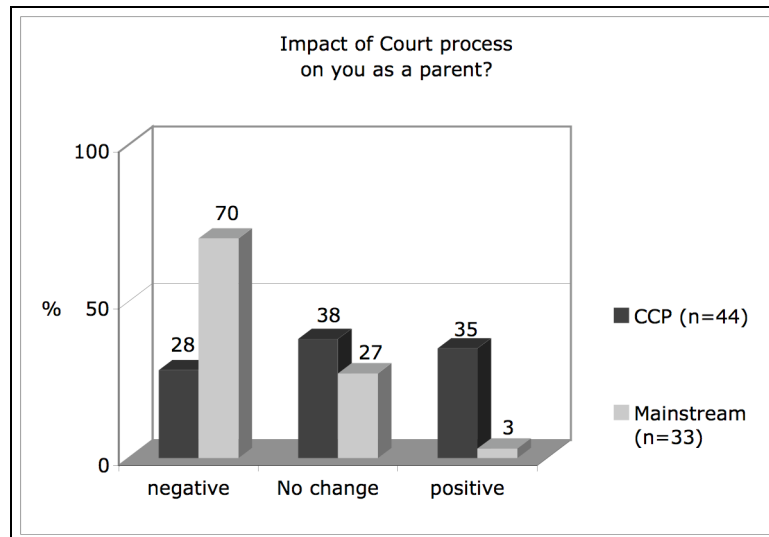
Overall, the narrative accounts show a greater immediacy of awareness from the CCP parents about their conflict and its potential for impact on their children. The finding suggests that the deliberate educative component of the CCP process may be contributing to this effect. This is further supported by data presented in the next section, around change to parents' experience of themselves as a parent, their parenting relationship with their former partner, and their relationship with their children.

3.8 The impact of the court processes on the parent

Parents were asked to rate and describe the impact of their court experience on themselves, as a parent. Care was taken to distinguish this from impacts on them as a 'person' or as a 'former spouse'. (Two cases of parents who did not understand the distinction were excluded from the analysis.) As the graph below shows, there is a substantial difference between the two groups on the

experience of being a parent, participating in these two different court processes.

Graph 1: The impact of the respective Court processes on the 'parent'.



CCP parents were far more inclined to report that the court process had left them on higher ground as parents, leading to a positive change in 35% of cases.

I found the whole thing less stressful than I thought it would be and the way it was handled very good. I can't think of a better way it could be done. I could see who this sort of thing was about: the kids. The court could make you think about your children. (Mother in the CCP group)

It (the CCP) was very confronting. You tend to doublethink – am I a good mother? As a mother you wonder: Did I do the right thing? Am I keeping them out of it? You do that all the way through. It's not a bad thing to ask yourself. (Mother in the CCP group)

The process taught us to let go – and not to make children exposed to adult issues. (Father in the CCP group)

Only one Mainstream parent could identify any positive impact of the court process, in this case on his sense of responsibility:

It was positive, it instilled a lot of responsibility, it opened my eyes. I became more aware of my child's legal rights, that she has a right to both parents. Before that it appeared that the mothers had the rights. (Father in the Mainstream group)

Twenty-eight percent (28%) of the CCP parents felt that the overwhelming impact of the court process upon them as a parent had been negative. In contrast, seventy percent (70%) of parents from the Mainstream sample believed this to be the case. The following comments are representative of their sentiments:

Court and all that is involved with it has had massive devastating impacts on me as a parent. My health has deteriorated through the strain of constant court battles – four years now. Nothing at all about this process has made me feel supported as a parent, nothing. (Father in the Mainstream group)

My friends told me I coped well as a mum, but I felt I didn't really. I didn't cope nearly as well as a parent as I wanted to. What do you mean did I get any support from the court as a parent? And I didn't get any support at all – I got nothing out of it as a parent, just stress from trying to get my message across and protect my children at a time when the Court thinks that all children should have a relationship with all fathers. (Mother in the Mainstream group).

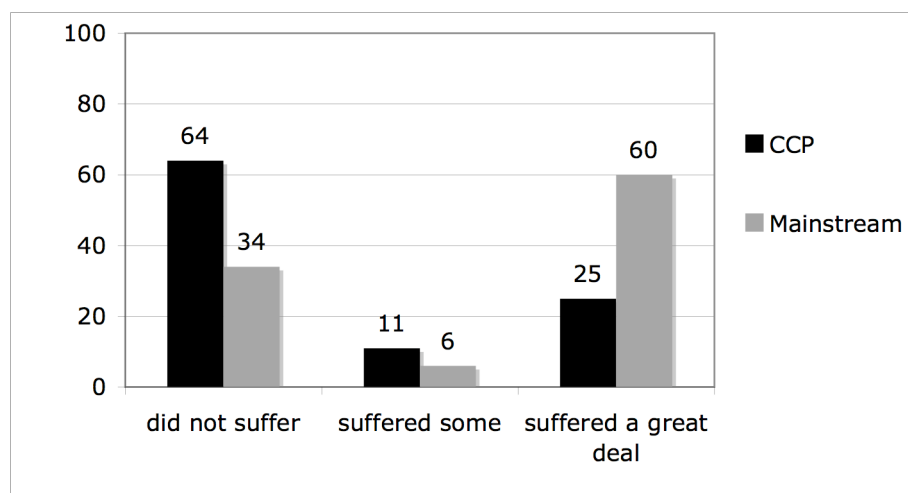
3.9 Impacts on the parenting relationship

When asked to consider whether the Court processes had helped or harmed their parenting relationship with the other party, neither group were lavish in their praise for either court system. Seventy-six percent (76%) of CCP

parents and eighty-nine percent (89%) of Mainstream parents reported that the court process had not helped *improve* the relationship.

When asked to comment on the extent to which their parenting relationship had *suffered* through the court process, the Mainstream group reported significantly greater damage²³ Sixty percent (60)% of parents in the Mainstream group felt their parenting relationship has suffered a great deal, whereas twenty-five percent (25%) of the CCP group rated their outcome this way. The graph below shows a near opposite image of results between the two groups.

Graph 2: Extent to which the parenting relationship was seen to suffer as a result of the court processes (%):



CCP parents were more likely to identify a pattern of their parenting relationship not having improved overall, but equally not suffering as a result of the court process. The Mainstream group were more unified around a picture of no improvement, and indeed a good deal of damage having been done to an already precarious parenting relationship.

²³ ($t = -2.7$, 2 tailed, $p = .01$).

Six CCP parents attributed moments of learning to an aspect of the Courtroom process itself. Only one Mainstream parent did so, but was unclear what in particular helped:

The parenting relationship was very hostile, we were not verbal with each other. She tried to get me deported by interfering with my visa. Now, as a result of the process we can speak together as parents for our daughter. What was it about the process? Well, just having it resolved and, well it is much better. (Father in the Mainstream group)

Re CCP Courtroom process:

In regards to mother, instead of impulsively reacting to me, she listens now. I think she was listened to there, so she could listen to me too. (Father in the CCP group)

She (ex) is more at peace I think. It was handled well in the Court, and with respect. (Father in the CCP group)

It's better because neither of us have any weapons to stick in each other anymore. We don't argue any more. It's good we don't talk except by e-mail. If I do ring her up we're sort of pleasant but the phone call's limited to less than a minute. That was good advice. There's also no animosity there. We were treated like people in the court, not animals that should be kept apart. How do you measure that? (Father in the CCP group)

At one stage I didn't agree to phone because he was always abusing me on the phone... His new partner took an AVO against me, saying I'd done x, y, and z. Then in court, she had to look at me, and listen, and she realised I hadn't done anything – and it got us to talk. Now we can say 'hi' and talk about the kids. It's led to my ex talking more civil. (Mother in the CCP group)

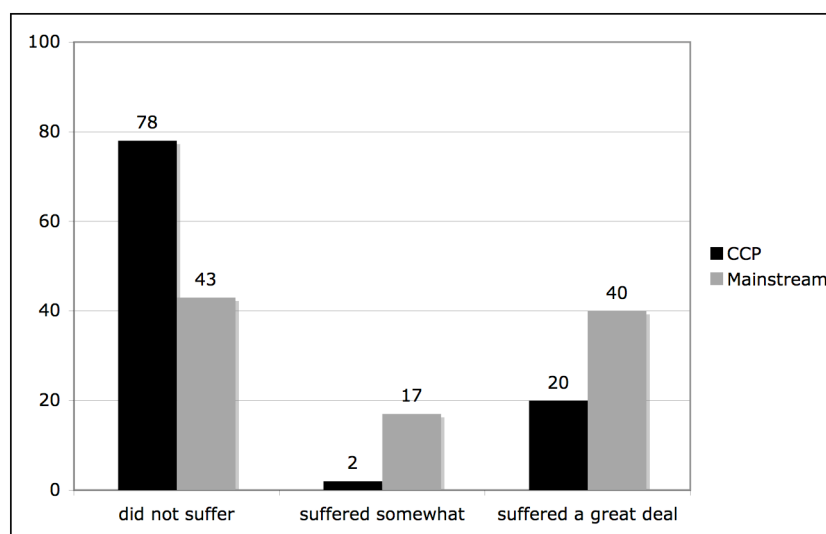
Couldn't have gotten worse, it's actually gotten better. Because when he drops our son off we at least talk to each other in a civil manner. All very calm, very relaxed. Not heavy like it used to be. The court helped us decide our son came first and our feelings for each other – that's in the background, it doesn't matter. We're staying civil. Not tense like it used to be. I think Judge X made us both realise in talking with us both that it's our son that comes first not the animosity between each other.
(Mother in the CCP group)

Of interest here are the direct references to unique features of the CCP Courtroom, (for example, the seating of all parties at a large table across from each other instead of the traditional partitioned long bench). Respectful treatment, and conversation with the Judge about the impacts of conflict on children are also referenced as pivotal moments in learning.

3.10 Impacts on the parent-child relationship

Parents were also asked to discuss the extent to which they felt their relationship with their children may have improved or suffered because of the Court process.

Graph 3: Extent to which parents' relationship with their children was seen to improve or to suffer as a result of the court processes (%):



Here, the Mainstream group were far more likely to report that the parent-child relationship had suffered substantially²⁴.

Many parents spoke of the inevitable strain upon them of going through at times very lengthy and expensive legal battles, and the associated guilt that they had not been able to protect their children adequately from this strain.

I am more carefree now, so yes. During the whole court thing there was a lot of strain and I couldn't spend as much time with the kids, going to the solicitors etc took a lot of time. But now I'm free to be with them, 100%, so that's better. (Mother in the CCP group)

Content analysis of responses shows that the majority of parents in both groups were aware of the impact of court outcomes or final orders on their children and their relationship with them, and less aware of any direct impact of the court process itself.

Three parents who mentioned court process were all in the CCP group. For example:

The court bit was handled very well, so I don't think it really touched my child, or my relationship with him. The court process really looked after the parent. (Father in the CCP group)

Most parents in both groups felt the relationship with their children benefited simply from a resolution of the matter. For example:

Absolutely improved. They are allowed to have a relationship with me now. When tenuous contact is set up, it (the relationship) naturally suffers. Contact had been taken away from me and now the kids are allowed to be with me, with nothing negative said about their mother, the relationship could only flourish. (Father in the CCP group)

²⁴ (t = -2.92, 2-tailed, p = .005)

An extra day a fortnight allows me to be involved in more of his life. An extra day dropping him off at school, at soccer training, taking part – it was definitely a big positive. (Father in the CCP group)

I am relaxed more because I am not terrified that (my child) is going to be taken away from me. Everyone has noticed this in him also, that he is much more relaxed. It may also be because he is not having any access with his father now. My son is just a different person now. So it has strengthened because I am much more relaxed. (Mother in the CCP group)

More because the children are getting more used to the idea they get to see their father every fortnight and are established in a routine. They're probably unaware of court proceedings. (Father in the CCP group)

Improved, like when I'm with him he tries to jam two weeks into 15 minutes. Hard to explain, he just wants to see more of me but the fact that he knows I love him is enough for him. He seems okay, some days he's depressed, other days he's alright. (Mother in the CCP group)

For those parents who felt the relationship had not improved or indeed had suffered badly, the common sentiments were around the spectrums of loss and fear:

I don't put their father down to them. I am very careful what I say and do, but they are suffering as a result of the increased access; they are experiencing things that they just shouldn't be, at four and seven. And it feels like it's my fault because I can't protect them from it. How can they really trust me? It ends up affecting how they see me, just because I can't stop it. (Mother in Mainstream group)

The relationship hasn't changed as I have no contact with them. The relationship has suffered yes, but due to my ex. I can only guess what he might say. (Mother in Mainstream group)

The relationship is severely dinted – I've got no contact with the kids at all now. (Father in Mainstream group)

Unchanged, not really worse. I do most of the suffering, so my son doesn't. (Mother in the CCP group)

While neither group identified the court processes as “therapeutic” in themselves, the CCP group were more inclined to reference the words of Judges and Court Mediators as being beneficial to their understanding of their children’s needs. This is detailed in a later section.

3.11 Perceptions of children’s emotional well-being, post court

Parents were asked to comment on their children’s happiness with their current living arrangements, the impacts of conflict and the court process upon them, and their general emotional well-being post court.

The overall picture from the CCP group was of greater contentment and emotional stability in their children after court. The CCP group identified their children as being significantly happier with the living and visiting arrangements that had resulted from the court process than did parents from the Mainstream group. This does not reflect a causal link as such to the CCP process, but the findings are presented here to explore possible implications.

On the Emotional Symptoms sub-scale of the Strengths and Difficulties Questionnaire, a strong difference is apparent in parents’ ratings of their children’s well-being. As a guide, a normal range for this scale is a score of 0-3. Borderline scores are 3-4, and abnormal scores are between 5-10.

Table 11: Parent report: Emotional Symptoms subscale of the 'Strengths and Difficulties' Questionnaire

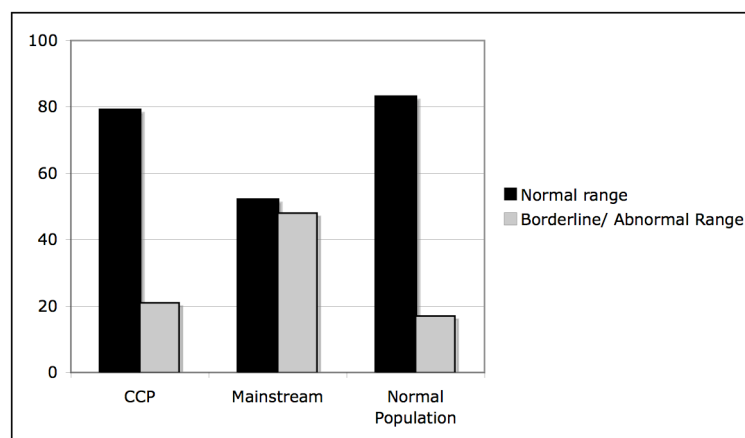
	Mean	N	Std. Deviation
Children's Cases	1.7	45	2.5
Mainstream FC	3.5	27	3.0

The overall sub-scale score is significantly different²⁵ between the groups, with the CCP group rating their children significantly lower than the Mainstream group on four key symptoms. Namely, they reported that, since the resolution of their court matter, their children had reported:

- fewer worries (**)
- were less tearful, unhappy or downhearted (*)
- less fearful (**), and
- less anxious (**).

Children's emotional well-being was worse across both groups when parental acrimony post court remained high (**). The level of abnormal symptomatology post court reported by parents in the CCP group was only slightly higher than expected in the normal population, but substantially lower than in the Mainstream group of children.

Graph 4: Distribution of Emotional Symptoms Scores (%)



²⁵ * = significant at .05, and ** = significant at .01

Some parents made a conscious link between the CCP and the outcomes for their children. For example:

It confirmed to me the things I was doing were the right things and it made me more aware that I was a good father because you really start to doubt yourself.....If CCP was in place four years ago the children would not have had the problems they do. (Father in the CCP)

The benefits of an emotionally available parent for children in high conflict separation are well established (McIntosh, 2003). Further longitudinal research is needed to distinguish the baseline characteristics of children's emotional functioning against any ameliorative impacts of a less adversarial court process for their parents. This current exploration suggests that CCP parents feel spared from very lengthy drawn out trial processes, in addition to experiencing a more direct, supportive input around their children's needs from all involved. In this sense, they (and their children) lose fewer emotional resources, and stand to preserve more in turn.

3.12 Ego maturity of the client groups

Returning to the question of whether the two groups in this study differed fundamentally from each other, it was possible to examine this question from the psychological perspective of understanding levels of ego maturity. So, further to the broad classification of complexity examined earlier in this report, it was considered important to examine parents' ego maturity as a possible association with either selection into the CCP, or any differential outcomes that may be evident. The term 'ego maturity' refers to the level of psychological functioning demonstrated by parents, specifically in the capacity for reflective, higher order thought with respect to interpersonal dynamics. At its heart is the question of whether the CCP process, through the need for mutual consent and a higher level of interpersonal engagement with the Judge and associates, appeals to parents with a higher level of ego functioning, or, in other words, emotional maturity and capacity for insightful, interpersonal evaluations? In turn, might this in itself contribute to different outcomes in that group?

To this end, the research team explored the detailed interview protocols from parents using the Social Cognition and Object Relations Scale (Westen, 1991)²⁶. Two sub-scales were selected from it, which best fit the question of socio-emotional maturity. They are: (i) Complexity of Representations of People, and (ii) Understanding of Social Causality. Each scale has a five level coding system, through which narrative accounts can be graded for the presence and absence of key characteristics, all with established content and construct validity in the areas in question. Cases were rated blind to the group membership of parents, and cross-validated by two clinical researchers.

Using the first thirty cases from each group, the data indicate no significant difference²⁷ in group means on either scale between the CCP and Mainstream parents.

Table 11: Parents' Complexity of Representations & Social Causality in CCP/Mainstream FC interview narrative

		N	Mean	Std. Deviation
Complexity of representations of people	Children's Cases	30	2.5	.79
	Mainstream FC	30	2.4	.58
	Children's Cases	30	2.6	.76
Social Causality	Mainstream FC	30	2.6	.69

The average ego functioning in both groups was relatively low, with the majority of parents functioning at a simple, one-dimensional level of complexity in their representations of people, with minor ability to elaborate on mental life or personality. Functioning in the area of Social Causality was on average rudimentary, with frequent reactivity and irregularities of logic, and a

²⁶ Westen, D. (1991) Social cognition and object relations, *Psychological Bulletin*, 109 (3), 429-455.

²⁷ Complexity: $t = .89$, Significance = .377, 2-tailed: not significant.
Social causality: $t = .459$, Significance = .65, 2-tailed: not significant.

relatively simple understanding of the mediating nature of thought upon action.

Along these lines, this post hoc set of analyses indicate no substantial difference in the ego maturity of the two groups. In this sense, the CCP did not attract a fundamentally different group of parents at the level of ego functioning. These findings also make it unlikely that differences in outcomes are attributable to the pre-existing individual ego strengths of one group over the other.

3.13 Parents' experiences of the Judge and Mediator in the CCP

CCP parents' narrative accounts were examined for views on the role of the Judge and Mediator, and any indication of impact on parental functioning. In the interview, parents were asked 'What or who specifically had the biggest effect on you as a parent?'

The Mediator's (or Child and Family Consultant's) role in the CCP pilot is as a central figure throughout the whole case. This person spends a good deal of time with parties, acting in the court as expert advisor on children's matters, preparing the formal family report when needed, and direct conciliation of aspects of the settlement. Parents' experience of the Mediator reflects their multi-dimensional role, and contrasts with a more one-dimensional experience of the Judge (see below).

In twenty-two cases out of the forty-five, unsolicited, spontaneous references to the Court Mediator were made (parents were not pushed for comment on the mediator specifically if this was not given first in an unsolicited manner). These references were evenly split, in broad terms, between positive and negative experiences.

In eleven cases, the Mediator (or Family and Child Consultant) was referenced as a person who had made a clear, positive impact on the parent, which remained with them, three months post court. Specific terms included

‘supportive, helpful, stayed with us throughout, insightful, knowledgeable, strong, felt accompanied, dependable, should have larger role in CCP, wanted more time with them, understood my child’s development’.

The mediator was a strong woman. She said to me the Judge will look on your children’s wishes. I don’t know about the Judge but the counsellor she was very good. She knew at what age the children go through that rebellion. (Father in the CCP group)

In the other half of these cases, the Mediator’s impact was not seen favourably, described in the following terms: ‘gave me trouble with the Family Report aspect, aggressive, attacking, biased to the other parent, didn’t look deep enough into it, favoured other information over mine, took over the decision, a clock watcher, pushy, tough, unlikeable’.

Don’t know how far they’ve developed a Family Report that fits the (CCP) system. That was one very hard part of that system. It wasn’t until I pointed that out to the counsellor that those Family Report questions do not reflect that (the CCP orientation). (Father in the CCP group)

I am disappointed in the Mediator – seeing us in one go. I think she should have spoken to us a lot more. Would have been nice for the kids and us to be in a program together. (Mother in the CCP group)

There were no gender differences evident in the above reports. There was less homogeneity of experience of the Mediator’s impact on the parent, compared to the Judge allocated to each case. Amongst many variables, this doubtless reflects the diversity of roles the mediator played in the CCP pilot, with some parents experiencing a single conversation with the Mediator, some being led through out-of-court settlements, and other parents going through to a full Family Report assessment and trial involvement by that person. A more complete evaluation of an expanded role for the Mediator is underway through the Melbourne CCP-Child Responsive Pilot.

Most parents in both the CCP and Mainstream samples were keen to mention the impact of the Judge upon them and upon their outcomes. No-one from either group offered a neutral comment about their experience of the Judge.

In the CCP sample, thirty-one percent (31%) reported a predominantly negative experience of the Judge. Specific reference was given to the following: 'naïve, incorrect, abused their power, critical/harsh, ill informed, omnipotent'. In sharp contrast, ninety-two percent (92%) of the Family Court parents reported a predominantly negative experience of the Judge's role and impact, with these comments: 'biased, unduly critical/harsh, unfair, naïve, ignoring, omnipotent, inconsistent'.

Three parents from the Family Court group (8%) offered a positive comment about their Judge being 'supportive'. Sixty-nine percent (69%) of the CCP parents reported predominantly positive experiences of their Judge, with the following specific features identified: 'excellent, fair, supportive, correct, observant, wise, powerful, strong, helpful, eased the confusion, very nice, listened, open, amazing, wonderful, encouraging, very polite, respectful'.

The lived experience of the CCP Judge's role appears indeed to be as was hoped for: that this Judge stands out to the parties as a strikingly humane figure, with qualities of compassion and fairness balanced evenly with authority and the wisdom of the law. The dominant experience is one of a benevolent and understanding Judge, who in the moment was frequently capable of assisting parties to transcend a previously entrenched view of their conflict and their place within it as a parent.

4. SUMMARY AND CONCLUSION

Summary

Within the confines of this exploratory study, three core questions were examined in relation to parents' experience of the Children's Cases Project:

- How do parents, as parents, experience the two different court streams?
- Considering each court process separately, what impacts if any, can be identified on subsequent parenting alliance and capacity to manage conflict?
- What are parents' perceptions of the impacts of a less adversarial process on their children's well-being?

The resulting data suggest some significant differences in these core outcomes, and point to aspects of the CCP Court process that may stem 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, 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.

'They explained normal court would take 12 months longer so we both agreed to CCP. Every step of the way it seemed clear what was going on – before we even started we got to watch a video of what to expect. It made it so much easier. With normal court you don't know when to speak or where to stand or what to call the Judge. I had a court counsellor in the CCP if you needed any help or if you got upset. And we even had her phone number if we weren't in court and we needed some help. The Judge was very polite, and made us feel like humans, not criminals. It was as good as it could be for something bad – if that makes sense. And that was good for my kids. (Mother in the CCP group)

I think it is important to keep this program going. It is a social responsibility. When emotions are involved you need people to step in for children who need to be protected, no matter what cost. The Court thing was a necessary evil – a necessary process. When we had nowhere to go, it was vital. Any program that softens the blow for children is absolutely vital. This program is a lot better than what we went through before – a lot less formal and a lot better for children. It was better for my children, because it took the major stress out of it for us (parents) – it was over in a relatively short period of time. (Father in the CCP group).

The question has been raised in this report about the nature of parents who elected to participate in the CCP pilot, against those who entered the Mainstream arena. Are the differential results evident in this study attributable to the CCP process, or to the nature of pre-court functioning of the parents,

the nature of their conflict and pre-existing contact arrangements? One of the major limitations of this post hoc study is that it cannot provide that data. However, the answer is likely to be that 'both' are true. The Hunter study will provide a greater sense of the ways in which the CCP pilot families differed from the Mainstream group. Here, it was established that the two groups who participated in this study presented with matters of similar complexity and focus, and that parents presented with similar levels of ego maturity, and of pre-separation conflict. The main differences amongst those areas explored came in higher levels of multi-issue Child Protection matters in the Mainstream group, and higher levels of relocation matters and core concerns about parental mental health in the CCP group.

The qualitative findings of this study indicate some patterns of improvement in the CCP group which parents themselves attribute to the nature of the CCP intervention. In particular, the 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. Here, half of the CCP group specifically referenced the person and actions of the Mediator involved, as helpful and supportive. There was less homogeneity of experience of the Mediator's impact on the parent, compared to the Judge allocated to each case. Amongst many variables, this doubtless reflects the diversity of roles the Mediator played in the CCP pilot, with some parents experiencing a single conversation with the Mediator, some being led through out of court settlements, and other parents going through to a full Family Report assessment and trial involvement by that person.

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.

I'd like to say that Judge... Brilliant. Very fair. And I felt like even though I didn't have representation, I felt like I was treated evenly in court and I was listened to. Definitely. It was excellent. You could tell she'd been around the block (in a good way).....As a mother it's extremely stressful. This is your child, the love of your life, but the Judge was guiding me, made it a lot easier. (Mother in the CCP group)

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. Not all Judges will be attracted to or suited to the different role attributed to them by the CCP process.

The magnitude of this move away from traditional Family Court processes is significant in the context of a history of the rule of law, much of it underpinned by the assumption that the best justice derives from thorough adversarial proceedings²⁸. The losses and gains of this advance will need to be weighed carefully over time. Certainly this first exploratory study suggests that a loss in judicial impartiality amounted to a clear gain for many parents, who were more often reached, moved and inspired by a Judge who entered their struggle.

A critical role for this exploratory study is to suggest further questions that need to be asked of court interventions in the lives of separating families. The

²⁸ (L. Moloney, personal communication)

early evidence found in this study supports investment in future research at a level that can systematically explore the vicissitudes of the CCP processes as applied to a larger and more diverse cluster of cases. Particularly, one would hope for studies that look at a broad foundation of baseline factors in family lives, outcomes of court process, and their interaction with variables such as the style and nature of the role played by Mediator, Judge and legal representatives in the matter. Further, the complexity of Child Protection matters and severe family violence cases within the CCP need to be fully addressed in their own right.

Conclusion

In closing, 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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