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BACKGROUND PAPER

**CHILD CUSTODY ARRANGEMENTS:
THEIR CHARACTERISTICS AND
OUTCOMES**

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Child Custody Arrangements: Their Characteristics and Outcomes

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EXECUTIVE SUMMARY

This literature review describes what is known about the factors that affect child custody arrangements, the characteristics of different custody arrangements and their effects on children and their parents. The emphasis is on shared custody.

A variety of social and environmental factors, as well as the personal characteristics of parents, are associated with the type of custody arrangement, including family law legislation, family composition, such as the age and sex of the children, the socio-economic status of the family, and the amount of parental co-operation. The effects of changes in family law legislation on actual custody arrangements are uncertain, although there is evidence that the number of shared custody arrangements goes up, while the number of sole maternal custody goes down after statutory changes that permit or encourage joint physical custody. Family composition affects the type of custody arrangement parents choose, with boys more likely to be in shared and sole paternal custody situations. Parents with more education and higher incomes are disproportionately involved in shared custody arrangements. Parents who co-operate and those who are more child-oriented are more likely to select shared over sole custody. There is anecdotal evidence that some parents seek shared custody to reduce their child support obligations or reject it to increase these obligations, but the author was unable to locate any empirical evidence on this issue.

Compared to sole maternal custody, sole paternal and shared custody arrangements appear to be vulnerable to change over time, typically to maternal custody with visitation by the father. The reasons for the change and the effects on the children are not known. Since much of the movement to different living arrangements involves older children (teenagers), the children themselves may have requested the change.

The research literature is remarkably silent on the logistics of different custody arrangements, such as scheduling, decision making, the sharing of child rearing tasks and expenditures.

Some inferences on the costs associated with different custody arrangements can be made from an Australian survey of fathers who had frequent visitation with their children. As the number of overnight visits increased, so did the number of items purchased by the father. The income of the father was not associated with the number of items purchased. A second study from Australia, which used the same survey as its data source, found that the cost of raising a child who spends 30 percent of the year with the non-custodial parent is from 46 to 59 percent higher than the cost of raising the child in an intact household, with the variation depending on the parents' standard of living. Costs related to household infrastructure (such as a bedroom, furniture and toys) and transportation were the primary reasons for the higher cost. There was little difference in the estimated costs for different frequencies of contact visits (i.e. 15, 20 and 30 percent of the year). Unfortunately, the extent to which these findings can be generalized to all non-resident parents, especially in Canada, is not yet known.

The social science evidence on living arrangements after separation and divorce is fairly clear on one important point: child outcomes in terms of social and psychological development do not differ by the type of custody arrangement as long as parental conflict is not high. The following

conclusions concerning the advantages and disadvantages of shared custody are preliminary and need to be replicated in future research.

The advantages of shared custody:

- Shared custody avoids the phenomenon of “Sunday dads.” Fathers who have shared custody tend to spend more time with their children, and father involvement in parenting may be maximized in shared custody arrangements.
- Shared custody results in a more equal division of parenting time and effort. In effect, shared custody gives each parent a respite from child rearing. This may be especially important when—as is the case in most families—both parents work full-time.
- Parents’ satisfaction may be higher in a shared custody arrangement compared to other types of arrangements.
- Shared custody may permit greater opportunity for parents to resolve financial issues. As well, each parent may have a greater understanding of the costs of child rearing.

The disadvantages of shared custody:

- Shared custody increases the overall costs of child rearing. However, the cost difference between shared custody—the children spending 40 percent or more of time with each parent, as set out in the Federal Child Support Guidelines—and sole custody with frequent contact by the non-resident parent has not been the subject of Canadian research.
- Parents in conflict are less likely to be able to cope with the demands of shared custody (in particular, commentators urge against shared custody when there are indications of domestic violence). Parents in shared custody arrangements are usually advised to establish schedules in order to provide the children with a sense of stability. At the same time, parents with a shared custody arrangement must be prepared to discuss issues of child rearing, such as discipline and limit setting, in more detail than when one parent has physical custody. Such co-operative parenting is less likely when there is ongoing hostility between the former spouses. When there is parental conflict that is obvious to the children, the children can experience loyalty conflicts and feel “caught,” which in turn can lead to emotional and behavioural problems. There is no evidence that shared custody improves the relationship between the parents.
- There are some indications that shared custody is less stable than most other arrangements. Changes in living arrangements may be disruptive to the children.

In the future, research on custody arrangements should emphasize longitudinal designs using random samples of separating parents. A prime example of this approach is the National Longitudinal Study of Children and Youth conducted by Statistics Canada, which is providing valuable data on how parents and children adjust to separation and divorce. Other research on “shared parenting” (i.e. both shared custody and sole custody with frequent contact between the children and the non-resident parent) should address questions such as what family characteristics are associated with “successful” custody arrangements.

1. INTRODUCTION

This review of the literature summarizes what is known about the factors that affect child custody arrangements, the characteristics of different custody arrangements, and their effects on children and their parents. The focus is on shared custody arrangements.

1.1 BACKGROUND

The purpose of this report is to review the social science research from Canada and other countries that describes the comparative benefits of different types of custody arrangements and the characteristics of shared custody. At the time of writing this paper the Department of Justice Canada is reviewing federal custody and access policies. In 1998, the Special Joint Committee on Child Custody and Access recommended that shared parenting arrangements be favoured. In its response, the Government of Canada emphasized the need for review and research.

To respond to the concerns raised in the *Report* [of the Special Joint Committee], the Government of Canada will review the concepts, terminology and language used in family law with a view to identifying the most appropriate way to emphasize the continuing responsibilities of parents to their children and the ongoing parental status of both mothers and fathers post-divorce (Government of Canada, 1999: 10).

This report on sole, joint and split custody is part of the review of the effects of different types of custody arrangements on children and parents.

This review is also intended to shed light on the costs associated with shared custody compared with other types of custody. The calculation of child support amounts in cases of shared custody, within the meaning of the term under the Federal Child Support Guidelines, is also being reviewed by the federal government. Part of the developmental work involves assessing the difference in costs, if any, between shared custody arrangements and sole custody arrangements that include frequent access by the non-resident parent.

Although the report occasionally refers to the differences between intact and separated and divorced families, its primary focus is the differences among the custody arrangements of separated and divorced families. Consequently, there is little or no reference to the impact of the separation or divorce itself on children and their parents.

1.2 ORGANIZATION OF THE REPORT

The report is structured as follows. Chapter 2 examines the terminological confusion that sometimes accompanies research on the living arrangements of children after separation and divorce. Gaps and weaknesses in the research literature are addressed in Chapter 3. Chapter 4 describes the factors that seemingly affect parents' selection of one custody arrangement over others. Chapter 6 looks at the effects of different custody arrangements on children and parents in several categories: parent-child contact, the well-being of children, parental adjustment, parent-child relationships and parenting skills, the relationship between the parents, child support payments, and returns to court and re-litigation. Chapter 7 summarizes the main findings of the review.

Appendix A contains an overview of the policy and legislative approaches to shared custody in other countries.

2. ISSUES RELATED TO TERMINOLOGY

Terminological issues abound in the research literature on custody arrangements after separation and divorce.

2.1 CUSTODY AND ACCESS

Many countries, including Australia, England and Scotland, no longer use the terms *custody* and *access* “with their connotations of ownership and winner/consolation prize winner.” (Carberry 1998). In the United States and in some Commonwealth countries, access is generally called visitation or contact.

In Canada, the report of the Special Joint Committee on Child Custody and Access recommended that the terms *custody* and *access* no longer be used in the *Divorce Act*. Instead, the Committee suggested that the meaning of both terms be incorporated into the new term *shared parenting*. (Special Joint Committee on Child Custody and Access 1998). The federal government’s response was, in part, as follows:

The challenge is to identify a term that would ... avoid the problems currently associated with the terms custody and access as well as possible diverse connotations and understandings of the word “shared.” The term would need to be consistent with a child-centred approach and would have to be carefully defined to have a clear and accepted understanding and use by both the courts and the public.

It may be that new child-centred words and phrases will need to be identified to describe a variety of particular parenting responsibilities and arrangements for use in parenting plans and court orders (Government of Canada, 1999: 13).

2.2 SHARED CUSTODY

The following terms are used in the research literature to describe shared custody: *shared parenting*, *dual parenting*, *dual residential placement* or *dual residence*, *joint physical custody*, *time-sharing* and *co-parenting*. In Canada, *shared custody* is defined in the 1997 Federal Child Support Guidelines under the *Divorce Act* as an arrangement in which the children spend a minimum of 40 percent of the time living with each parent.

In the United States, *joint physical custody* is the most common term for shared custody. In some studies, especially in earlier work, researchers do not clearly distinguish between joint legal and joint physical custody;¹ *joint legal custody* is sometimes assumed to be the same as *joint physical custody*. *Joint legal custody* is defined as an arrangement in which the parents share responsibility for important decisions in their children’s lives (such as those surrounding medical treatment and schooling) with no implications for the residential placement of the child.

Unless otherwise specified, this report uses the terms *shared custody* and *joint physical custody* to mean arrangements in which the parents share the physical custody of the children and the

¹ It still not uncommon for the term *joint custody* to be used in the literature. The reader must take care to determine whether joint legal custody or joint physical (shared) custody is being discussed.

children have two residences. In the majority of research reports, the amount of time spent by the children in the two residences is not specified. In addition, not all research on shared parenting or co-parenting can be assumed to describe arrangements that closely resemble shared custody. These terms are used much more loosely than is *shared custody* in the Federal Child Support Guidelines.² In fact, what is called *shared custody*, *shared parenting* or *co-parenting* in the literature is often what in Canada would be called sole custody with frequent access.

In the Stanford Child Custody Project, which is among the most rigorous studies on custody arrangements and often quoted in this report, *dual residence* was defined as an arrangement in which each parent has responsibility for the children for “significant periods”—four or more overnights in a two week period in the second residence (Maccoby et al. 1988). This definition is based in part on parents’ perceptions: in the majority of cases in which the children spent four or more overnights with each parent in two weeks, the parents said that the children lived with both parents. This schedule represents 29 percent of nights spent in the second home, which is quite different from the 40 percent standard found in the Federal Child Support Guidelines in this country.

Time sharing in shared custody arrangements in the United States can range from 20 to 50 percent of the year (Pruett and Santangelo, 1999: 406). More typically, the proportion of time (or of the year) children spend in the second residence ranges from 30 to 50 percent, which appears to represent the standards for shared custody in child support guidelines in many U.S. states.

All researchers agree that equal shared custody—in which the children spend half their time in each residence—is a rare phenomenon (see, for example, Lye, 1999; and Marcil-Gratton and Le Bourdais, 1999).

Advocates of shared custody argue that it lessens the feeling of losing a parent that children may experience after a divorce and is fair to both parents. Because of the high degree of co-operation that shared custody is presumed to require, some courts are reluctant to order this arrangement unless both parents agree.³ Many jurisdictions also have statutory provisions that limit visitation and prohibit shared custody when there is evidence of family violence.

2.3 SPLIT CUSTODY

In split custody arrangements, parents divide custody of their children, with each parent having physical custody of one or more children. The literature suggests that courts try not to separate siblings when awarding custody. Informal arrangements of this type are also believed to be rare. Split custody is believed to evolve over time, especially when older children are involved (Kelly, 1994).

² Melli and Brown (1994: 549) note that state laws in the United States do not define what constitutes visitation with a parent as compared to residing with that parent.

³ This may not be uniformly true. In both the Stanford Child Custody Project and a Wisconsin study (Brown et al., 1997), there were indications that shared custody was sometimes used to resolve custody disputes.

2.4 SOLE MATERNAL OR PATERNAL CUSTODY

In sole custody arrangements, the children live with one parent. The other parent may or may not have rights of access and rights of decision making. When the other parent has rights of decision making, this is called joint legal custody. Sole maternal custody is the norm in Canada and most other countries for which there are data.

3. GAPS AND WEAKNESSES IN THE RESEARCH LITERATURE

This review was impeded by gaps and weaknesses in the social science literature on custody arrangements in general and on shared custody in particular.⁴

3.1 RESEARCH TOPICS

Relatively few studies explore the factors that affect the choice of custody arrangement made by separating and divorcing parents, or the effects of those decisions on children and parents. An important omission is the absence of data on the number and characteristics of parents who (a) initially selected their final custody arrangements; (b) settled on a specific custody arrangement after mediation or negotiation; and (c) were ordered by the court to establish a specific arrangement. The changes over time in custody arrangements—the move from shared custody to other arrangements, for example—are little studied, with the consequence that the reasons for these shifts in arrangements are not well understood. Furthermore, we know little about how shared custody is operationalized in daily living. “How parents actually work out, structure, and manage co-parenting subsequent to divorce is largely unknown” (Arendell, 1995a). Data on the costs associated with different custody arrangements are also very limited.

Little data are available on the effects of custody arrangements on children of different ages. Nord and Zill (1996) comment that the following questions are almost never researched:

- Do optimal custody arrangements vary by the age of the children?
- Does the influence of any given factor change with the developmental stage of the children? For example, is parental conflict more or less damaging when children are toddlers, when they are in grade school or when they are adolescents?
- Does the influence of the various factors that may affect custody vary with the children’s temperament or other characteristics. For example, do children who are extraverts and those who are shy react differently to parental conflict or to adjustment problems in the resident parent?

Although researchers have made efforts to answer the question concerning “what is the best custody arrangement for the children when divorcing parents are in high conflict,” only one or two good-quality studies have directly tackled this issue. More research should be conducted in this area.

3.2 STUDY DESIGNS

3.2.1 Sampling

Researchers often use samples that are not randomly drawn from the total population of separating and divorcing couples. Furthermore, the emphasis has been on middle-class families. There is scant information on families outside of the middle class and those from minority groups. Samples of convenience, such as volunteers and couples who are in mediation or

⁴ See Lye (1999) for a review of the flaws in this body of research.

referred to counselling (clinical samples), are frequently found in the literature. Exceptions to this general rule are the studies based on data from the National Longitudinal Survey of Children and Youth (NLSCY) conducted by Statistics Canada and Human Resources Development Canada, and several national surveys in the United States. Therefore, possible bias in the selection of study participants resulting from the use of non-random samples is a major drawback in the research literature on child custody arrangements after separation and divorce.

3.2.2 Court Versus Survey Data

Some studies use court data exclusively. However, in real life, custody arrangements often bear little resemblance to what is found in court files (Maccoby and Mnookin, 1992). The factors that are related to the type of custody arrangement in court files may not be the same as the factors that affect the custody arrangement in the long run. More survey data, particularly longitudinal data on divorcing couples, are required to address a number of research interests, such as the extent and nature of changes over time in inter-parental conflict, children's adjustment to divorce, and the reasons why changes in custody arrangements are made.

3.2.3 Cross-sectional Versus Longitudinal Designs

A *cross-sectional* design compares different groups of people at the same point in time. A *longitudinal* design involves data collection from the same people in two or more time periods or "waves." Because of the lower cost and shorter time frame, most research uses a cross-sectional rather than longitudinal design. Cross-sectional designs have a number of disadvantages, a primary one being that controls cannot be introduced for *pre-separation* family dynamics and parental and child adjustment cannot be taken into account.⁵ Cross-sectional data are therefore unable to capture the complete picture of the effects of these factors on custodial arrangements or parenting roles. Studies that fail to take into account the pre-existing difficulties of families have a tendency to overstate the effects of separation.

3.2.4 Data Sources

Some of the most sophisticated and rigorous in-depth studies of custody arrangements were done in California; for example, the Stanford Child Custody Project was conducted in two counties near San Francisco. Other studies were also confined to local communities in the United States, rather than being national in scope. The only research on expenditures by non-resident parents and the costs of visitation or contact by non-resident parents was done in Australia. The applicability of the findings to Canada is not known.

Both surveys and smaller scale research, with some exceptions, use parents (mostly mothers) to report on their post-separation experiences and on the well being of the child. Fathers are generally excluded from the study design. Validity problems arise with regard to parental assessments of their children's adjustment. Parents may be reluctant to reveal problems encountered by their children and their subjective assessment of the children's post-divorce adjustment may be particularly vulnerable to this tendency. Alternatively, parents may not be aware of behavioural problems such as delinquent activity. Relatively few researchers conducting surveys and smaller scale studies actually interview or otherwise assess the children (e.g. by means of teacher reports).

⁵ Other than by using retrospective accounts by respondents.

3.2.5 Other Problems

Because of difficulties in locating parents and children in non-standard custody arrangements, such as sole paternal custody, split custody and shared custody, much of this research on these arrangements involves small numbers and unrepresentative samples from specific communities. Because of the formidable expense and other problems inherent in obtaining a large enough sample for analysis, these arrangements have not been well studied. This is a reason why many analyses “piggy-back” questions on custody arrangements onto large scale surveys, such as has been done in Canada with regard to custody and access issues added to the National Longitudinal Survey of Children and Youth.

Some research, even that published in the late 1980s and early 1990s, uses survey data from two decades ago. Many aspects of custody arrangements have changed in the past 20 years.

3.3 ANALYSIS

Multivariate analysis using regression or logistic regression is rarely undertaken in research on living arrangements. Since a number of independent variables (e.g., family income; conflict between parents) are related to the dependent variable (e.g., child outcomes), it becomes important to determine which, if any, of the independent variables is significantly correlated with the dependent variable, taking into account the various correlations that may exist between the independent variables. Multivariate analysis helps to determine the *relative* influence of all of the various forces that can affect the dependent variable. If possible, all “confounding” factors should be included in the analysis. For example, to determine the effects of custody arrangements on the well-being of children, the analysis should control for socio-economic status: social class variables such as parental income affect well-being and are also strongly associated with custody arrangements.

Because many surveys are conducted for reasons other than an examination of child custody arrangements, the variables required for a complete examination of child custody are often not available. Analyses are therefore impeded because the data source lacks all the information desirable for analysis.

Finally, surveys in the United States frequently include respondents who were never married and do not control for marital status (divorced or separated parents versus those who never married). This may affect the relationships among the variables. Large differences in many aspects of custody, access and child support arrangements were found for various types of unions in the National Longitudinal Study of Children and Youth in this country (Marcil-Gratton and Le Bourdais, 1999) and we suspect that these differences would be even larger in the United States.

3.4 SUMMARY AND CONCLUSIONS

Weaknesses in the social science literature on child custody arrangements include major gaps in the topics examined, flaws in study designs, especially sampling, and inadequate analysis.

The quality of available child custody research varies greatly. Some of the research is poor in quality. In some cases, researcher bias appears to negatively affect the soundness of conclusions

drawn. This applies primarily to papers that were not subject to the rigour of peer review, but even some journal articles that were presumably vetted by colleagues show bias, usually in favour of shared custody. Lower quality research in peer-reviewed journals tends to be found in less prestigious journals and in papers from the 1980s and earlier. Particularly problematic are some review articles that contain misleading conclusions and inaccurate citations. For example, research is cited to support a generalization but no such support is found upon review of the original study.

Despite the drawbacks to the research literature on child custody arrangements, several excellent, well-designed studies have been undertaken.

4. FACTORS AFFECTING CUSTODY ARRANGEMENTS

4.1 LEGISLATION

Changes in family law legislation may contribute to changes in the occurrence of different custody arrangements.

In the United States, the incidence of joint *legal* custody increased greatly as a result of statutory changes (see for example, Maccoby et al., 1988). Kelly (1994) which suggests that this increase is much larger than the increase in joint *physical* (shared) custody.

In some U.S. states, an increase in shared custody arrangements being set out in divorce decrees since the 1980s seems to be due to changes in legislation. For example, in Wisconsin, according to final divorce judgements in court files, the proportion of couples with shared custody rose from 2 percent in 1980 to 14 percent in 1992. The proportion of sole maternal custody arrangements fell correspondingly; while the proportion of sole paternal custody and split custody arrangements remained approximately the same over this period (Brown et al., 1997; Cancian and Meyer, 1998).⁶ Since this research was confined to court data, the extent to which these arrangements reflected the actual living arrangements of the children is not known.

In California, studies have shown that since 1980, when joint physical custody became an explicit option, the number of families who selected this arrangement has increased substantially, according to court records (Kelly, 1993). On the other hand, Kelly also notes that physical arrangements did not greatly change between the 1970s and the early 1990s: “despite changes in the law and social custom, custody arrangements remained remarkably stable over the past three decades” (Kelly, 1994). In California, despite enabling legislation in the 1980s, shared custody did not increase dramatically—the mother typically gets physical custody and both parents share legal custody (Maccoby et al., 1988).

In Australia, the third year of the *Family Law Reform Act* 1995 brought a small increase in dual residence (shared custody) orders in interim and final judgments, but the sample of judgments was small (Rhoades et al., 2000: 46-9). However, the increase in dual residence may not be due to the change in legislation. Interviews suggested that many shared residence arrangements were reached without legal assistance and without the parents knowing about the new legislation.

4.2 SOCIAL AND DEMOGRAPHIC CHARACTERISTICS OF THE FAMILY

4.2.1 The Number, Gender and Age of the Children

Pearson and Thoennes (1990) used interview data from divorcing couples in mediation in several communities across the United States. The study design was longitudinal—respondents were interviewed at least three times after separation. The sample was neither random nor nationally representative although it drew cases from a number of cities. A sizable proportion of the

⁶ The *Divorce Reform Act of 1978* authorized Michigan courts to give “care and custody” of children to the parties jointly when they agreed and when the court found that this arrangement was in the best interest of the children (Brown et al., 1997). Amendments to the law in 1987 allow the courts to award joint custody over the objection of one party under certain circumstances.

sample was made up of couples who initially disagreed about custody and access but who resolved their differences in mediation. In this sample, 70 percent of the parents with shared custody arrangements had only one child, compared to 33 to 52 percent of parents with other custody arrangements. Conversely, Canadian researchers found that parents in their shared custody sample typically had two children (Irving et al., 1984).

Buchanan et al. (1996) found that boys were disproportionately in shared and sole paternal custody arrangements.⁷ The children were between 10.5 and 18 years of age, and the residential arrangements were those that were in place four to five years after separation. In Wisconsin, boys were more likely to be initially in a sole paternal custody arrangement. When all the children were boys, the likelihood of shared custody increased (Brown et al., 1997: 16; Cancian and Meyer, 1998).

In the Canadian National Longitudinal Survey of Children and Youth (1994-95 cycle), court-ordered custody arrangements at separation differed somewhat by the age of the children. Younger children (aged 0 to 5 year-old) were slightly less likely than older (6 to 11 year-old) children to be in a shared custody arrangement—12 percent and 16 percent respectively (Marcil-Gratton and Le Bourdais, 1999: 19). The researchers point out that among 6- to 11-year-olds, almost one child in four was formally in the care of his or her father either exclusively (8 percent) or jointly with his or her mother (16 percent).

Seltzer (1990), as well as other researchers, reported that families with sole paternal custody are more likely to involve older children than those with other arrangements. Seltzer hypothesized that family composition is more closely associated with physical custody than is the economic status of the family (see section 4.2.3). Younger children were less likely to be in a sole paternal custody arrangement, but when all children were older than 11 years of age, the proportion of fathers with sole custody increased (Cancian and Meyer, 1998). Similarly, Nord and Zill (1996) reported that in their national sample the youngest child was 12 years or older in 51 percent of families in which the father had sole custody compared to 28 percent of families in which the mother had sole custody. Finally, in the mediation samples Pearson and Thoennes (1990) used, the average age of children in sole paternal custody arrangements was 10, whereas it was 8 in families with sole maternal custody arrangements.

In split custody situations in Wisconsin, the children were also usually older (Brown et al., 1997). The division was frequently along gender lines: boys lived with their father and girls with their mother. In this examination of court data, children in shared custody were about the same age as those in mother custody, but younger than those in split custody and marginally younger than those in father custody. That is, children in split custody were older than those in other arrangements, with the next oldest group being found in father custody.

4.2.2 Age of the Parents

In Wisconsin, the age of parents and the average length of their marriage were greater in split custody than in the other arrangements (Brown et al., 1997). The 1991 panel of the Survey of Income and Program Participation, also from the United States, found that fathers with sole

⁷ This paper is one of many that emanated from the Stanford Child Custody Project.

custody were older than mothers with sole custody: 23 percent of fathers were 45 years of age or older compared to 9 percent of the mothers (Nord and Zill, 1996).

4.2.3 Socio-economic Status

The relationship between socio-economic status and custody type has been discussed by many researchers (e.g. Seltzer, 1990; Maccoby and Mnookin, 1992), who report that parents with shared custody are more likely to be middle class or professionals and be better educated than parents with other arrangements. These findings are in line with other research that found that the socio-economic status of the father has a strong and direct relationship with the frequency of contact with the children.

Bannasch-Soissons (1985), in analysis of data obtained from court files on an unrepresentative sample of 30 mothers with sole and 30 with shared custody, found that the mothers with shared custody⁸ were significantly better educated and earned higher incomes than the mothers with sole custody.

A nationally representative survey in the United States found that fathers with sole custody were slightly better educated than mothers with sole custody: 16 percent of the fathers had graduated from college, compared to 10 percent of the mothers (Nord and Zill, 1996). Compared to mothers with sole custody, fathers with sole custody had higher median family incomes and were less likely to have experienced poverty in the previous year, were less likely to have received social assistance, and were more likely to own their own homes.

More detailed information on social class was available in the Wisconsin court-based study. When only the father was employed, shared custody judgements were less likely. Shared custody was found in 14 percent of families in which both parents worked, but in only 8 percent when just the father worked (Brown et al., 1997). As the combined parental income increased, so did the proportion of parents choosing shared custody. For example, 7 percent of families making \$30,000 a year chose shared custody compared to 22 percent of those making more than \$70,000 annually (there was a tendency for equal shared custody to rise with mother's income; the pattern was similar for men's income.) Also, as the income of the mother rose, the likelihood of the parents choosing a sole paternal custody arrangement decreased. Sole paternal custody was very rare when the father had a low income. Brown et al. (1997: 24) also examined the ratio of mother to father income and found there is "a dramatic decrease in father sole custody and an increase in mother sole custody as the ratio of mother's to father's income rises." Equal shared custody is most common when the parents have similar incomes—that is, when the mother's income is between 75 and 149 percent of the father's income.

Also in Wisconsin, the likelihood of parents choosing shared and sole paternal custody decreased when the family was receiving social assistance payments (Cancian and Meyer, 1998). On the other hand, when the family owned a home, the incidence of shared and sole paternal custody increased.

The data analyzed by Pearson and Thoennes (1990) replicated these findings. The shared custody parents were more likely to have attended graduate school and had the highest mean

⁸ Only half of the mothers with shared custody according to court files actually shared custody.

household incomes of the parents in the five groups studied (sole maternal, sole paternal, joint legal maternal, joint legal paternal, and shared custody arrangements). The mothers with shared custody had higher annual earnings than did mothers in other custody arrangements.

Although these data show that middle- and upper-middle class parents are disproportionately involved in shared custody arrangements, Maccoby and Mnookin (1992: 76) emphasized that in California such arrangements were found in families with varied backgrounds. The arrangement “was not by any means exclusively chosen by the well-educated and affluent.” Irving et al. (1984) drew the same conclusion from Canadian data. One third of the parents with shared custody made less than \$20,000 combined annually, and about one quarter had a high school education or less.⁹ The authors concluded as follows:

(1) shared parenting is a viable custody option among some working and lower-status couples, (2) the quality of the marital relationship and the process of selecting shared parenting are more important determinants of outcome success than social class, and (3) the reason such findings have not surfaced previously is the result of a sampling artefact; that is, the samples available to researchers tend to be middle and upper class (Irving et al., 1984: 134).

One reason why shared custody arrangements often involve a disproportionate number of parents with higher socio-economic status is probably, at least in part, because these parents are more likely to have flexibility in their work schedules, which enables them to spend more time parenting. In addition, as is discussed in section 5.3, shared custody is more costly than other arrangements.

In summary, shared custody is most common among better educated, higher earning parents and in families that include boys and only children. Split custody is most likely to involve older children, with boys often living with their father and girls with their mother. Older children are disproportionately part of sole paternal custody arrangements.

4.3 PERSONALITY CHARACTERISTICS OF THE PARENTS

A few clinical studies have focussed on the qualities of parents that facilitate shared parenting. Ehrenberg et al. (1996) found that parents who agreed on shared parenting were less narcissistic, more empathetic, less self-oriented and more child-oriented in their parenting attitudes. Earlier work by Steinman et al. (1985) drew similar conclusions; that is, successful couples are empathetic and flexible, can maintain boundaries between inter-parental and parent-child interactions, and can adjust their expectations as they shift their expectations from a spousal to a co-parenting role.

4.4 DEGREE OF CONFLICT AND CO-OPERATION BETWEEN THE PARENTS

Some researchers have found that shared custody is more likely to be chosen by parents who are on relatively good terms. The data analyzed by Pearson and Thoennes (1990) included

⁹ This Ontario sample was from the early 1980s; 201 male and female respondents with shared custody were interviewed. The sample was non-random, made up of volunteers obtained by contacting parenting, mediation and child care groups (Irving et al., 1984).

interviews before the final divorce decree.¹⁰ They found a relationship between parents who said their relationship was “friendly” or “strained but able to co-operate,” and the type of custody arrangement they chose. In essence, parents with “friendly” or “strained but able to co-operate” relationships were more likely to choose shared custody arrangements: 67 percent shared custody; 57 percent joint legal/paternal custody; 44 percent joint legal/maternal custody; and, 37 percent sole maternal custody.

Ehrenberg (1996) found that co-operating couples chose a wider range of custody arrangements than did disagreeing couples, all of whom had selected either sole custody or joint legal custody. This study of de facto custody arrangements involved interviews with only 16 couples in each category (co-operating and disagreeing). The sample was obtained through newspaper ads and information letters distributed by lawyers and community agencies. Both the sample size and sample source limits the generalizability of the conclusions.

4.5 PREFERENCES OF THE PARENTS

Fathers are more likely to want to share custody than are mothers, but the effects of the fathers’ wishes on court-ordered and actual custody arrangements are not well understood. In the Stanford Child Custody Project, Maccoby and Mnookin (1992: 270) found that about two thirds of men expressed a preference at the beginning of the divorce process for some type of physical custody, but “few of these fathers actually sought custody through the formal legal process.” The authors speculate as follows:

The authors speculate that fathers (a) may be responding to perceived social expectations that women should have custody except in exceptional circumstances, or (b) while mothers and fathers may have similar wishes, fathers sometimes realize that their desires may not be realistic due to inexperience or difficulty in co-ordinating work and child care (Maccoby and Mnookin, 1992: 72).

In the data analyzed by Pearson and Thoennes (1990), parents who received shared custody were more receptive to this outcome than were other parents. In cases in which parents had initially favoured some type of joint legal or joint physical custody, the final custody outcomes were that: 41 percent had joint legal maternal custody; 52 percent had joint legal paternal custody, and 58 percent had joint physical custody. Among these groups, 50 to 70 percent of parents reported that they had reached their agreements on their own (i.e. without using mediation or going to court).

On the other hand, Pearson and Thoennes (1990: 240) also found that among parents who got joint legal or physical custody, 40 percent or more had initially wanted a sole custody arrangement. This percentage can be contrasted with the 90 percent of sole custody parents that had wanted, and received, sole custody. Parents who received joint legal or physical custody were more likely than parents with sole custody to feel that someone had tried to talk them into the arrangement that they ultimately received (40 versus 15 percent). The “someone” was most often the other parent, followed by mediators and lawyers. A small proportion of mothers with

¹⁰ This time frame removes any misperceptions introduced by subsequent events. That is, having respondents recall the nature of their relationship in earlier months or years does not blur the data.

joint physical custody said that they had felt pressured financially by their ex-spouse to choose this particular arrangement. As a whole, these data suggest that parents can reach a compromise during mediation and other negotiations at the time of the divorce. As is discussed next, sometimes these compromises are reached only after the parents appear in court.

4.6 FACTORS RELATED TO THE COURT PROCESS

In the Stanford Project, Maccoby and Mnookin (1992) found that shared custody was sometimes used to resolve custody disputes: shared custody was awarded in about one third of disputed cases in which mothers and fathers had both sought sole custody. In addition, the more conflict between parents, the more likely shared custody was awarded. It should be emphasized, however, that trials accounted for only 3.7 percent of the cases in the sample; 50 percent were uncontested and the remainder were settled after assessments, mediation, and other interventions.

Another California study presents the outcomes of cases that had gone to court-ordered mediation. When there was a custody dispute, 57 percent of the cases resulted in sole maternal custody, 27 percent in joint custody, 7 percent in sole paternal custody, and the remainder in other custodial arrangements (Maccoby, 1999: 59). Other studies have found that the success rates of fathers who seek either sole paternal or shared custody in court proceedings range from about 40 to 60 percent.

Legal representation was associated with the incidence of court-ordered sole paternal custody in Wisconsin (Brown et al., 1997: 27, Table 10). When counsel represented the father but not the mother, the percentage of sole maternal custody judgments was substantially lower and the percentage of sole paternal custody judgments was higher. As the authors comment, the interpretation of these findings is unclear. It may be that the unrepresented parent lost custody because of the lack of counsel, but it is also possible that the parent willing to relinquish custody saw no need to retain a lawyer. An argument against the latter conclusion is that unrepresented mothers and fathers had lower incomes than did represented parents. Poorer parents may have agreed to decisions because they lacked resources for legal fees.

Data on which issues parents dispute were also available in the Wisconsin research. Overall, the residential placement of the children was disputed in 18 percent of the divorces, but a considerably larger share of parents with unequal shared custody had this dispute: 34 percent of the cases that resulted in unequal shared custody (in which the children spend 30 percent to less than 50 percent of the time in the secondary residence) involved placement disputes compared to only 6 percent of the cases that resulted in equal shared custody. Disputing parents in cases involving unequal shared custody also had more issues in other areas, such as property, and child and spousal support. These findings suggest that unequal shared custody may be the result in cases that are more contentious than others.

4.7 CHILD SUPPORT OBLIGATIONS

Research in Australia on the first three years of the *Family Law Reform Act* purportedly found that “the desire to reduce child support liabilities is frequently a motivating factor for seeking and making shared residence arrangements” (Rhoades et al., 2000: 8). This statement is not

supported in the report by any evidence.¹¹ The precise influence of child support on the selection of shared versus other custody arrangements is not known. On the other hand, family lawyers and others in the field frequently cite anecdotal evidence that suggests that some parents may reject, or seek, shared custody because of its implications for child support obligations. Melli and Brown (1994: 546) comment that a reason why shared custody has a “bad reputation with child support policy makers is the view that the interest of secondary parents in shared custody is primarily in reduced child support, not in time with their children.” A recent article by Maccoby (1999: 62-3) contends that when the California divorce legislation was changed so that child support payments were linked to the amount of time spent by the children in the second residence, there was a sudden increase in the number of requests for modification of custody and child support awards. “Fathers were claiming that their children needed to be with them more, and that they themselves wanted and needed to have more time with their children.” Maccoby suggests that these variation requests were being made in order to bring the number of days “to the 129 overnights a year that would allow [fathers] to be designated as joint physical custodians and hence to pay less child support” (Maccoby, 1999: 62-3).

4.8 SUMMARY

The effects of changes in family law legislation on actual custody arrangements are uncertain, although there is evidence that the incidence of shared custody increases and sole maternal custody decreases after statutory changes that permit or encourage joint physical custody.

Family composition affects the type of custody arrangement, with boys more likely to be in shared and sole paternal custody situations.

Parents with more education and higher incomes are disproportionately involved in shared custody arrangements.

Parents who co-operate and those who are more child-oriented are more likely to select shared over sole custody.

There is anecdotal evidence that some parents seek shared custody to reduce, or reject shared custody to increase, their child support obligations, but no empirical evidence on this issue was found.

¹¹ The discussion of this issue on pp. 62-3 of Rhoades et al. (2000) offers no support for the conclusion found in the summary of the report.

5. CHARACTERISTICS OF CUSTODY ARRANGEMENTS

The practical requirements of shared and other forms of custody are not well researched. What Maccoby and her associates wrote more than 10 years ago still applies today:

There is still relatively little information concerning the details of inter-parental cooperation—that is, the logistics of managing visitation and alternation, the division of responsibilities, the frequency and nature of communication, the amount of mutual undermining versus mutual backup—that prevails under different custodial arrangements (Maccoby et al., 1990: 142).

5.1 STABILITY OF CUSTODY ARRANGEMENTS

5.1.1 Canada

There are three sources of Canadian data on child custody arrangements: a small research study of court files in two communities, the Survey of Child Support Awards, and a national survey of parents and children.¹²

A pilot study of 1992 court files in Hull, Quebec, and Hamilton, Ontario, found that 86 percent of the arrangements involved sole custody, 9 percent joint legal custody, 5 percent split custody, and 1 percent joint physical (shared) custody (Ellis, 1995). The Hull sample involved a higher percentage of sole custody cases than did the Hamilton sample (94 versus 79 percent) with the difference explained by the lack of use of joint legal custody in Quebec. Nine out of ten sole custody parents were mothers. Both separation agreements and divorce orders were included in these data.

The Survey of Child Support Awards (1998 to 1999 cases) provided data on custody arrangements as found in court files in selected courts across Canada (Bertrand et al., 2001). The mother had sole custody in 80 percent and the father in 9 percent of cases. Shared custody, defined in the Federal Child Support Guidelines as the children spending at least 40 percent of the time with each parent, was reported in 5 percent of cases. There was a fairly large variation by jurisdiction in the incidence of shared custody, from 1 to 8 percent. Split custody was found in 5 percent of the total cases, with a range of 3 to 7 percent of divorce cases depending on the province and territory.

As expected, at the time of separation, most children younger than 12 years are in the sole custody of their mother, according to data from the 1994-95 cycle of the National Longitudinal Survey of Children and Youth (Marcil-Gratton and Le Bourdais, 1999). Table 1 shows that among all families sampled and according to court orders, 79 percent of these children were in their mother's custody, 7 percent were in the custody of their father, and 13 percent were in a shared custody arrangement. There was a small difference in court-ordered arrangement by the type of union, with common-law couples reporting a lower proportion of shared custody arrangements.

¹² Note that the court file study and Survey of Child Support Awards use the separating/divorcing family as the unit of analysis whereas the national survey uses children as the unit. This difference means that the findings cannot be directly compared.

Table 1 Court-ordered Custody Arrangements at Separation, by Type of Broken Union, NLSCY, Cycle 1 (1994-95)

	Common-law relationship	Marriage, common-law before marriage	Marriage, no common-law before marriage	Total sample
Mother exclusive custody	84.1	74.3	82.0	79.3
Father exclusive custody	6.2	7.9	5.3	6.6
Shared physical custody	8.7	16.8	10.9	12.8
Other	1.0	0.9	1.8	1.2
Total percent	100.0	99.9	100.0	99.9
Weighted number	328	489	409	1,239

Source: Marcil-Gratton and Le Bourdais, 1999. The survey is confined to children under 12 years of age. The unit of count is the child.

Still using the NLSCY as the data source, *the actual arrangements at separation* varied from what was in the court order.

- 87 percent of children lived only with their mother, compared to 79 percent that were supposed to according to the court orders.
- 7 percent lived only with their father, which was identical to the proportion in the court orders.
- 7 percent lived in a shared custody arrangement, compared to 13 percent in court orders (the 7 percent breaks down as follows: 3 percent were in shared custody but mainly with the mother; 2 to 5 percent were in equally shared custody; and 1 percent were in shared custody but mainly with the father).

Court-ordered custody status therefore frequently does not reflect the reality of physical placement.

The NLSCY analysis also revealed that shared residence arrangements decreased with time. Among children of married couples who had separated, 13 percent had shared custody in the first two years after separation, compared to 10 percent two to four years after separation and 7.5 percent five or more years after separation (Marcil-Gratton and Le Bourdais, 1999: 27).

5.1.2 United States

Only about 15 to 20 percent of children live in dual residences, even in those U.S. states “that are at the forefront of the joint custody movement,” such as Washington and California (Pruett and Santangelo, 1999: 391). The authors suggest that rates of shared custody in other parts of the country are likely to be lower. This assumption is supported by estimates from two national surveys in the United States that found that 12 to 13 percent of all households with formal custody arrangements had a shared custody arrangement (Donnelly and Finkelhor, 1993).

A longitudinal study in California found that actual custody arrangements did not correspond to the court order. Twenty percent of divorce cases in the Stanford Child Custody Project resulted in joint legal and physical custody according to the court order. Of the couples with this type of

order, only one half had a dual residence arrangement with time shared between the parents a few years after the divorce (Maccoby and Mnookin, 1992: 198-199). In most of the remainder of the families, children lived in a primary residence and the other parent had access.

Three types of custody arrangements—sole maternal, sole paternal and shared—were tracked over two years in a Canadian study (Cloutier and Jacques, 1997a and 1997b). One half of the children in a shared custody arrangement changed custody arrangements during this period. Girls who were in the custody of their father changed their physical placement more often than other girls. These girls typically went to live with their mother. Boys who changed custody normally divided their time equally between their parents.

When sole maternal and sole paternal custody arrangements are compared, non-resident mothers are more likely to regain custody than are non-resident fathers (Stewart, 1999).

Thus, empirical data from both Canada and the United States show that custody arrangements are not necessarily stable and that the actual incidence of shared custody is considerably lower than what is found in court files containing the initial arrangements. Maccoby comments on this phenomenon:

At the time of separation, many parents are not in a position to make good decisions concerning residence, visitation, and financial support for their children. [As time passes] the language of the formal agreement concerning custody and visitation begins to fade into the background.... The changes that families make in the residential and visitation arrangements for their children, or even in the amounts of child support mutually agreed upon, are usually made informally, without going back to court for formal modification of the terms of the divorce (Maccoby, 1999: 66-67).

The instability of shared custody arrangements need not be considered a negative outcome for children. In some, perhaps even many, cases the children themselves have asked to move. It would be valuable, however, to obtain quantitative data on the reasons for the adjustments to the initial arrangements.

5.2 THE LOGISTICS OF SHARED CUSTODY AND OTHER ARRANGEMENTS

No research could be found that fully describes the logistical or practical requirements of different custody arrangements. Even qualitative descriptions of the various types of custody arrangements are rare.

5.2.1 Amount of Parent-Child Contact

The analysis by Pearson and Thoennes (1990: 243) looks at visitation frequencies as specified in the court order (Table 2). The proportion of time that the non-resident parent had with the children, according to court orders, was 20 percent for sole custody, 28 percent for joint legal custody, and 40 percent for shared custody. Interviews revealed that complaints of missed or sporadic visits were much more common in sole custody cases than in joint legal and shared custody arrangements (bottom row of Table 2).

Table 2 Amount of Child-Non-resident Parent Contact by Type of Custody Arrangement in a Sample from the United States

	Sole custody with visitation	Joint legal custody	Shared custody
Mean number of days specified in court order			
Weekdays	19	45	188
Weekends	30	55	49
Overnights	43	87	137
Percentage of court-ordered time that non-resident parent had access to the children	20%	28%	40% (most common)
Percentage of resident parents who reported sporadic access by non-resident parent	54% (maternal custody) 44% (paternal custody)	7% (maternal custody) 20% (maternal custody)	0% overnights and weekends 12% other missed visits

Source: Pearson and Thoennes (1990).

In her voluntary Canadian sample of 16 co-operating and 16 disagreeing ex-couples (16 in each group) Ehrenberg (1996) reported the percentages of the children’s time spent with their mother versus their father. She concluded that the percentage of time children spent with each parent after separation or divorce was influenced by whether their parents were able to co-operate about parenting rather than the type of custody arrangement (Table 3).

Table 3 Time Spent with Each Parent, Co-operating and Disagreeing Ex-couples

Type of custody arrangement	Co-operating parents: Percentage of time children spend with mother	Disagreeing parents: Percentage of time children spend with mother
sole (maternal) custody	64% (n = 5)	87% (n = 11)
joint legal custody	66% (n = 5)	74% (n = 5)
shared custody	55% (n = 4)	
split custody	50% (n = 2)	

Adapted from Ehrenberg (1996).

The small sample size and the voluntary nature of the sample mean that caution should be used in generalizing these relationships. In this sample, children with disagreeing parents are less likely to see their father frequently than those with parents who co-operate. As Ehrenberg noted (1996: 112), this could mean either that the children’s time is a source of conflict for disagreeing ex-couples or that co-operation facilitates equity in the amount of time children spend with each parent. Other evidence, albeit from the United States (e.g. the Stanford Child Custody Project), suggests that the former explanation (that it is the children’s time which is the source of conflict) may apply in many cases.

Sole custody arrangements that involve frequent access by the non-resident parent may not differ in many respects from equal or almost equal shared custody arrangements. However, the content of parent-child interaction between families where the father has the children on the weekends and holidays and those where the father has responsibility during the week probably differs greatly (Pruett and Santangelo, 1999). On weekdays, child care is “normalized” because the

resident parent is responsible for supervising bedtimes, curfews and homework. The time is much less likely to be spent in play and recreational activities.

5.2.2 Scheduling

Descriptive information suggests that shared custody typically involves the children spending four days a week with one parent and three days a week with the other, or spending one or two weeks alternatively with each parent. Luepnitz (1986) reported oddities, such as families in which the children spend half a day with each parent, live half a year with each parent, or alternate years. Other extremely rare arrangements include those where the children reside in the same house and the parents move in and out, and the parents live in such close proximity that both interact daily with the children. The most common arrangement was some form of split week.

Arendell (1995b) interviewed only a small number of shared custody fathers in her study (9 of 75 cases). Most of these parents either divided the week in two halves or alternated weeks. Scheduling entailed regular meetings with the other parent to review and plan the schedule. Respondents emphasized that scheduling was the “key to success” and required a willingness to be flexible when circumstances warranted. For younger children, calendars were kept so that the children could know where they would be. Older children were included in the planning and discussions of needed adjustments and were allowed to request adjustments, but were kept out of parental disputes. According to the fathers in the study, they and their ex-spouses maintained direct contact with each other and did not use the children as intermediaries. Children telephoned freely between their homes. The majority of these families had child care assistance from relatives. In several cases, these relatives—grandmothers and in one case a stepmother—were involved in the planning of the children’s schedules.

About one half of the shared custody parents interviewed by Irving et al. (1984) had divided time with their children equally, with the typical schedule being a one-week rotation and an equal division of holidays. The next largest group (30 percent) chose a 75:25 split. In this group the children would spend the school week with one parent and most weekends with the other, and the holidays are divided equally. The remainder of the arrangements ranged from splitting the week equally, to having the children spend the school year with one parent and the summer holidays with the other. Residential proximity and scheduling were closely related. Parents who lived close together tended to have a more equal time-sharing arrangement. In the total sample, 46 percent of the parents lived a short drive from each other and 32 percent lived within walking distance.

These schedules were not problem-free according to parental interviews. Initial difficulties arose in about one half of the cases. While many respondents reported early success in ironing out these problems, 32 percent said that the problems had lasted a year or more and 13 percent continued to experience scheduling difficulties (Irving et al., 1984: 131). Scheduling of holidays and household transitions was also mentioned as an issue by the shared custody parents interviewed by Rothberg (1983).

5.2.3 Task Sharing

Arendell (1995a) enumerated the following activities that could be involved in shared parenting: sharing of major and daily decisions about child rearing and co-parenting, sharing responses to the children's school and medical problems, planning special events in the children's lives, discussing the children's adjustment to divorce and their progress and accomplishments, and examining and planning child-related finances.

One study was located that quantified the differences in parental activities and responsibilities by the type of custody arrangement. In the Pearson and Thoennes study (1990), 90 percent of sole custody parents reported full responsibility for assisting with homework, driving the children to activities, attending school events, arranging visits with friends, and staying home with sick children. In joint legal arrangements, 73 to 85 percent of the resident parents were responsible, depending on the task. In shared custody, however, about one half of the mothers said that they shared these responsibilities equally with their former partner. The exception was staying home with a sick child: fewer than 35 percent of parents with shared custody shared this responsibility equally.

5.3 THE COSTS OF ACCESS AND SHARED CUSTODY

Two research questions are addressed in this section.

1. What items does the non-resident parent provide for the children when they make overnight visits? Do they differ by the amount of non-resident parent-child contact?
2. How much do different forms of custody arrangements, especially shared custody, cost? Because there are no data on the amounts actually spent by disrupted families, estimates extrapolated from the costs of raising children in intact families are used.

There is a third question, which could not be directly answered.

3. How do the costs of shared custody differ from the costs of sole custody arrangements that involve frequent access?

5.3.1 Costs of Child-Non-resident Parent Visits

Australian data on the additional expenditures associated with access visits to the homes of non-resident parents are available (Murray Woods and Associates, 1999). The data were collected by telephone survey with a volunteer sample of 252 non-resident fathers who had their children between 18 and 110 overnights annually; two thirds of the sample had between 55 and 110 nights of contact. The sample was drawn from the Australian child support agency client list. The fathers interviewed had much higher median incomes than did child support payors as a whole. Interestingly, while this could be construed as invalidating the generalizability of the findings, the analysis found that income was not related to the number of expenditures (see below).

The large majority of the parents in this sample (about 90 percent) provided a separate bedroom for each child. The following is the frequency of items that the fathers purchased, "mainly because the child needed or wanted the item:"

- toys and games (94 percent);
- bicycle, skateboards, etc. (92 percent);
- outdoor play equipment (78 percent);
- storage for clothes (77 percent);
- desk or table for study (70 percent); and
- computer (38 percent).

Other expenditures were as follows.

- Almost 90 percent of the non-resident parents had purchased items of clothing for the children when they visited.
- 76 percent had paid for personal care items (e.g. medications and toiletries).
- 94 percent had provided recreation and entertainment activities, such as sporting events, movies, videotape rentals and excursions.
- Almost every parent said that supermarket expenditures increased, 67 percent purchased more take-out food, and 48 percent spent more on restaurant meals. The main reason for the two latter expenditures is that they are treats for the children.
- 44 percent provided pocket money.

Four out of five non-resident parents (81 percent) said that the other parent had not shared the costs of contact.

This research includes an index of the number of expenditures made by the non-resident parent (although the dollar value was not included). When the figures in the index were correlated with other variables, it was found that there was a significant positive relationship between expenditures and the number of nights of contact. That is, as the number of overnights increased, the number of items the non-resident parent purchased also increased. There was also an increase in the number of items purchased as the children got older. The income of the non-resident parent was not, however, associated with the expenditures, suggesting that parents purchase similar numbers of items for their children during their access visits regardless of income.

5.3.2 Efforts to Estimate the Costs of Shared Custody

A shared custody arrangement is widely believed to cost more than a sole custody arrangement (Carberry, 1998; Arendell, 1995a; Morrow, 1995; Melli and Brown, 1994; Zinner, 1998). There is little quantitative research on this topic, perhaps in part because of the complex and controversial calculations that are required to estimate the costs of raising children.

In a shared custody arrangement, each parent pays part of the children's fixed and non-fixed expenses, and the total expenditures of both parents increase. One parent's expenses do not decrease for every dollar that the other parent pays in expenses because each parent is responsible for fixed expenses that both parents must pay, such as a bedroom for the children, toys and utilities. Morgan (1999) drew the comparison to child support guidelines that recognize that the amount to support two children is less than twice the amount needed to support one child because certain household expenses are shared.

Two studies were located that employ unsophisticated calculations to estimate the costs of shared custody in contrast to the costs of intact families. Both originated in the United States and used statistics from the Department of Labor's itemization of expenditures by intact families in urban areas. A third study, from Australia, estimated the costs of access by non-resident parents at different levels of annual parent-child contact.

Melli and Brown (1994) set out some of the complexities involved in estimating the costs of shared custody. As mentioned above, *some costs are fixed* and must be borne by both parents. This is because of the need to duplicate housing, utilities and other items. Expenditures on these items make up from 24 to 34 percent of the total child-related expenditures for a child up to the age of 18, and must be duplicated when a child resides with both parents (Melli and Brown, 1994: 554-5).

There may be child-related costs that decrease with shared custody, such as child care expenses, because the parents are able to coordinate work schedules in a way that reduces the need for paid care. This may be unlikely when both parents work full time and the children require child care during the day or before and after school.

Some child-related costs may or may not change with shared custody. This category contains expenses that are not necessarily related proportionately to the amount of time the children spend with each parent, such as clothing, medical care and school expenses. These items were estimated to constitute about 25 percent of child-raising expenses. As the Australian survey of non-resident parents found, these parents frequently incurred expenses in this category, especially for clothing.

Expenses that are almost directly proportionate to the amount of time that the children spend with each parent include items such as food, recreation and some transportation costs. However, additional transportation costs may be required to manage the changeovers from one home to another.¹³ It could be argued that because many parents with shared custody live close together, any additional transportation may be offset by the shorter distances travelled. Melli and Brown (1994) estimated that these items make up between 40 and 50 percent of the budget for a child younger than 18. These costs represent the largest reduction in the expenditures of the "primary" parent.

Thus, according to this analysis, from one quarter to one third of the total costs of child rearing must be duplicated in shared custody arrangements. This would appear to be a minimum, given

¹³ At the same time, there may be "a need to acquire a more recent model or a better-maintained automobile on the part of the secondary parent" (Melli and Brown, 1994: 556).

that some costs are duplicated for clothing and personal care items, and additional transportation costs are involved in many cases. The costs of paid child care would not be duplicated, but it is possible that non-resident parents could be responsible for the costs of paid child care when the children are in their home.

The only other study from the United States that could be located is an inadequate and highly misleading paper written in the early 1980s (Patterson, 1984).

In Australia, Henman and Mitchell (2001) undertook the sole methodologically sophisticated attempt to estimate the costs of contact by non-resident parents. This research used the budget standards method, which is a normative approach to determine living standards. The estimates produced do not represent actual expenditures but rather costs required to meet a specified standard of living. It is beyond the scope of this report to describe the complexities of the budget standard calculations or those of the other methods used to estimate the costs of children. Suffice it to say, there are several methods utilized in the economics literature and they often reach quite different estimates (see, for example Harding and Percival, 1999). The budget standard approach is, however, one of the main methods.

The researchers calculated two estimates of the cost of maintaining contact with children, one for non-resident parents with a low or frugal standard of living and another for parents with a modest but adequate standard of living. All costs of contact with children were expressed in annual dollar amounts (Australian dollars) and as a percentage of the annual costs of children in intact families. The costs refer only to the additional costs of contact to the non-resident parent.

The costs were calculated for parent-child contact of 15, 20 and 30 percent of the year. Based on the researchers' assumptions, the costs of increased contact are not large. For example, when contact increases from 20 to 30 percent of the year (a 50 percent increase), the cost of contact increases only by 8 to 12 percent, depending on the assumptions made. This is because the costs of "infrastructure"—primarily housing but also furniture and toys—are only minimally affected by moderate changes in the amount of contact.

Another variable introduced into the calculations by the authors was the cost of transportation. They found that a moderate variation in the distance between the non-resident parent and the children had only a modest effect on costs: there was only a 3 percent difference in the cost of contact when parent had to travel 15 kilometres as compared to 50 kilometres. However, the price of gasoline has risen since this research and the differences could well be higher today.

The costs of contact expressed as a proportion of costs of raising children in intact families were higher at the frugal than at the modest but adequate standard.

- When a non-resident parent has contact with one child for 30 percent of the year, it costs about 59 percent of the costs of raising the child for a full year in an intact household at the frugal standard. At the modest but adequate standard, the figure is 46 percent.
- When a non-resident parent has contact with two children for 30 percent of the year, it costs 54 percent of the costs of raising these children in an intact family at the frugal standard. The figure is 45 percent at the modest but adequate standard of living.

From these data, the authors conclude the following:

The higher proportional cost of contact at the low cost standard suggests that there is a basic set of unavoidable costs associated with contact that do not increase proportionately as the living standard rises. Housing, transport and household infrastructure are clear examples of this unavoidable basic set of contact costs.... This explanation of a basic set of costs ... may also explain the tendency for the proportional costs of contact to drop when the number of children increases (Henman and Mitchell, 2001: 32).

This research therefore quantifies the frequently made assumption that the total cost of raising children increases substantially when parents separate. Household infrastructure, such as bedrooms, furniture and toys, and transportation costs are the primary reasons for the higher costs. In order for these findings to be extrapolated to Canada, the normative assumptions would have to be confirmed by data on the behaviour of non-resident parents in this country. In addition, data on the costs of raising children in intact families with different standards of living would have to be available. From the perspective of Canadian social policy, perhaps the most important finding from this work is that the different frequencies of child-non-resident parent contact did not greatly affect the estimates of increased costs.

5.3.3 Costs of Shared Custody and Sole Custody with Frequent Access

There does not appear to be any research that explicitly addresses the differences in costs between shared custody arrangements using the 40 percent standard, as set out in the Federal Child Support Guidelines, and sole custody arrangements involving frequent access by the non-resident parent. The studies described above do however provide some insight into the magnitude of the differences. It appears that from the Australian budget standards research and the Australian survey of non-resident parents that the differences in expenditures may be incremental. The costs of raising children in two households—regardless of the number of overnights involved and the income of the non-resident parent—are substantially higher than the costs of child rearing in intact homes.

5.4 SUMMARY

In Canada, court files show that about 80 percent of divorce cases result in a sole maternal custody arrangement; 9 percent in a sole paternal custody arrangement, and 5 percent in each of shared and split custody arrangements. A nationally representative survey involving children under 12 years of age found a similar proportion of sole maternal custody arrangements, but higher proportions of shared custody arrangements (court-ordered custody arrangements at separation). The same survey also found that the actual arrangements differed from what was in the court order (e.g. 87 percent of children lived with their mother). There is a good deal of evidence that custody arrangements change over time for a variety of reasons, including the wishes of the children.

There is little information on the logistics of shared custody arrangements. Scheduling of shared custody can vary widely. Qualitative data suggest that split weeks or children spending one to two weeks alternatively with each parent are typical. Mothers in shared parenting arrangements are much more likely than other mothers to report that they share most child-rearing tasks

equally with their ex-partner. The exception was staying home with a sick child, a responsibility that tends to fall more often to the mother.

A survey of non-custodial fathers in Australia (a volunteer sample) found that these fathers made a number of expenditures for their children related to contact visits, including providing a separate bedroom for each child. As the number of overnight visits increased so did the number of items purchased by the non-resident parent. The income of the non-resident parent did not affect the number of expenditures.

Another Australian study used the budget standards approach to quantify the costs of raising children after separation or divorce. The cost of raising a child who spends 30 percent of the year with the non-custodial parent is from 46 to 59 percent higher than the cost of raising the child in an intact household (with the variation depending on the standard of living of the parents). Household infrastructure, such as a bedroom, furniture and toys, and transportation costs are the primary reasons for the higher cost. There was little difference in the estimated costs for different frequencies of contact visits.

No Canadian studies were found that quantified the differences between the costs of raising children in a shared custody arrangement, based on the 40 percent definition used in Canada, and the costs of a sole custody arrangement involving frequent visitation by the non-resident parent.

6. THE EFFECTS OF CUSTODY ARRANGEMENTS

6.1 PARENT-CHILD CONTACT

Research shows that in shared custody situations, fathers spend more time and are more involved with their children than fathers in other custody arrangements, even when socio-economic status and the pre-divorce quality of the parent-child relationship are taken into account (Kline et al., 1989; Arditti, 1992).¹⁴

A number of studies report that, as the years pass after separation, there is a decrease in the frequency of father-child contact in cases of sole maternal custody (e.g. Seltzer et al., 1989; Maccoby et al., 1993). In cases of sole paternal custody, however, mothers visited *more often* over time (Maccoby et al., 1993). In shared custody situations, “there appears to be less change in contact ... in the first several years after separation, particularly when the arrangement is close to 50/50” (Kelly, 1994: 5). Others have found that fewer fathers “dropped out” in shared compared to sole maternal custody arrangements (Coysh et al., 1989; Kline et al., 1989).

6.2 THE WELL-BEING OF CHILDREN

The well-being of children has been examined in terms of behavioural problems, deviant or delinquent behaviour, peer relationships, achievement in school, self-esteem, social competence and psychological adjustment (e.g. depression, somatic symptoms), depending on the study.¹⁵

6.2.1 Child Outcomes

The majority of the research literature has found no relationship between the type of custody and child outcomes.

In Canada, a study using the database of the 1994-95 National Longitudinal Survey of Children and Youth reported that custody arrangements had *no effect* on the emotional or psychological health of children between 2 and 11 years of age (Haddad, 1998). Custody arrangements were defined as mother custody, father custody and shared custody. There apparently was no definition of shared custody; rather, the interpretation was left up to the respondent.¹⁶ Problem behaviour was defined as one or more of the following: anxiety, emotional disorder,

¹⁴ In a multivariate analysis of factors affecting father-child contact, Nord and Zill (1996) found that joint legal and physical custody did *not* predict the amount of contact. The authors suggest that this may have been because parents with shared custody misinterpreted the question. “Some parents in such arrangements may exclude from their calculation of contact times when the child or children are actually living with the other parent.” Another possibility, not mentioned by the researchers, is that the arrangement in the court order was not the same as the *de facto* arrangement.

¹⁵ The effects of separation and divorce on children’s well-being may vary according to the way in which child outcomes are measured. For example, Healy et al. (1990) found that frequency and regularity of fathers’ visits affected self-esteem and behavioural problems differently.

¹⁶ There were two questions relating to custody type. “Did the court order [the child] to be put into sole custody of mother, sole custody of father, shared physical custody of both, other?” “With whom did [the child] go on living with at the time of separation—mother only, father only, shared time basis mostly mother, shared time basis mostly father, equally shared time, mother and father?”

hyperactivity, inattention, conduct disorder, physical aggression and unsocial behaviour.¹⁷ The parent identified these problems. Multivariate analysis found that gender (boys), younger children, parents with lower education, and the number of years that the parents were separated—but not custody type—were positively associated with reported behaviour problems among the children.

In their random sample of cases in a California county, Kline et al. (1989) found that children in shared and maternal custody were equally well adjusted—there were no significant differences in children’s behavioural, emotional or social adjustment. Similarly, Pearson and Thoennes (1990) reported no relationship between custody arrangement and adjustment in their multiple regression analysis of the factors that affected parental reports of aggression, depression, delinquency, social withdrawal and somatic complaints. In both studies, the factors that best predicted the child’s adaptation to divorce were family dynamics, child characteristics and inter-parental relationships.

Overall, there were no major differences in adolescent behavioural and emotional outcomes for children in shared custody and other arrangements in the California sample of Buchanan et al. (1996). However, youth in shared custody tended to be less depressed, to have better grades, and to have less severe “worst problems” than did those in sole custody.

There were no differences in adjustment of the 91 children in different custody arrangements assessed by Luepnitz (1986) in terms of self-concept, the parents’ ratings of children’s self-esteem, psychosomatic and behaviour problems, and the emotional climate in the family.

Contrary findings on the effects of custody arrangements on the well-being of children are reported in some studies. Many studies that find evidence of effects of custody arrangements on psychosocial development are small in scale and/or clinical in approach. A clinical study found that, according to scores on one factor of the Adolescent Multiphasic Personality Inventory, children in shared custody arrangements exhibited better psychological adjustment than did those in sole custody arrangements. On most measures, however, there were no differences between children in shared and sole custody arrangements. Girls showed better adjustment in shared rather than sole custody arrangements, whereas boys did better in sole custody (Hendrickson, 1991). Using parent and teacher ratings of behaviour and emotional problems, Shiller (1986a) found that boys between 6 and 11 years of age who were in a shared custody arrangement were better adjusted than those in a sole maternal custody arrangement. Adolescents in a sole paternal custody arrangement reported more problem behaviour than did youth in either sole maternal or shared custody arrangements (Buchanan et al., 1992). The poorer adjustment of adolescents in paternal custody arrangements was associated with a lower degree of supervision/monitoring in these families, greater inter-parental hostility and the father’s long working hours.

6.2.2 The Role of Parental Hostility and Conflict

Children’s adjustment to divorce has long been assumed to be related to the post-divorce conflict between the parents, although the relationship is acknowledged to be complex (e.g. Lee, 1997). One of several problems with this strand of research is that conflict can be defined and measured

¹⁷ In total, 33 percent of the children who were not living with both parents had one or more behaviour problem.

in a variety of ways. The content of the conflict, the manner in which the conflict is expressed, its frequency, and the children's role in the conflict all deserve greater research attention.

The most critical questions are “Does shared custody increase conflict between ex-partners?” and “Is there a negative effect on children as a consequence?” The clearest available answers to these questions are found in the findings of the Stanford Project.

In this research, adolescents were interviewed approximately four years after the separation of their parents.¹⁸ Teenagers in a shared custody arrangement were better off in terms of adjustment than were respondents in a sole custody arrangement but only when their parents cooperated in their parenting. When the parents were in conflict, the adolescents were better off living with only one parent. Children with parents in conflict reported more depressive symptoms and problem behaviour (e.g. in school, delinquency, substance abuse). Negative effects were most apparent for those who felt caught in the middle of their parents' conflicts: for example, when the children carried messages between parents about child support payments or other contentious issues, or were asked questions about the household of the ex-spouse. These children experienced loyalty conflicts or, in the researchers' words, “felt torn” or “caught” between the parents.

The amount of contact with the non-resident parent and type of custody (shared versus sole) were not associated with feelings of being caught. However, adolescents in a shared custody arrangement with parents in high conflict who communicated poorly were particularly likely to feel caught. Discord between the parents was related to feeling caught, which was, in turn, related to the adolescents' depression and deviant behaviour. Parental discord “did not appear to augment either depression or deviance among adolescents in this sample unless the adolescent felt caught between parents as a result of this conflict” (Buchanan et al., 1991: 1022).

Buchanan et al. (1991: 1025) concluded that the direct relation between frequent contact and being caught in parental conflict (as reported by Johnston et al., 1989¹⁹) is limited to families that are in high conflict. Thus, the custody arrangement, in and of itself, did not increase or decrease the likelihood of problem behaviour (see also Maccoby and Mnookin, 1992).

Pruett and Hoganbruen (1998: 280) concluded “interparental conflict that reaches high levels on a sustained basis appears to have strongly adverse outcomes for children.” At the same time, despite shared custody arrangements (or others that involve frequent access), some high conflict parents manage to maintain boundaries between their interaction and their interaction with their children, regardless of negative feelings for their ex-spouse.

One of the flaws in this kind of research is that the pre-separation functioning of the children is not known. The problem behaviour and psychological problems of children in high conflict may

¹⁸ About 520 adolescents from 365 families were interviewed: 70 percent lived with their mother, 19 percent lived with their father, 10 percent lived in both residences (shared custody), and 1 percent lived elsewhere (Buchanan et al., 1991).

¹⁹ In a sample of parents who were in high conflict, Johnston et al. (1989) found that children had more emotional and behavioural problems when they had more frequent contact with both parents and more transitions (movement from one home to another) per month.

have been present even before the divorce process began. What needs investigation is the extent to which custody arrangements affect *pre-existing* behaviour and problems.

In summary, shared custody appears to be harmful to children when the parents are in “high conflict” (although what parental behaviour constitutes high conflict is somewhat unclear), when the children are the subjects of the conflict, or when they become embroiled in the discord.

6.2.3 Gender of the Resident Parent and the Children

Several studies have compared the outcomes of children who live with their mother to those who live with their father in sole custody arrangements. The findings are conflicting and more than a little confusing. Differences in sampling, the sophistication of the analysis (e.g. the use of appropriate control variables such as parental conflict, social class and the age of the children), and the different measures of child outcomes undoubtedly account for the variations in the findings of the effects of mother and father residence arrangements.

A 20-year-old study of child outcomes after divorce, the Texas Custody Research Project, looked at the role of the gender of the children and the custodial parents. The authors concluded that boys benefit from growing up with their father and girls benefit from being with their mother. More recent research does not always support these findings (see Pike, 2000, for a review of this research.)

Maccoby et al. (1993) reported that girls who lived with their mother had somewhat higher grades and better psychological adjustment as compared to girls who lived with their father in a sole custody arrangement. Kelly (1994) concluded that girls who lived with their mother had significantly greater social competence, maturity, co-operativeness and self-esteem than did boys who lived with their mother.

In a recent Australian study of primary school students, Pike (2000) contrasted four groups: boys living with their father, girls with their father, boys with their mother, and girls with their mother. Boys living with their mothers scored significantly higher in scholastic, athletic and physical domains. These boys scored higher in scholastic domains than did boys living with their fathers, and higher in the athletic and physical domains than did girls living with their mothers. There were no differences in performance of the four groups in the social and behavioural domains, or in self-esteem. In reading and spelling, girls living with their mother outperformed both girls and boys living with their father. In spelling, boys living with their mother outperformed both girls and boys living with their father. In other words, boys and girls raised by their father did not perform as well in academic areas as did the boys and girls from mother-resident families. On the other hand, there were no differences among the groups in self-esteem and competence. The gender differences were not uniform across all residential groups—that is, there were different profiles for each of the four groups. Pike concluded that it is not necessarily advantageous for children living with single parents to be raised by a single parent of the same sex.

Cookston (1999) analyzed data from the 1995 and 1996 National Longitudinal Study of Adolescent Health in the United States. Higher rates of self-reported (by the adolescents) problem behaviour were found in all types of family structure in which there were low levels of supervision. That is, it was not where the children lived, but rather the amount of supervision

that was associated with problem behaviour. Unfortunately, monitoring and supervision were measured in a limited fashion: whether the parent was at home when the children left for school, returned from school, and went to bed.

Hilton and Devall (1998), after interviewing mothers and fathers with sole custody and one child in each family, found no differences in positive and negative parenting behaviours of single mothers and single fathers. The behaviour of the children as reported by their parents did *not* differ between sole custody mothers and fathers, except that children in sole maternal custody were reported to have somewhat higher “internalizing” behaviour (complaints of headaches by the children). The authors concluded that the gender of the parent was of little value in explaining the children’s behaviour.

6.2.4 Changeovers in Shared Custody Arrangements

Concern is often expressed about the uncertainty introduced by having the children move from one residence to another (the “yo-yo effect”). While there is a good deal of unsupported commentary on this issue, the research evidence on the effects on children of frequent transitions from one home to another is limited.

In Canada, almost one quarter (23 percent) of a sample of shared custody parents reported that the children were “upset” for a time following the change in residence (Irving et al., 1984). In Luepnitz’s (1982) smaller (but also a self-selected) sample, however, shared custody did not seem to create distress or confusion for most children about their living arrangements; in fact, three quarters of the children said that they liked having two homes. Only three children (of an unstated but small number of about 20) were confused about following two sets of rules or conflicting parental expectations. No other research was located that directly addressed this question.

The absence of information on the effects of changeovers from one household to another required by shared custody—especially information on the differences in impact on children of different ages—prevents even tentative conclusions on how children perceive and cope with this type of transition on a regular basis.

6.2.5 Summary

There are a myriad of factors that influence the well-being of children after divorce, including the amount of parental conflict both pre- and post-separation, the adjustment of the parents to divorce, and the degree of closeness between the children and their parents. Also, factors related to the children’s personality, their sex and age, their pre-divorce adjustment, the pre- and post-divorce functioning and parenting practices of the parents, and the socio-economic circumstances in which children find themselves after marital dissolution may affect children’s ability to adjust to their new situation.

Most research indicates that custody arrangements after separation and divorce do not predict child outcomes. The direct impact of custody status on outcomes appears to be minimal.

Lye summarized her analysis of the research literature on the effects of custodial arrangements on children as follows:

The evidence ... does not reveal any particular post-divorce residential schedule to be most beneficial for children. There are no significant advantages to children of joint physical custody, but also no significant disadvantages to children of joint physical custody or of any other post-divorce residential schedule (Lye, 1999: 1).

6.3 PARENTAL ADJUSTMENT AND SATISFACTION

One might expect that the greater the satisfaction with a custody arrangement, the greater the psychological benefits of the arrangement to the parents and perhaps also the children. With a few exceptions, research has produced no categorical findings on the extent to which different custody arrangements benefit parents.

6.3.1 Effects on the Post-divorce Adjustment of the Parents

Shared custody arrangements may work to maintain a parent's attachment to his or her ex-spouse and inhibit the re-organization of his or her life. No such findings were evident in a sample analyzed by Pearson and Thoennes (1990). Respondents in each custody group—including parents with shared custody arrangements—had the same or lower “attachment scores” in the third interview as they did in the first, which had been done soon after separation. Other researchers have suggested that a degree of attachment benefits co-parenting: a friendly attachment to a former spouse is conducive to a more supportive and shared co-parenting relationship (Dozier et al., 1993).²⁰ The friendlier the attachment, the less conflict around child rearing.

A study that used a California sample of shared custody parents and sole custody mothers undertook two sets of interviews and clinical assessments, one interview less than a year after separation and the second two years later (Coysh et al., 1989). One third of the sample had a shared custody arrangement.²¹ The type of custody was not related to parental adjustment, which was measured by factors such as coping skills, social relationships, fulfilment in work, and emotional and psychological disturbance. There was reasonably strong evidence that the prior functioning of the parents was predictive of their adjustment after divorce. Good psychological adjustment among fathers was related to the quality of their relationship with a new partner. Poor psychological adjustment among mothers was associated with a conflictual relationship between their children and her new partner.

Bailey (1991) examined the adjustment process after divorce of 141 custodial single parents (63 mothers and 58 fathers) who had either sole or shared custody of children aged 5 to 14 years. No relationship was found between the type of custody arrangement and parental adjustment (e.g. life satisfaction, life stress, job satisfaction). However, parents with sole custody reported receiving more social support and were more satisfied with their relationships with their children and their custody arrangements. Fathers with sole custody were more content with life and themselves, had greater job stability, and were slightly better off financially than those with other custody arrangements.

²⁰ The authors of this research did not precisely define co-parenting.

²¹ The majority of this non-random sample were white collar workers and professionals with some higher education.

Using longitudinal data from the U.S. National Survey of Families and Household (wave 1 in 1987-88 and wave 2 in 1992-94), Shapiro and Lambert (1999) analyzed fathers' psychological well-being in relation to their children's residential status. There were no significant differences in self-reported depressive symptoms between divorced fathers with and without children living in their home. When the self-reported "happiness" of the divorced fathers was examined, the findings were that divorced fathers living with their children were somewhat less happy than divorced fathers not living in the same home as their children. However, the finding was not statistically significant.

6.3.2 Effects on the Satisfaction of the Parents

Two studies of shared parenting provide evidence that the parents were satisfied with their shared arrangements. It is important to emphasize that there are problems in generalizing their conclusions: the samples were voluntary (i.e. self-selected) and therefore not random, and there was no comparison between parents with shared custody arrangements and those with different custody arrangements.

In the early Canadian study of shared custody parents, overall satisfaction was reported by 77 percent, and satisfaction with scheduling by 86 percent (Irving et al., 1984). The factors that were significantly associated with overall parental satisfaction were as follows:

- How the agreement had been established. Parents who came to shared custody by means of court action and court services were much less satisfied than those who came to the arrangement informally.
- The greater the respondents' reported level of guilt over the marital break-up, the less satisfied they were with this custody arrangement.
- The greater the pre-separation conflict, the less satisfaction with shared parenting the parents expressed.
- The longer the shared parenting arrangement had been in place, the greater the parents' satisfaction.

Factors that had no relationship to satisfaction with shared parenting were social class, scheduling arrangements, and remarriage of one or both parents.

The stated reasons for parental satisfaction included continuity in parenting and improved security of the children as well as shared responsibility for child rearing. The sources of dissatisfaction included uncertainty about the long-term effects of the arrangement on the development of the children and the lack of time spent with the children.

The majority of the shared custody parents interviewed by Rothberg (1983) did not find their problems overwhelming and perceived that the arrangement benefited their adjustment to the divorce process. Eighty percent would recommend shared custody to other couples as long as the divorce was fairly co-operative and amicable.

Some studies have found that fathers tend to be more satisfied than are mothers with shared custody arrangements (e.g. Benjamin and Irving, 1990; Emery, 1988). However, gender differences in satisfaction may be diminishing (Kelly, 1993).²²

Other research has looked at parental satisfaction by custody type. Maccoby et al. (1990) found that women with a shared custody arrangement were more satisfied than were sole custody mothers whose children saw their father. Both groups were more satisfied with their custody arrangements than were women whose children had no father contact with their fathers.

One reason why some mothers in successful shared custody arrangements are more satisfied than their sole custody counterparts may be because they rely on their former partner for child care²³ and have more time to pursue their career or leisure activities (Luepnitz, 1986; Rothberg, 1983). Burnout is reduced among shared custody parents because “without asking for it, or making special plans, they have part of the week ... to be free of parenting” (Luepnitz, 1986: 7). Welsh-Osga (1981) found that shared custody parents were less overburdened by parenting responsibilities than sole custody parents. This difference among custody arrangements is exemplified by the finding by Pearson and Thoennes (1990: 139) that 40 percent of parents with sole maternal, 25 to 30 percent of sole paternal or joint legal, and only 13 percent of parents with shared custody agreed with the statement “I often feel overwhelmed by the amount of time and energy my children require.”

In conclusion, the research literature generally shows a positive relationship between shared custody and parental satisfaction—assuming that there is not a substantial degree of hostility and conflict between the parents.

6.4 PARENT-CHILD RELATIONSHIPS AND PARENTING SKILLS

6.4.1 Shared Custody

In comparison to sole custody parents, parents with shared custody in the Stanford Child Custody Project had fewer problems making adjustments to parenting roles after divorce (Maccoby and Mnookin, 1992). The shared custody parents, especially mothers, could remain firm and patient and had more time for playing with their children. As noted, a likely explanation for this finding is that parents with shared custody arrangements have more child-free time than parents with sole arrangements.

On the other hand, parents who continued to be in conflict reported more difficulty monitoring and in keeping track of their children. Also, approximately one quarter of the parents with shared custody expressed concern about their children’s lives in the home of the other parent, including parenting style and lifestyle (Maccoby and Mnookin, 1992).

In contrast to mothers with sole custody, mothers with shared custody more often felt that their ex-spouse did not respect their parenting style and that their children returned upset after stays

²² Kelly offers no empirical support for this conclusion.

²³ In the research by Luepnitz (1986), about one third of shared custody parents relied on the other parent almost exclusively for substitute care. Sole custody parents, especially mothers, were forced to rely on their families or paid child care.

with their father (Bannasch-Soissons, 1985). In addition, mothers with shared custody expressed greater discomfort about the potential for negative paternal influences and greater fears for their children's emotional and physical safety while with their father. However, this research is based on a small sample.

Also in the United States, Donnelly and Finkelhor (1992) used a national sample to explore the extent to which shared custody had an impact on child-to-parent support and affection, parent-to-child support and affection, and parent-child disagreements. Data were obtained from 160 households with children older than 5 whose parents were never married or were divorced. Only 12 percent of the respondents (75 percent of whom were female) were in a shared custody arrangement, defined as when the mother and father had custody of the child "about equally." After undertaking multivariate analysis, it was found that the type of custody—shared versus sole—was related only to child-to-parent support and affection: children in sole custody were more likely than those in shared custody to express support and affection towards their parents. Their behaviour in this regard resembled that of children in intact families. The type of custody was not related to either parent-to-child support and affection or to parent-child disagreements. There was no direct indicator of parental conflict available in the data.

While this research appears to be well done, the relatively small sample size (a total of 160 households and fewer than 20 with shared custody) is problematic given the use of regression analysis with nine independent variables.

Parents with shared custody have reported that they have less difficulty finding time to play with and talk to their children than do mothers with sole custody, and often are more "involved" with their children (Welsh-Osga, 1981).

The Pearson and Thoennes (1990) analysis revealed that respondents' satisfaction with the parenting performance of their ex-spouse differed by type of custody: 30 percent of the sole custody mothers were satisfied, as were 50 percent of the sole custody fathers and parents with joint legal custody, and 65 percent of the shared custody parents. From the perspective of ex-spouses with shared custody arrangements, 90 percent of their former partners had a good relationship with the children. This can be compared to 50 percent for the sole custody mothers and 60 to 65 percent of the sole custody fathers and joint legal custody parents.

From the perspective of the children, compared to those in a sole custody arrangement, adolescents in a shared custody arrangement were more likely to report that they felt close to both parents (Buchanan et al., 1992). A small clinical study that assessed children four or more years after divorce also found that the perceptions of children differed (Ilfeld, 1989). Children in a shared custody arrangement, compared with those in a sole maternal custody arrangement, said they spent more time with their father in child-centred activities which were pleasurable and important to the children. There were no differences by custody arrangement in the children's perceptions of emotional closeness to, or acceptance by, their father.

6.4.2 Father Custody

The analysis by Shapiro and Lambert (1999) of a nationally representative sample found that divorced fathers who lived with their children perceived a higher quality of child-father

relationship than those who did not live with their children. Divorced fathers in the latter category perceived the largest decrease in relationship quality after marital break-up.

6.4.3 Sole Maternal Versus Sole Paternal Custody

In an interview study involving parents with sole custody (30 mothers and 30 fathers), Hilton and Devall (1998) found that the parenting behaviours of the two groups did not differ, except that single fathers allowed their children more independence. Similarly, single fathers were less likely to monitor or supervise 11- to 19-year-olds than were single mothers (Cookston, 1999).

Some studies have found that non-custodial mothers are more involved in child rearing than are non-custodial fathers. In California, for example, mothers whose children were in a sole paternal custody arrangement spent more time buying clothes, tracking appointments and supervising homework than did fathers whose children were in sole custody of their mother (Maccoby and Mnookin, 1992).

Using 1987-88 data from the U.S. National Survey of Families and Households, Stewart (1999) looked at how non-custodial mothers and fathers spent their time with their children. Contrary to expectations, mothers and fathers had a similar pattern of participation in activities of (outings, play and school for example), after socio-demographic and family characteristics were taken into consideration. That is, both non-resident mothers and fathers spent similar amounts of time in leisure activities versus school or other organized activities. The author suggests that the similarity in involvement with absent children may be the result of circumstances surrounding the role of the non-resident parent, rather than a gender difference.

6.5 THE RELATIONSHIP BETWEEN THE PARENTS

In the Stanford Child Custody Project, one quarter of parents were in high conflict at the time of divorce; this proportion decreased to 10 percent a few years later. It has been estimated that from 9 to 15 percent of couples are in continuing and severe conflict (Pruett and Hoganbruen, 1998). These estimates suggest that high conflict relationships affect a minority of couples, but they are the minority that is of most concern to divorce professionals, not least because they create most of the litigation burden on the courts.

Most authorities emphasize that a shared custody arrangement works best when parents communicate regularly and have a co-operative relationship with regard to child rearing. Sources of conflict have the potential to be more numerous when the children live in two residences because of the frequent parental interaction believed to be required. Furthermore, the nature of the parenting role changes after divorce. Former couples who, when married, were accustomed to sharing decisions and responsibilities on a daily basis must accommodate to new methods of parenting, a situation that may be a source of strain.

In Irving et al. (1984), the majority of respondents (75 to 90 percent, depending on the item), said that issues such as child rearing, lifestyle differences, and inter-parental contacts were either free of problems or presented only minor difficulties. These parents reported remarkably few conflicts and generally problem-free communication. Only 1 out of 10 respondents had taken any legal action with regard to their custody arrangements. Only 15 percent said that their financial agreements had not been kept. The majority of respondents said that their relationship

with their former spouse was very or moderately friendly, that over time this relationship had stayed the same or improved, and that their communication about child rearing had few problems. It was also noted that discussions about issues other than those related to the children seldom or never occurred. Again, it must be emphasized that this sample was a self-selected one and comprised only of those with shared custody—no comparison data are available.

Maccoby and Mnookin (1992) reported that communication between parents with shared custody decreased over time. In the first wave of interviews soon after separation, 68 percent of the couples discussed the children at least once a week; three to four years later, only 41 percent did so. This finding may not necessarily reflect a negative situation; it is possible that the immediate post-separation “renegotiation of parental roles” requires more interaction, a need that decreases as time went on.

The same research found that there was no significant difference in the level of conflict by the type of custody arrangement. One quarter of parents with a shared custody arrangement were classified as co-ordinating their parenting goals and strategies; this pattern remained relatively stable over three years. A second response was disengagement: parenting was done independently of the other parent. This proportion increased from 29 to 41 percent after three years. The third response was conflict, meaning that there was conflictual communication between the parents: this type of interaction decreased from 34 to 26 percent of the sample after three years.²⁴ Proportionately more conflict occurred in larger families with one or more children under school age. Parents who were initially hostile and subsequently reduced their conflict usually shifted to the disengaged mode of interaction (or more pertinently, non-interaction).²⁵

In the non-random interview study by Bailey (1991), mothers and fathers with shared custody experienced more verbal conflict with their ex-partners than did parents with sole custody.

Parents who select shared custody may be predisposed towards co-operative behaviour. As described in section 4.3, parents with shared custody interviewed before their divorce became final were almost twice as likely as mothers with sole custody to comment that they were able to co-operate (Pearson and Thoennes, 1990). Three years later, the proportion of parents in this sample who characterized the level of co-operation with a former spouse as “impossible” was as follows: 10 percent for parents with a shared custody arrangement; 15 percent for parents with a joint legal paternal custody arrangement, 30 percent for parents with a sole custody arrangement; and 30 percent for parents with a joint legal maternal custody arrangement. As the authors comment, the causality of these findings cannot be readily determined.

The small sample of shared versus sole custody couples assessed by Luepnitz (1986) differed in the amount of inter-parental conflict; parents with shared custody had *less* conflict than did parents with sole custody.

It is not that joint [shared] custody parents did not disagree with each other; they did disagree, and often needed to change the logistics of their arrangement. However, they

²⁴ Disengagement was measured as couples who had low discord and low co-operative communication. Conflicted parents were those with high discord and low co-operative communication.

²⁵ Another phrase for disengaged parenting is parallel parenting.

were able to disagree in a more civil manner than their single-parent custody counterparts (Luepnitz, 1986: 6).

Luepnitz acknowledges that the families with a shared custody arrangement may have been “self-selected for the ability to negotiate reasonably.” Also noteworthy is that in Luepnitz’s sample the minimum length of time that parents were separated was two years.

Coysh et al. (1989) found no relationship between custody arrangement (shared versus maternal custody with contact by the father) and parental relationship two years after the divorce. The factor that best predicted the post-divorce relationship between mothers and fathers was their pre-existing (pre-divorce) functioning. There was a “marked continuity of functioning and relational style from pre- to post-divorce.” In a similar vein, the emotional state of the parents at the time of separation had a significant effect on the co-parenting relationship one year later (Maccoby et al., 1990).

There is no evidence that the type of custody arrangement either improves or negatively affects the parental relationship. However, if shared custody is ordered by the court, there is some evidence from the Stanford Child Custody Project that there is more conflict and less co-operation among parents who made shared custody their first choice of custodial arrangement (Maccoby and Mnookin, 1992).

Pearson and Thoennes (1990) reported on types of conflict. Among sole custody mothers, the most frequent complaint (50 percent) was about cancelled or missed visits. Among mothers with shared custody, 38 percent complained that their former spouse had the children for too much of the time. Regardless of the custody arrangement, 20 percent of respondents said problems arose because children returned late after contact visits.

Despite the “central belief” about shared custody—that parents co-operate more than sole custody parents around child rearing—support for this conclusion is mixed (Pruett and Santangelo, 1999). The available evidence suggests that the type of custody arrangement is not strongly related to the inter-parental relationship. It is probable that the best predictor of the quality of the relationship of divorced couples is the quality of their pre-separation relationship.

6.6 CHILD SUPPORT PAYMENTS

When looking at the relationship between custody arrangement and compliance with child support payments, it is important to not assume that there is a cause and effect link. For example, it is not clear whether non-resident parents who comply with child support payments tend to be more involved with their children or whether being involved with their children makes non-resident parents more likely to provide support.

A positive relationship has been found between the payment of child support and shared custody, although few studies took the payor’s income into account. First, Brown et al. (1997) included data on child support compliance for two years after divorce. In this Wisconsin data, the different custody arrangements had quite different rates of full compliance in the second year:

- paternal custody cases had the lowest full compliance (36 percent);

- in maternal sole custody cases, compliance was 57 percent;
- split custody cases had 60 percent compliance;
- the rate in equal shared custody was 68 percent; and²⁶
- unequal shared custody had the highest full compliance rate, at 77 percent.

However, the parents with equal and unequal shared custody arrangements had the highest incomes. Because the researchers failed to control for income, the question then becomes whether income or custody arrangement is the influential factor in full compliance with child support payments.

Second, Nord and Zill's (1996) analysis using the Survey of Income and Program Participation also did not take income into account. Shared custody was marginally related (it "approached significance") to whether or not any child support was paid but was unrelated to the amount of child support paid by those who paid some support.

Third, in a sample analyzed by Pearson and Thoennes (1990), two years after final decrees, court files showed that 20 percent of sole custody mothers had filed one or more citations for child support. Only 8 to 10 percent of those with joint legal or shared custody had filed such citations. The next section presents more findings on post-divorce returns to court.

6.7 RETURNS TO COURT AND RE-LITIGATION

As with other topics discussed in this chapter, the research findings on post-divorce returns to court by custody type are conflicting.

Luepnitz (1986) in her self-selected sample of 16 maternal, 16 paternal and 11 shared custody families found that no shared custody parent had returned to court about money or visitation compared to 56 percent of the sole custody parents.

In Wisconsin, returns to court within two years of the final divorce decree were examined for cases heard between 1987 and 1992. Of the five categories of custody arrangements examined, unequal shared custody and split custody arrangements showed the highest rates of return, at 45 percent and 43 percent, respectively. Lower proportions were found for maternal custody (34 percent), paternal custody (30 percent) and equal shared custody (27 percent) (Brown et al., 1997). Parents with unequal shared custody and split custody arrangements were twice as likely as other parents to return to court about the physical placement of the children (about 22 percent versus 10 percent for the sample overall). These parents were found to be most likely to have retained legal counsel and to have had legal conflicts during the divorce process, suggesting that this pattern may have continued in the two years after divorce.

²⁶ However, from 1989 to 1992, only 38 percent of equal shared custody cases contained a child support order. The authors speculate that the omission of equal shared custody in the 1987 Wisconsin child support guidelines may have led judges, parents and lawyers to believe that these cases did not require a child support order.

Requests for modification of custody arrangements in the Pearson and Thoennes (1990) sample also differed by custody type. Attempts to modify the arrangements were made in 10 percent of cases of sole maternal custody, 14 percent of cases involving joint maternal custody, 29 percent of parents with shared custody, 33 percent of joint paternal custody cases, and 39 percent of cases involving sole paternal custody.

In a Massachusetts study, almost half of the total sample of divorced parents returned to court to re-litigate issues (Koel et al., 1994).²⁷ Unlike the two studies described above, custody arrangements bore no relationship to whether re-litigation occurred. Of those who did re-litigate, however, parents with joint legal custody (which included shared physical custody) filed more motions than did parents with sole legal custody. The re-litigation by these parents raised different issues, with child support being the main one for sole custody parents, and custody and access being the most common in joint legal custody families.

The outcomes of these returns to court are interesting, although why the differences occurred is not known (the researchers collected only court-based data). Overall, 31 percent of joint legal custody families changed their child custody arrangements after re-litigation, compared to only 13 percent of the sole legal custody families. If the outcomes of the re-litigating joint legal custody families are examined by changes in the residential placement of the children, there were significant differences in outcome:

- The joint physical custody families had the highest rates of change in placement of the children, at 57 percent.
- The rate in joint legal paternal custody families was very similar to that in joint physical custody families, at 56 percent.
- The joint legal maternal custody families (the majority of this group) had a much lower rate, at 23 percent.

Therefore, joint legal custody (including shared custody) and father-residence families were much more likely to obtain court-ordered changes to their custody arrangement than were joint legal mother-residence families and sole legal custody parents. Although these new arrangements may have been consensual, the authors suggest that the number of motions indicates that parental conflict was the basis of the returns to court. The authors also point out that the re-litigating joint legal custody parents were not necessarily dissatisfied with their arrangement, since most joint families who altered their arrangements kept their joint legal status, changing only the physical placement of the children (Koel et al., 1994).

6.8 SUMMARY

Most of the research on child custody has concentrated on the effects of different arrangements, primarily on child outcomes. In this context, Chapter 6 addressed the effects of custody arrangements on child outcomes and the roles of parental conflict, the gender of the parent, and changeovers or “transitions” from one home to another in shared custody arrangements. Other

²⁷ The number of families with joint physical (shared) custody was too low to separate in the analysis.

topics examined were parental adjustment, parent-child relationships, the parental relationship, and child support payments. The incidence of re-litigation on custody arrangements was briefly summarized.

No particular benefits or drawbacks accrue from different types of custody arrangements: children in shared custody arrangements do as well in terms of psycho-social development as do those in sole custody arrangements. There is no evidence that shared custody increases conflict between the parents, but this topic is not well studied. Research does suggest, however, that discord between the parents increases the likelihood of negative outcomes among adolescents in shared custody situations when the children feel torn between the parents.

The evidence suggests that the amount of supervision by the custodial parent, not the sex of the custodial parent, is related to problem behaviour by the children.

No conclusions can be drawn on the effects of changeovers between the two households in shared custody arrangements.

No relationship between type of custody arrangement and parental adjustment has been found. However, parental satisfaction tends to be higher among those with shared custody arrangements. Perhaps associated with this, parents with shared custody arrangements had fewer problems adjusting to their parenting roles after divorce. In shared custody situations, most parents believed that their former partners had a good relationship with the children, and adolescents in shared custody were more likely to report that they felt close to both parents. At the same time, a minority of parents with shared custody (about one quarter in one study) expressed concern about the effects of their ex-partner's parenting and lifestyle on the children. Data on the relationship between the parents with shared versus other types of custody arrangements are difficult to interpret because shared custody parents are a self-selected group—they are probably better able to co-operate than are many other parents. The available evidence indicates that the type of custody arrangement the parents choose is not strongly related to the inter-parental relationship.

Several researchers have suggested that greater adherence to child support obligations is an outcome of shared custody. However, the evidence is inconclusive on this point.

Similarly, the effects of custody arrangement on returns to court—re-litigation—are not clear, with studies from the United States reporting conflicting findings.

7. CONCLUSIONS

A variety of social and environmental factors, as well as the personal characteristics of parents, are associated with the type of custody arrangement established after separation or divorce, including family law legislation, family composition (such as the age and sex of the children), the socio-economic status of the family, and the amount of parental co-operation. The effects of change in family law legislation on actual custody arrangements are uncertain, although there is evidence that the incidence of shared custody increases and sole maternal custody decreases after statutory changes that permit or encourage joint physical custody. Family composition affects the type of custody arrangement, with boys more likely to be in shared and paternal custody situations. Parents with more education and higher incomes are disproportionately more likely to have shared custody arrangements. Parents who are able to co-operate and those who are more child-oriented may be more likely to select a shared rather than sole custody arrangement. There is anecdotal evidence that some parents either seek or reject shared custody in order to increase or decrease their child support obligations, but no empirical evidence on this issue was located.

Compared to sole maternal custody, sole paternal and shared custody arrangements appear to be vulnerable to change over time. These arrangements typically change to maternal custody with visitation by the father. The reasons for change and the effects on the children are not well researched. Since much of the movement to different living arrangements involves older children (teenagers), the children themselves may have requested the move.

The literature is remarkably silent on the day-to-day logistics of different custody arrangements, such as scheduling, decision making, the sharing of child rearing tasks and expenditures.

Some inferences on the costs associated with different custody arrangements can be made from an Australian survey of fathers who had frequent contact with their children. As the number of overnight visits increased, so did the number of items purchased by the father. The income of the fathers was not associated with the number of items purchased. A second study from Australia concluded that the cost of raising a child who spends 30 percent of the year with the non-custodial parent is from 46 to 59 percent higher than the cost of raising the child in an intact household, with the variation depending upon the standard of living of the parents. Household infrastructure (such as a bedroom, furniture and toys) and transportation costs were the primary reasons for the higher cost. There was little difference in the estimated costs for different frequencies of contact visits (i.e. 15, 20 or 30 percent of the year). Unfortunately, the extent to which these data can be generalized to all non-resident parents, especially in Canada, is not yet known.

The social science evidence on living arrangements after separation and divorce is relatively unequivocal on an important point: child outcomes in terms of social and psychological development do not differ by the type of custody arrangement as long as parental conflict is not high. The following conclusions are preliminary and need to be replicated in future research.

Several advantages of shared custody can be gleaned from the research literature.

- Shared custody avoids the phenomenon of “Sunday dads.” Fathers who have shared custody tend to spend more time with their children, and father involvement in parenting may be maximized in shared custody arrangements.
- Shared custody results in a more equal division of parenting time and effort. In effect, shared custody gives each parent a respite from child rearing. This may be especially important when—as is the case in most families—both parents work full time.
- Parents’ satisfaction may be higher in shared custody than in other arrangements.
- Shared custody may permit greater opportunity for parents to resolve financial issues. As well, each parent may have a greater understanding of the costs of child rearing.

Several disadvantages of shared custody also emerge from the research literature:

- Shared custody increases the overall costs of child rearing. However, the cost difference between shared custody—the children spending 40 percent or more of time with each parent, as set out in the Federal Child Support Guidelines—and sole custody with frequent contact by the non-resident parent has not been the subject of Canadian research.
- Parents who are in conflict are less likely to be able to cope with the demands of shared custody (in particular, commentators urge against shared custody when there are indications of domestic violence). Parents in shared custody arrangements are usually advised to establish schedules to give the children a sense of stability. At the same time, parents must be prepared to discuss issues of child rearing, such as discipline and limit setting, in more detail than when one parent has physical custody. Such co-operative parenting is less likely when there is continuing hostility between the former spouses. When there is parental conflict that is obvious to the children, they can experience loyalty conflicts and feel “caught,” which in turn can lead to emotional and behavioural problems. There is no evidence that shared custody *improves* the relationship between the parents.
- There are some indications that shared custody is less stable than most other arrangements after separation and divorce. Changes in living arrangements may be disruptive to the children involved.

In the future, research on custody arrangements should emphasize longitudinal designs using random samples of separating parents. A prime example of this approach is the National Longitudinal Study of Children and Youth conducted by Statistics Canada, which is providing valuable data on how parents and children adjust to separation and divorce. Other research on “shared parenting” (i.e. both shared custody and sole custody with frequent contact between the children and the non-resident parent) should address questions such as the family characteristics that are associated with “successful” custody arrangements.

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**APPENDIX A:
POLICY AND LEGISLATIVE APPROACHES
TO SHARED CUSTODY IN OTHER COUNTRIES**

United States

Each state has its own separation and divorce laws and there are considerable differences by state and region in the extent to which custodial arrangements are shared. Almost 90 percent of states authorize joint legal custody, 12 states have a presumption in favour of joint legal custody, and another 8 states have a presumption in favour of joint custody when both parents agree (American Bar Association, 2001). Joint legal custody involves joint decision-making rights and responsibilities with regard to child rearing. A handful of states encourage or have a presumption for joint physical custody (e.g. New Jersey, Oklahoma, Oregon, Vermont and Washington).

Many state laws specify that custody decisions should ensure that the child has frequent and continuing contact with both parents (e.g. Arkansas, Colorado, Delaware and Florida). The proviso of “best interests of the child” is very common. Other statutory exceptions are when physical harm or significant emotional harm to the children or a parent is likely to result from contact with a parent.

England and Wales

The *Children Act 1989* promotes parental responsibility, defined as “all rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to that child or his property” (United Kingdom Department of Health 1997). When a couple is not married, only the mother automatically acquires parental responsibility. Unmarried fathers must secure parental responsibility by agreement with the mother or by order of the court.

The Act contains a “no order principle.” It is deemed to be in the best interests of the child that the courts not become involved in the post-divorce or separation arrangements when the parents can agree on those arrangements. The court only makes an order when it is satisfied that making one is better for the child than not making an order. When the parents cannot resolve the matter by agreement, either party can apply to the court for an order. There are four types of order:

- Residence order. Residence replaces the term *custody*. When the parents cannot agree on the place of residence of the children, the court can make this order. If the parties agree, then a joint residence order could be made specifying how much time the children spend with each parent.
- Contact order. Contact replaces the term *access*. When the parents cannot agree on contact (telephone, letter, in person), the court may order a contact order that requires that the person with whom the children are living make the children available for contact. Contact is the right of the children not of the parents.
- Prohibitive steps order. When one parent objects to something the other is doing in his or her role as a parent, they can apply for a prohibitive steps order. This order prevents the parent from taking specified actions, such as removing the children from the jurisdiction.
- Specific issue order. When the parents are unable to agree on specific aspects of the upbringing of the children (e.g. which school the children are to attend) they can apply for a specific issue order.

It is believed that joint residence orders (shared custody) are rare. For example, the divorce.co.uk Web site states that joint residence orders are “unusual because [they are] seldom practical.” The original intent of the legislation was apparently to encourage the use of these orders more frequently than has actually occurred. The House of Commons reference sheet on the Children Bill, dated June 26, 1989, stated the following:

It is intended that another difference between residence and custody orders is that the new order should be flexible enough to accommodate a much wider range of situations.... In some cases, the order will provide that the child shall live with both parents, although they do not share the same household. If such an arrangement is practicable, there is no reason to discourage it.²⁸

Scotland

The *Children (Scotland) Act of 1995* replaced custody and access arrangements with residence and contact orders, as in England and Wales. Previously, it was possible for divorcing couples to apply for joint custody but it was relatively unusual, and many courts were reluctant to consider this possibility. Parents wishing to share parenting can now apply for a joint residence order or, alternatively, may apply for a contact order involving overnight stays for specific periods. There is the presumption under this Act, as in the legislation in England and Wales, that the parents should make their own arrangements rather than seek court orders.

Australia

Shared parental responsibility is a hallmark of the *Family Law Reform Act* proclaimed in 1996. Although parents are encouraged to make child custody arrangements outside of the court, parenting orders made by the court can include arrangements for residence, contact, maintenance and other issues. Some of the new terms and concepts were drawn from the British *Children Act 1989*.²⁹

An important feature of the legislation was the removal of the terms and concepts associated with the right to guardianship, custody or access and the introduction of the new concepts of parental duties and responsibilities. The concept of guardianship was removed and both parents have responsibility for their children, unless there is a court order otherwise.

Parents are encouraged to agree on arrangements regarding the care and responsibility of children rather than seeking a court order. The arrangements must consider the best interests of the child as the most important factor. Parenting plans are agreements between parents covering arrangements on the following:

- who the child will live with (residence orders);
- who the child will have contact with (contact orders);
- maintenance arrangements (maintenance orders); and

²⁸ Cited at <http://www.fnf.org.uk/shared.htm>.

²⁹ In all Australian states except Western Australia, the application of the legislation is much broader because it applies to all parents, married or not.

- any other aspect of responsibility (special issues orders).

Parenting plans can be registered in the Family Court and enforced like an order. When this occurs, there must be a statement that each person had independent legal advice and that a family and child counsellor was consulted. Each professional must sign the plan. There is no requirement that parents obtain independent advice or counselling, nor that agreements be registered. When there is a disagreement, the Family Court judge can only set a parenting plan aside when he or she is convinced that it was obtained by fraud, that both parents want it set aside or that it is in the best interests of the child to do so.

A residence order is similar to what was previously called a custody order and deals with where the children are to live. Unlike a custody order, a residence order concerns only residence and does not grant complete control over decisions on daily care, which is the responsibility of both parents. A contact order is similar to what was previously called an access order and sets out with whom the children are to have contact. When there is family violence, the safety of the vulnerable parent is to be taken into account when contact orders are made.

Most children continue to live with their mother and have contact with their father at specified times (Rhoades et al., 2000). Shared physical custody is not directly mentioned in the legislation. A recent paper prepared for the Australian Institute for Family Studies (Carberry, 1998) estimated that about 2.3 percent of cases registered with the child support agency in that country were registered under the “shared care” formula (the children spend 40 to 60 percent of time with one parent).

New Zealand

In 2000, a Shared Parenting Bill was introduced into Parliament by a private member, Muriel Newman. The Bill included a rebuttable presumption of 50:50 shared physical custody to replace sole maternal custody, which is the norm in New Zealand (as elsewhere). Among the criticisms of the Bill were that it was too simplistic and adult-focussed, and that it contained “outmoded” labels of custody and access. “Furthermore, the Bill seems to ignore the fact that the vast majority of parents seem to be able to find sensible and pragmatic solutions to the problems posed by family separation without recourse either to lawyers or the courts.”³⁰ The government did not support the Bill. One reason cited was that, although the Bill’s objective was laudable, it was unlikely it would be achievable with the provisions in the proposal (the objective was to promote fairness in child custody arrangements.) The government rejected the “one size fits all” approach, and stated that the Bill placed the rights of the parents above those of the children.³¹

³⁰ These criticisms were made by the Family Law Section of the New Zealand Law Society on its Web site, <http://www.nz-lawsoc.org.nz/fls/news/sharedp.htm> (July 2001).

³¹ See <http://econ.massey.ac.nz/cppe/papers/spb.htm> for a critique of the Bill, the contents of the Bill, press releases, and the governmental response.