MONASH UNIVERSITY
Castan Centre for Human Rights Law

11 August, 2003

Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Parliament House
Canberra ACT 2600

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Dear Committee,

Please accept the enclosed submission authored by Becky Batagol for the Castan Centre for Human Rights Law regarding the Committee's Inquiry into Child Custody Arrangements.

We are glad of course to answer any questions you may have regarding the submission, and, should you require, provide you with copies of any of the social science research referred to in the submission. Questions should be directed to Ms Batagol at the address below and she would be happy to provide oral evidence to the Committee.

Yours sincerely,

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Standing Committee on Family and Community Affairs: Child Custody Arrangements Inquiry: August 2003

Why a Rebuttable Presumption of Equal Time Should Not Be Implemented: A Research Informed Argument

By Becky Batagol

About the Castan Centre for Human Rights Law

The Castan Centre for Human Rights Law was established in 2000 to meet the need for and interest in the study of human rights law, globally, regionally and in Australia. It seeks to bring together the work of national and international human rights scholars, practitioners and advocates from a wide range of disciplines in order to promote and protect human rights. It does so by way of teaching, scholarly publications, public education (lectures, seminars, conferences, speeches, media etc), applied research, collaboration and advice work, consultancies and advocacy.

Overview

This submission addresses the following terms of reference for the Inquiry:

> (a) given that the best interests of the child are the paramount consideration:
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> > (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption should be rebutted;

This submission is a plea for evidence-based legislative reform. The proposed introduction of a rebuttable presumption of equal time[1] has been termed "the most

[1] "Equal time" in this submission refers to a family arrangement where children live with both parents, spending more or less equal time with each parent. Elsewhere, this arrangement has been termed joint custody, joint residence, shared care, co-parenting, joint physical custody, joint residential custody or dual-residence.

extensive reform of the law relating to children since the introduction of the *Family Law Act* in 1975."[2] Such reform must not be based upon ideology alone, but upon firm empirical evidence that introducing such a legislative change would be in the best interests of Australian children. There is enough clear empirical evidence to suggest that a rebuttable presumption of equal time will not be in all children's best interests and should therefore not be implemented. The evidence is outlined within this submission.

The specific concerns this submission raises about a rebuttable presumption of equal time are:

- That an equal time arrangement will be unworkable in many families, and that a presumption in favour of equal time will normalise a particular model of post-separation parenting which many families will be unable to implement;
- That a rebuttable presumption of equal time is unlikely to lead to an increase in the number of equal care arrangements;
- That a rebuttable presumption in favour of equal time may force some children into a care arrangement that is not in their best interests, distracting attention away from an important focus on quality of parenting relationships; and
- That a rebuttable presumption in favour of equal time may become a competing standard to the best interests principle in children's residency decision-making.

The equal care model should not be presumed to apply to all separating families, even if such a presumption is rebuttable. Equal time should instead be viewed as one model amongst many of post-separation parenting that should be available to families. The need for flexibility in children's care arrangements after separation or divorce is emphasised.

This submission acknowledges that existing empirical research into equal time care arrangements suggests that in many circumstances, equal time can be a beneficial arrangement for children and their parents. It is accepted within this submission that the model of equal time or near equal time can be an ideal model of post-separation children's residency arrangements in some Australian families, and may be a successful way of increasing some fathers' involvement in their children's parenting after separation.

All families must be reconstructed after separation or divorce, as patterns of family life before separation or divorce cannot be carried over.[3] The question raised by this inquiry is how families with children should be reconstructed after separation or divorce, specifically whether an "equal time model" of children's residency arrangements should be the presumed starting point of all post-separation negotiations.

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2 Bruce Smyth, Catherine Caruana & Anna Ferro (Australian Institute of Family Studies) 'Some Whens Hows and Whys of Shared Care: What Separated Parents who Spend Equal Time with Their Children Say About Parenting' (Paper Presented at the SPRC, Australian Social Policy Conference, University of New South Wales, Sydney, 9-11 July 2003) 3, available at http://www.aifs.gov.au/institute/pubs/papers/smyth4.pdf.

3 Eleanor Maccoby & Robert Mnookin, *Dividing the Child: Social and Legal Dilemmas of Custody* (1992, USA) 276.

The Equal Time Proposal Will Be Unworkable in Many Families

Research into the operation of equal time arrangements is limited and little is known about how these arrangements are structured and how well they work within families who opt for this model of post-separation children's residency arrangements.[4]

The only research into the operation of equal time or near equal time arrangements in Australia was conducted in 2003 by the Australian Institute of Family Studies.[5] The data for that study was collected through a series of focus groups interviews with parents, and the methodology used means that no claims can be made that the results are representative of the general population of Australian families implementing an equal time model of post-separation children's arrangements. The study is, however, useful in describing how some equal time families have worked out the "nuts and bolts" of their shared care arrangements and the family dynamics around these arrangements. The study concluded that equal or near equal time arrangements could work, but that a number of conditions had to be present for equal time to be a viable and successful option for the families interviewed (although not *all* of the conditions had to be met). These were:

- geographical proximity [of the parents' houses];
- the ability of parents to get along in terms of a business-like working relationship as parents;
- child-focussed arrangements (with children kept "out of the middle", and with children's activities forming an integral part of the way in which the parenting schedule is developed);
- a commitment by everyone to make shared care work;
- family-friendly work practices- especially for fathers;
- a degree of financial independence- especially for mothers; and
- a degree of paternal competence.[6]

This research highlights parental co-operation as the key to equal time arrangements, as almost all of the factors listed above depend upon the existence of a fair degree parental collaboration. In the words of one of the focus group fathers interviewed, "Reasonable relations make so much possible."[7] Positive patterns of family dynamics were the norm, although not uniform through the research group.

Other studies into equal time care arrangements in other countries have concluded that a number of factors, in addition to those listed above are necessary for successful equal time arrangements:[8] major organisational skills, on the part of the parents and children,[9]

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4 Smyth, Caruana & Ferro, note 2, above, 3 & 21

5 Smyth, Caruana & Ferro, note 2, above.

6 Smyth, Caruana & Ferro, note 2, above, 21.

7 Smyth, Caruana & Ferro, note 2, above, 20.

8 For a through discussion of available empirical research on equal care, see Smyth, Caruana & Ferro, note 2, above, 3-5.

9 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 129.

the need for duplication of some daily items such as furniture, clothes, toys and computers and money to pay for this,[10] equal involvement of parents in childcare prior to divorce or separation,[11] frequent changeovers for very young children,[12] and fewer number of children.[13] An example or an equal time arrangement working well because of good parental relations is recounted in a UK study of children's responses to equal time arrangements. Tom, who is 12 years old, explains why the equal time arrangement has worked so well for him:

> TOM (12): It's worked out really well. I don't think there could be any better arrangement than this.
> *Q: So what is it that you think makes it work so well?*
> TOM: I think it's because even though mum and dad don't love each other they're still very kind to each other and they get on really well, even when we swap over and things.[14]

It will be very difficult for many separating or divorced Australian families to meet these conditions, or most of them. This suggests that equal care will be unworkable and therefore unachievable for many families. After separation, parents may be unable or unwilling to live near each other, local employment may not be available, one or both parents may find it difficult to obtain the flexible workplace practices required to look after children (especially young children), the need for flexibility at work may reduce the likelihood of obtaining a job that pays well enough to support a household with children, and families may find it hard to juggle the organisational obstacles to having children moving between two houses, creating daily frictions in domestic life. All of these factors depend on the attitudes and abilities of the individuals involved, and the people and social conditions around them. For example, a 9 year old girl in an equal time arrangement, commented in an interview for a UK study:

> NICOLA (9): Right at the moment, dad's got all of my clean trousers there and these are too small for me, I got them when I was 5, so that gets quite annoying.
> *Q: How come all of your clean trousers are over there?*
> NICOLA: Because I stayed a week with dad and so I took quite a lot of clothes over there [and] none of them came back. And yesterday I wore some leggings and I just spilled bean juice on them and so I've got to wear these and the other ones are really too small and feel uncomfortable.
> *Q: Did you leave your things at dad's so he could wash them or . . .?*

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10 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 128-9.

11 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 131.

12 Eleanor Maccoby & Robert Mnookin, *Dividing the Child: Social and Legal Dilemmas of Custody* (1992, USA) 276. US child psychologist and President of the California Dispute Resolution Institute, Dr Joan Kelly, a supporter of shared residency, was quoted as saying, "Neither lawyers nor judges understand attachment issues in infants and toddlers and preschoolers. They require shorter visits, to avoid separation anxiety, and therefore, ironically, more transitions." Ian Munro, '50-50 joint custody challenged', *The Age* (Melbourne), 12 July 2003, 3.

13 Eleanor Maccoby & Robert Mnookin, *Dividing the Child: Social and Legal Dilemmas of Custody* (1992, USA) 276.

14 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 131.

NICOLA: Well no, I just made a mistake.[15]

Carol Smart is a British sociologist who has written extensively about children's experiences of divorce. With colleagues Bren Neale and Amanda Wade she conducted three landmark studies interviewing children about their experiences after their parents' separation or divorce in the U.K. in the 1990s.[16] One of these studies (the ESRC Study) involved 65 children, all of whom were "co-parented" (which is defined as apportioning children's time between parents on a 50/50 basis) and another study, (the Nuffield Study) involved 12 out of 52 children who were co-parented.[17] Although not focussing exclusively on children in equal time arrangements, these are the only studies known to interview children (rather than parents or professionals) involved in equal time arrangements. These studies provide a unique glimpse into children's views of equal care arrangements after their parents' separation or divorce and form an important plank in our knowledge of how children cope with such arrangements and in determining what may be in their best interests. To date, there has been no equivalent Australian study.

Smart, Neale and Wade suggest that the successful outcomes of equal time parenting that their study noted, "may depend far more upon the characters, personalities, resources and values of the parents and children involved than in one particular form of post-divorce parenting."[18] For some families, the equal time model will be unworkable, as they find they are not able to achieve the conditions that the research suggests are important for the successful implementation of this parenting arrangement. For these families, a different model of post-separating parenting will be necessary.

Even a rebuttable presumption of equal time normalises a model of post-separation family life which the research suggests is difficult to achieve. The model may be rebuttable, but it is still preferred to others, putting implicit pressure upon families to adopt this state-sanctioned model. Families who attempt to implement the equal time model but find it unworkable may find that it puts undue stress upon all family members when care arrangements reach a crisis and are then changed. Parents, and perhaps children who have attempted the equal care model but find it impracticable may experience a sense of failure as they have not lived up to a model of family life that is presented as "the norm". This would be an unacceptable consequence of implementing a rebuttable presumption of equal care.

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15 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 128-9.

16 Two of these studies, the "Nuffield Study" and the "ESRC Study" which Smart conducted with colleagues are written up in Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) and the third is in Amanda Wade & Carol Smart, *Facing Family Change: Children's Circumstances, Strategies and Resources*, Joseph Rowntree Foundation (2002) available at http://www.jrf.org.uk/bookshop/eBooks/1842630849.pdf. See also Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307.

17 See Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 127.

18 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 132.

Additionally, unnecessary engagement with the legal system or even litigation may result from the introduction of the presumption. If the equal time arrangement becomes unworkable within a family, parents will be forced to rebut the presumption and amend their parenting plan by consent or, if there is disagreement between the parents, in Court through litigation if one parent or a child feels that the equal time arrangement is unsatisfactory. Any increase in the incidence of litigation is contrary to the principles expressed recently in the *Government Response to the Family Law Pathways Advisory Group Report* "promoting the need for earlier conflict resolution and agreement in separating families and less adversarial behaviour."[19]

A Rebuttable Presumption of Equal Time is Unlikely to Lead to an Increase in the Number of Equal Care Arrangements

In 1997, 3% of Australian children with a natural parent living elsewhere, lived under an equal time or near equal time care arrangement.[20] A presumption of equal time will be unlikely to lead to more families achieving the necessary conditions for successful equal time care arrangements for children.

The chief factors identified in the AIFS study for successful equal time parenting are a co-operative "business-like working relationship" between the parents, a shared commitment to equal time parenting and an ability to focus on the children when making care arrangements. Parents who fit these criteria are likely to be able to agree to an equal or near equal time arrangement without the need for a presumption, given appropriate encouragement. This is because the qualities which the research suggests will lead to successful equal time arrangements are similar to the qualities which permit parents to agree to their own post-separation children's arrangements.

The present legislative framework provides adequate tools for encouragement of equal time or near equal time arrangements. Section 60B(2)(a) of the *Family Law Act 1975* states that "children have a right to know and be cared for by both parents." Section 60B(2)(c) states that "parents share duties and responsibilities concerning the care, welfare and development of their children." Section 61C(1) states that each parent has "parental responsibility" for a child, meaning each has the "duties, powers, responsibilities and authority" for their children.[21] Parents must be made more aware of these provisions.

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19 Commonwealth of Australia, *Government Response to the Family Law Pathways Advisory Group Report* (May 2003) 10.

20 Australian Bureau of Statistics, *Family Characteristics Survey Australia 1997* Cat. No. 4442.0 (1998) 7. This report refers to "shared care" rather than equal time. Shared care, in the ABS report, is where each natural parent looks after the child(ren) at least 30% of the time.

21 S. 61B *Family Law Act 1975.*

Parents who are capable of a business-like working relationship, with appropriate encouragement, can be assisted to reach an equal time or near equal time residency agreement under the present family law regime. It is in these families that such agreements are most likely to succeed. There is no need for the introduction of an additional presumption of equal time to encourage those parents who are most likely to succeed at equal time care, to make such agreements.

The introduction of a rebuttable presumption of equal time will not assist those families to reach an equal time arrangement where both parents are unable or unwilling to attain a business-like working relationship, a shared commitment to equal time parenting nor an ability to focus on their children's interests when making residency arrangements. It is unlikely these parents will be able to freely agree to an equal time arrangement, because a lack of these factors suggests that conflict levels will be high. Janet Johnston's research suggests that highly conflictual parents have a poor prognosis for becoming co-operative parents on an equal time basis.[22] If these same families are pressured or forced to implement an equal time arrangement through a rebuttable presumption, the research suggests that the equal care arrangement is unlikely to be successful, because many of the basic conditions have not been met. Johnston recommends that an equal time arrangement is generally inappropriate for highly conflictual parents.[23] In such a situation, one or both parents may simply (re)apply to the Court to have the presumption rebutted or will agree between themselves to a more suitable parenting arrangement.

An Equal Care Arrangement May Not be in the Best Interests of Children

The paramount consideration, under the current *Family Law Act* when determining care arrangements for children is the best interests of the children. The best interests standard must remain the overriding consideration when determining post separation children's arrangements. Spending equal time with each parent will not be in all children's best interests. It is submitted that the single most important determinant of whether a post-separation care arrangement is in the best interests of a child is the quality of relationships within the family, rather than the amount of time the child spends with both parents.

There is clear evidence to suggest that a focus on apportioning equal time with both parents may not be in the best interests of many children, particularly where the children's time becomes invested with heavy emotional significance within a family.

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22 Janet Johnston, 'Research Update: Children's Adjustment in Sole Custody Compared to Joint Custody Decision Making' (1995) 33 *Family and Conciliation Courts Review* 415, 423.

23 Janet Johnston, 'Research Update: Children's Adjustment in Sole Custody Compared to Joint Custody Decision Making' (1995) 33 *Family and Conciliation Courts Review* 415, 423.

Carol Smart explains the need to hear children's voices in making decisions about the allocation of their time:

> [A]t present, in policy terms, children are regarded as the objects of their parents' concerns and desires. This means that the just apportionment of the child (or the child's time) is seen as the solution to conflict between parents. But once the child himself or herself becomes a speaking participant in the process, the idea of apportionment rapidly appears to be less than ethical as a solution. This means that including the perspectives of children will alter the whole process.[24]

After listening to the voices of the children in the study, Smart argues that the majority of children whose parents share their care know how important the apportionment of their time is for their parents. However for some children, a requirement that they spend equal time with both parents can become "uniquely oppressive".[25] By dividing the child's time equally into two shares, Smart and her colleagues found that the child's time became heavily invested with emotional significance.[26] Children in this situation who were sensitive to their parents' wishes, were reluctant to ask for a change in the care arrangements when they became unsuitable. Such children, "found that they had to take a stand against a powerful philosophy, which insists that equal shares are fair, and also against the emotional strain of upsetting the balance between their parents."[27] The following exchange between an interviewer and Matt, who is 15 years old and has been in an equal time arrangement with hostile parents for 5 years, illustrates his situation:

> MATT (15): It's just a drag really for me.
> *Q: What's the worst thing about it?*
> MATT: Just not being able to settle down in one place for longer than one night . . . It's just my room. Really it doesn't ever feel lived in as it would if I was in one house all the time, that's really . . .
> *Q: If you had a completely free choice, what would you like to do?*
> MATT: I'd like to stay in one place. [When mum and dad were together] it was more settled, it just seemed more calm and peaceful . . .
> *Q: How do you think [your mum and dad] would react if you said 'Can we try something different?'*
> MATT: I don't know, they'd probably go mental about the amount of time I was spending at each house . . . I'd just feel under pressure not to say anything . . .They'd fight over every day . . .They argue over, like, whoever had had like one *long* day or something. It's just relentless. I wish they would stop it I suppose.[28]

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24 Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307, 309.

25 Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307, 314.

26 Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307, 314.

27 Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307, 314.

28 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 133.

If some children living under an equal care arrangement find that as they grow up, they would like to change their living arrangements but cannot express this wish, then an equal care arrangement is not in their best interests. Matt's living arrangements seem to be more about his parents interests than his. In such cases, Smart, Neale and Wade argue "co-parenting [an equal time split] can be just as debilitating for children as those cases where one parent refuses to allow children to see the other parent or to spend meaningful time with them."[29]

This does not mean that an equal time arrangement will silence all children, just those who feel that they cannot negotiate the emotional consequences of the time pressures created by their parents. And that depends upon the kind of pressures created by parents for their children and upon the personality of each child. For children in this pressured situation, a law which establishes a presumption of equal time creates an additional prevailing societal expectation of being a son or daughter by carefully measured equality. Defying such an expectation is a burden too great for some children to shoulder, who will acquiesce quietly and unhappily, as Matt has done.

Even if equal time is merely used as a starting point for negotiating post-separation parenting arrangements, Smart's research suggests that some children may be reluctant to express their wish to alter this arrangement– to rebut the presumption– for fear of upsetting their parents. One of the factors the Family Court of Australia must presently consider when determining the bests interests of a child is "any wishes expressed by the child."[30] Any care arrangement which inhibits children from expressing their wishes risks decision-making which is not in a child's best interests. This suggests that a presumption of equal time, even when rebuttable, may not be in the best interests of children or whom this arrangement inhibits them from speaking their minds.

Even if a child in equal time care is able to articulate his or her desire to shift arrangements but the parents are unable to agree between themselves to the change, the costs of litigating in the Family Court or Federal Magistrates' Service to rebut the presumption may be prohibitive, leaving the child in a situation which is clearly not in his or her best interests.

Smart, Neale and Wade's research establishes that it is the quality of parenting that matters when determining whether particular care arrangements are in the best interests of children, not whether children spend equal time with each parent.[31] "[T]he key element of success was not equal time but the equal caring."[32] The way that parents sustained and managed their relationship with each other and with their children was crucial to

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29 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 133.

30 S. 68F *Family Law Act 1975*.

31 Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307, 317.

32 Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307, 317.

outcomes for children through the family transitions caused by separation and divorce.[33] For Tom, quoted above, his care arrangement was positive because his parents visibly maintained a "kind" relationship with each other, but Matt endures an unsatisfactory arrangement because he doesn't wish to inflame a relationship where his parents already argue relentlessly. The fact that both boys have equal time care arrangements was no predictor of whether their best interests were maintained. It was the quality of family relationships that mattered.

Mandating a particular arrangement of post-separation parenting defined by time is not going to guarantee that parenting arrangements are in the best interests of children— it simply misses the point that it is *quality* of parenting that counts when it comes to upholding children's best interests. Smart, Neale and Wade conclude:

> We found that co-parenting [an equal time split], from the perspective of children and young people, was not intrinsically better or worse than living with one parent and seeing the other regularly, occasionally or never. What mattered to them was the quality of their relationships.[34]

If the best interests of the child standard is to remain the touchstone of decision-making regarding residency of children of separated parents, then a variety of flexible care arrangements must be available for parents and decision-makers to choose from. As every family is different and every child within it, so care arrangements must be flexible to cater for the best interests of those children. By establishing a presumption of equal time, care arrangements may be implemented in individual families which are not in the best interests of children, even if the presumption is rebuttable.

Equal Time May Become a Competing Principle to the Best Interests Standard

There is a danger that equal time will become a competing consideration to the best interests of the child standard in making decisions about the care of children.

What research we have into children's well-being through separation and divorce suggests that what matters for them is not an equal apportionment of time but a high quality relationship with both parents and between their parents. A standard of equal time, then, has the danger of misleading parents, judges and registrars– those who make decisions about the care of children– away from a focus on quality of parenting and toward a focus of equality of time. US Psychologist Sanford Braver, a strong advocate for fathers' increased involvement in their children's parenting, argues that an equal time

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33 Amanda Wade & Carol Smart, *Facing Family Change: Children's Circumstances, Strategies and Resources*, Joseph Rowntree Foundation (2002), 44 available at http://www.jrf.org.uk/bookshop/eBooks/1842630849.pdf.

34 Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 127.

arrangement (known in the US as "joint physical custody" or "joint residential custody") is not necessary to facilitate fathers' involvement in their children's lives.

> While it is recommended that the children have substantial contact with both parents, which includes time at home, time driving to and from as well as sharing the child's extracurricular activities, time feeding and clothing the child, time monitoring homework, and time spent with the child and his or her friends, it is not necessary that this tie be split exactly down the middle. . . A parent overly concerned that he see his child exactly the same amount of time as his ex-spouse becomes more of an accountant than a parent.[35]

The use of an equality presumption risks eclipsing the best interests standard when making some child residency decisions, because parents can use the equality principle as a focus for any conflict between them surrounding the end of their relationship. The equal time presumption involves measurement of the child's time and invites comparison between the portions received by each parent. Such measurement moves far away from the real issues behind ensuring that children's best interests are met— the quality of time a child spends with each parent and the quality of the relationship established and maintained through spending time together. Smart comments that, "sometimes the insistence on an exactly equal division of time between parents seems a long way away from the best interests of their children."[36]

A focus on equality of time is more often about the parents' interests rather than children's. Equality of children's time is a principle which can become the focus (if not a source) of parental conflict because it entails measurement and comparison between parents of a precious matter— a continuing relationship with the children. Alastair Nicholson, Chief Justice of the Family Court of Australia argues that an equal time presumption, "is parent-focussed, not child-focussed, and could be seen as placating a parent (of either gender) rather than advancing the welfare of the child."[37]

Conclusion

Equal time is not a one-size-fits-all model for post-separation children's residency arrangements. Different families require different models at different times in their children's lives. Above all, legislative policy in relation to care of children after divorce and separation must support flexibility in children's care arrangements. A rebuttable presumption of equal care will not provide such flexibility.

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35 Sanford Braver with Dianne O'Connell, *Divorced Dads: Shattering the Myths* (1988, USA) 223-4.

36 Carol Smart, 'From Children's Shoes to Children's Voices' (2002) 40 *Family Court Review* 307, 314.

37 Alastair Nicholson, 'The Child's Rights Come First', *The Sunday Age* (Melbourne), 22 June 2003, 15.

Smart, Neale and Wade argue in their conclusion to their UK study of children's views of "co-parenting" (their word for equal time or 50/50 care):

> If we start to think of co-parenting as one example of a family practice, rather than as *the* prescription or formula for 'proper' or desirable post-divorce family life, then it may be able to take its place alongside the full range of family practices that family members might deploy. It would be unfortunate if, because of the highly politicised context in which research on family life is conducted in Britain, children's complex and varied experiences of co-parenting were pressed into the service of a narrow campaign to force all parents and children into a particular model of post-divorce family life.[34]

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[34] Carol Smart, Bren Neale & Amanda Wade *The Changing Experience of Childhood: Families and Divorce* (2001, UK) 141.