

**CRITERIA SOCIAL WORKERS  
EMPLOY  
IN MAKING CHILD CUSTODY  
RECOMMENDATIONS**

A half-thesis submitted in fulfilment of the requirements for the degree of

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## ABSTRACT

During this study, an attempt was made to investigate the process employed by social workers in conducting child custody evaluations and making decisions related to the process, as well as to provide insight into which criteria are currently being used. The goal was to explore the perceived usefulness of these criteria from the perspective of social work, and to assess the adequacy of the requirements of the custody report in reflecting the above process and decision-making. In order to meet this goal, literature and empirical studies were conducted. The literature study focuses on the history of child custody matters, custody decision-making and legislation, types of custody arrangements, criteria social workers employ in making child custody recommendations, evaluator bias and custody evaluation reports.

During the empirical research phase, a non-probability purposive sampling procedure was adopted. Five family counsellors from the office of the family advocate serving the Eastern Cape were selected. After an interview schedule was compiled to cover certain topics and their sequence, semi-structured interviews were conducted with the family counsellors. In order to compare the criteria stated in the interviews with the criteria applied in the custody reports, three cases from each family counsellor were selected and the final custody report and recommendation were studied.

This study has revealed the following: some of the family counsellors experience problems with the process of custody evaluations; certain aspects regarding the process are not in line with some of the literature; some of the criteria used by the family counsellors are not evident in the custody reports and are not discussed in detail; a lack of training exists for the family counsellors; and the family counsellors experience some form of bias.

Finally, based on the research findings, recommendations were made regarding the process of custody evaluation, the criteria social workers employ when conducting child custody evaluations, training and bias of family counsellors, the role of the family advocate and possible future research.

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**CHAPTER 1**  
**INTRODUCTION**

## 1. INTRODUCTION TO THE STUDY

### 1.1 BACKGROUND

“The divorce process represents perhaps the most traumatic and far reaching event in human experience” (Venter, Van der Berg, Van der Merwe & Van Rensburg 1995:106).

Countless children are caught up in their parents emotional crossfire. Therefore, child custody decision-making can be emotional and often results in bitter disputes. It is necessary to evaluate each family individually to determine the best custody arrangement (De Groot 1999:73; Venter et al 1995:106).

In South Africa custody investigations were initially conducted by the state welfare departments. The type of custody arrangement was regulated by the Divorce Act 70 of 1979 (Van der Merwe 1990:27). A social worker investigated the circumstances (including home visits) of the parties concerned and submitted a report and recommendation to the High Court. The Mediation in Certain Divorce Matters Act 24 of 1987 was enacted in 1987. The Act came into operation on the 1 October 1990. The purpose of the Act is to provide for mediation in certain divorce proceedings and applications arising from such proceedings in order to safeguard the interest of the dependent minor children. The Act provides for the appointment of family advocates and family counsellors to assist the family advocate in custody investigations (Hoffman W 1989:105; Bosman-Swanepoel, Fick and Strydom 1998:33; Mediation in Certain Divorce Matters Act 24 of 1987: Section 2.1 and 3.1). Family counsellors are normally qualified social workers appointed by the family advocate. The underlying philosophy of the High Court in requesting custody evaluations, is to assist the court in reaching a correct and proper decision in the placement of children. Custody evaluations can be ordered by the court during the time of divorce or any time thereafter (Bosman-Swanepoel et al 1998:34, 38; Hoffmann W 1989:107, 108).

An investigation by the office of the family advocate can be requested by the following: the High Court, the family advocate (after examining the court documents) and the parties concerned. The court documents and sworn declarations (made by the parties involved) are

studied by the family advocate and family counsellor. The family counsellor arranges the dates for interviews with the parties concerned. Initially, the family advocate and family counsellor jointly interview each parent separately. The family counsellor then interviews the children alone and contacts references - the details of which are submitted by the parents. After the investigation is completed, the family counsellor submits a report and recommendation to the family advocate, who will draft the final report (the report of the family counsellor is attached to the family advocate's report). The family advocate usually accepts the recommendation made by the family counsellor (Scoltz 1998).

## 1.2 REASONS FOR THE CHOICE OF RESEARCH SUBJECT

Child custody evaluation is not intended to be therapeutic. The social worker plays a different professional role and has a different responsibility towards the disclosure of information. The social worker will use her clinical skills to conduct the custody evaluation, but the primary goal is to gather sufficient information to make a sensitive and intelligent recommendation (Lytle-Vieira 1987:7).

I was employed at the Department of Health and Welfare from 2 January 1985 until 31 May 1995. Apart from other duties, my professional social practice involved custody evaluations which were regulated by the Divorce Act 70 of 1979, as well as custody evaluations for the office of the family advocate in terms of the Mediation in Certain Divorce Matters Act 24 of 1987. I experienced the decision regarding the custody of children as one of the most difficult and complicated tasks. The family counsellor is often faced with specific questions in the middle of complex family issues. Therefore, the question is often asked which criteria are important when conducting the investigation: the parent's behaviour or misbehaviour, or their specific parenting abilities (Stahl 1994:24; Uys 1985:98, 99)?

The above situation has stimulated my interest in exploring the criteria social workers employ when conducting child custody evaluations, as well as the usefulness of the process they apply when performing custody evaluations. The literature focuses on a range of

criteria regarding custody evaluations which include the focus on the children and parents. This range of criteria was generated into a table (table 1 on page 29).

In 1990 Van der Merwe explored the use of the major criteria for decision-making identified in the literature. This study (Van der Merwe 1990:8) involved 14 social workers' court reports submitted in terms of the Divorce Act 70 of 1979. I am not aware of any other study that explored the criteria family counsellors employ when conducting child custody evaluations for the office of the family advocate, in terms of the Mediation in Certain Divorce Matters Act 24 of 1987. However, in 1994 a judge, King J, in the *McCall vs McCall 1994 3 SA 201 (C) 2041-J* custody case, enumerated certain factors to be considered when determining what is in the best interest of the child in custody evaluations (Bosman-Swanepoel et al 1998:30). Both the criteria from Van der Merwe's study (1990) and King J (1994) are stipulated in table 1 (page 29).

### 1.3 DEFINITIONS OF THE CONCEPTS

The following definitions can be submitted in terms of the Mediation in Certain Divorce Matters Act 24 of 1987 (Bosman-Swanepoel et al 1998: 39, 121, 122):

*Family Advocate*: A family advocate appointed under section 2 (1) of the Act, which means that the Minister of Justice may appoint one or more officers in the public service at each division of the High Court of South Africa to be styled the family advocate, by or under this Act or any other law. The Minister of Justice, or any person authorized thereto in writing by him, may appoint one or more persons, whether or not they are officers in the public service, at any division to act as family advocate.

*Family Counsellor*: A family counsellor appointed under section 3 (1) of the Act, which means that the Minister of Justice may appoint at each division of the High Court of South Africa one or more suitable qualified or experienced persons (who is usually a qualified social worker) to be styled the family counsellor, to assist the family advocate with an

enquiry. For the purpose of this study, both the terms *family counsellor* and *social worker* will be used.

Other definitions are the following:

Criteria (to be considered in custody evaluations): In determining what is in the best interest of the child, the court must decide which parent is better able to ensure and promote the child's physical, emotional, moral and spiritual welfare. In determining this question, certain factors can be considered, which can also be referred to as the *criteria* (Bosman-Swanepoel et al 1998:30).

Custody : "... is that part of parental authority which relates to the child's day-to-day life and activities" (Bosman and Van Zyl 1997:54). The parents have the duty to provide for the necessary creature comforts, to maintain, educate, protect and generally care for the physical and emotional well-being of the child.

Custody report: Refers to the report which is submitted by the family counsellor to the family advocate and High Court, regarding the circumstances of the parties and children involved, as well as a recommendation regarding custody of and access to the child/children.

#### 1.4 GOALS AND OBJECTIVES OF THE RESEARCH

The goals of the study are:

- \* To investigate the process employed by family counsellors in conducting evaluations and making decisions related to the process, as well as to provide insight into which criteria are currently being used.
- \* To explore the perceived usefulness of these criteria from the perspective of social work.

- \* To assess, from the perspective of social work, the adequacy of the requirements of the custody report in reflecting the above process and decision- making.

Other objectives are as follows:

- \* To draw up an interview schedule to explore the process of custody evaluations and criteria being used by the family counsellors.
- \* To collect three custody reports of each of the five family counsellors to assess if the criteria are reflected in the reports.
- \* To collate, analyze and present data in order to generate knowledge relating to the process of custody evaluations, criteria being used and format of the reports.
- \* To make recommendations regarding the process of custody evaluations, criteria being used and format of the reports.
- \* To make recommendations for further empirical research studies.

## 1.5 RESEARCH DESIGN AND METHODOLOGY

### 1.5.1 Design

The research design was an exploratory-descriptive design. Grinnell (1988:225) states that the purpose of exploratory research study is to explore, “nothing more - nothing less”. It makes it possible to build a foundation of general ideas and tentative theories, which could be explored later with more precise and more complex research designs, and yield new insights into a topic for research (Kvale 1996:100; Grinnell 1988:225; Rubin A and Babbie 1997:109).

### 1.5.2 Methodology

In order to describe and explore the criteria used in custody evaluation, this study lends itself to the use of more than one research method. While a semi-structured interview was used to allow free expression of thoughts and feelings (usually viewed as qualitative), the topic required a structured method (usually quantitative) of analysing what was said in the interviews.

Purposive sampling was used in the research study. Bailey (1987:94) states that the researcher uses his or her judgement about which respondents to choose and picks only those who best meet the purpose of the study. Five family counsellors were selected on account of their position and experience, their willingness to participate, my own knowledge of family counsellors, and the nature of research aims (Huysamen 1994:175; Rubin A et al 1997:266; Babbie 1998:194).

### 1.5.3 Literature study

I also relied on a literature study to support the empirical process. Attention was focused on the history of child custody matters, custody decision-making and legislation, types of custody arrangements, criteria social workers employ in making child custody recommendations, evaluator bias and custody evaluation reports.

## 1.6 PROBLEMS AND LIMITATIONS OF THE STUDY

The number of subjects is small and is not representative of all the family counsellors, however this study provided valuable information regarding problems and limitations which are addressed in the recommendations.

Given the subjective process of decision-making, it could have been difficult for the respondents to focus on the criteria they use. However, examples of their different cases helped them to remember the different criteria.

Only three custody reports of each respondent were studied. It is possible that other criteria were used in the other reports.

As a wide range of criteria was stated by the respondents and in the reports, I grouped the criteria under the headings of the criteria sheet (appendix 3 - criteria taken from King 1994:202 and other literature). It is possible that the respondents would have made different groupings, or view some of the criteria under a specific heading as more important than the other criteria. Two of the respondents were requested to give their view on the grouping of the criteria. Both of them agreed with the grouping.

A problem which was experienced during the pilot study, is that the questions on the interview schedule did not address the nature of the research aims. The interview schedule had to be altered for the next five interviews.

Apart from the custody reports which were given to me by some of the respondents, I had to travel to another city to collect the other reports, which was time consuming. All the completed custody reports of the family counsellors are kept at the office of the family advocate.

## 1.7 ORGANIZATION OF THE RESEARCH

This research study is divided into chapters, which consist of the following:

### 1.7.1 CHAPTER 1: INTRODUCTION

The aim of this chapter is to provide the reader with insight into the reason for the choice of the research subject, the definition of concepts, goals and objectives, the method of research,

limitations and problems encountered during the research study and the organization of the research.

## 1.7.2 CHAPTER 2: LITERATURE STUDY ON CHILD CUSTODY MATTERS

This chapter consists of six sections.

### (a) HISTORY OF CHILD CUSTODY MATTERS

In this section I give a brief overview of factors which affected custody decisions in the past.

### (b) CUSTODY DECISION-MAKING AND LEGISLATION

This section gives a brief theoretical overview of certain aspects of the Divorce Act 1979 of 1970, the Mediation in Certain Divorce Matters Act 24 of 1987, as well as the Natural Fathers of Children born out of Wedlock Act 86 of 1997. Attention is given to the role and duties of the family advocate and family counsellor, and how the court and family benefit from an evaluation.

### (c) TYPES OF CUSTODY ARRANGEMENTS

This section deals with the different type of custody arrangements.

### (d) CRITERIA SOCIAL WORKERS EMPLOY IN MAKING CHILD CUSTODY RECOMMENDATIONS

This section contains of a discussion on the best interest of the child, and attention is given to criteria according to different literature. The criteria according to King (1994:202) as

well as criteria selected from other literature are discussed in detail. These criteria also form part of the study.

(e) EVALUATOR BIAS

This section briefly deals with the bias of evaluators according to the different literature.

(f) CUSTODY EVALUATION REPORTS

This section focuses on tools for assessing parental ability, and the involvement of other mental health professionals with the evaluation. Attention is given to the format of the custody report according to the different literature.

1.7.3 CHAPTER 3: RESEARCH DESIGN AND METHODOLOGY

An explanation is given of the aim, design and methodology used during the research study.

1.7.4 CHAPTER 4: PRESENTATION AND DISCUSSION OF FINDINGS

This chapter consists of a full presentation and discussion of the findings of the research study.

1.7.5 CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

In this chapter various conclusions are drawn and recommendations made regarding the process of custody evaluation, criteria being used in custody decisions and the format of the custody report submitted to the High Court.

Further recommendations are made for future research studies.

**CHAPTER 2**  
**LITERATURE STUDY ON CHILD**  
**CUSTODY MATTERS**

## 1. INTRODUCTION

This chapter which consists of six sections, is quite extensive, but it is necessary to focus on the relevant issues regarding child custody evaluations.

The following aspects are covered: history of child custody matters; custody decision-making and legislation; roles and duties of the family advocate and family counsellor; how the court and family benefit from an evaluation; types of custody arrangements; criteria social workers employ in making child custody recommendations; evaluator bias; custody reports.

## 2. HISTORY OF CHILD CUSTODY MATTERS

Prevailing societal beliefs have influenced child custody decisions. At first the Roman-Dutch law in which South African Law has its roots, emphasized the father's right to custody. The Judeo-Christian and English Common Law regarded fathers as being the determinants of lineage, power and wealth. Then, the "tender years" doctrine began to favour the mother. The belief was that females could provide better nurturance and love by virtue of their biological linkage to children (Van der Merwe 1990:9). Schroeder (1995:152) states that traditionally, the courts have awarded custody of young children to the mother in the United States of America. This area is undergoing re-examination as the right of the father *vis-a-vis* the mother as preferred custodial parent and the right of parents living in irregular arrangements come before the court. Although the mother is still considered as the preferred parent, except in unusual circumstances, there is a decline in custodial presumptions based on the gender of the parent in the United States of America (Koopman and Hunt 1988:381).

Prior to 1948, there was uncertainty regarding the rules and guidelines of custody decisions in South Africa. The tendency was that the "innocent" spouse was generally entitled to the custody of the children, unless the court decided otherwise in the direction of the best

interests of the children. During this time the interests of the children were not considered exclusively (Van der Merwe 1990:9).

It seems that the case of *Fletcher v Fletcher 1948 (1) SA 130 A.D.* clarified matters in South African Law. The judge stressed that “what is really an issue in all custody cases, is the interests of the child itself.” (Van der Merwe 1990:9,10).

In 1971 the following factors affected custody decisions: sex of the child, age of the child and that a child of tender years should be with the mother, the aversion of a child against a parent, continuity of surrounding conditions, character of the parents and their ability or financial capacity. The South African law requires that the custody decisions are made in the best interest of the children. The concept “best interest” has not been operationally defined by the law and it has different meanings for legal and mental health professionals. It has been defined so widely that a range of interpretations can be made (Van der Merwe 1990:2, 10). However, in the case of *McCall v McCall 1994 3 SA 201 (C) 2041-J* (King 1994:202) the judge noted that, to determine what is in the best interest of the child, the court must decide which of the parents is better able to promote and ensure its physical, moral, emotional and spiritual welfare.

### 3. CUSTODY DECISION-MAKING AND LEGISLATION

#### 3.1 DIVORCE ACT 79 OF 1970

The divorce process is one of the most traumatic and far reaching events in human experience (Venter et al 1995:106). Child custody decision-making can be emotional and often results in bitter disputes. Each family has to be evaluated individually to determine the best custody arrangement.

A number of decades ago social services were introduced in divorce courts in South Africa to help and assist the judiciary in making decisions concerning families and their individual

members. An in-depth study and assessment of the structure and function of the family were conducted by a mental health professional and was compiled in the form of an evaluation report. Although a repertoire of services (counseling and mediation) was introduced, the traditional services of custody evaluation have remained important as a highly visible service rendered to the judiciary (Hoffman W 1989:107).

In South Africa custody investigations were initially conducted by the state welfare departments. The type of custody arrangement was regulated by the Divorce Act 70 of 1979 (Van der Merwe 1990:27). A social worker investigated the circumstances (including home visits) of the parties concerned and submitted a report and recommendation to the High Court. Section 6(3) of the Divorce Act 70 of 1979, states that a court may, with regard to the "custody or guardianship of, or access to, a minor child of the marriage, make any order which it may deem fit". The order cannot be granted until the court is satisfied that the arrangements made with regard to the welfare of the minor and dependent children are satisfactory or the best during the circumstances (Clark and Van Heerden 1995:315; Bosman et al 1997:58; Van Westing in Sonnekus 1995:608; Divorce Act 70 of 1979: Section 6.1 and 6.3).

### 3.2 MEDIATION IN CERTAIN DIVORCE MATTERS ACT 24 OF 1987

The Hoexter report, a report on the structure and functioning of courts in the Republic of South Africa published in 1983, proposed a family court, rendering mediation services, marriage and divorce counselling and custody evaluations (Hoffmann W and Wentzel in Hoffmann W 1992:8). The Mediation in Certain Divorce Matters Act 24 of 1987, was enacted in 1987. The Act came into operation on the 1 October 1990. The purpose of the Act is to provide for mediation in certain divorce proceedings and applications arising from such proceedings in order to safeguard the interest of the dependent minor children. The Act provides for the appointment of family advocates and family counsellors to assist the family advocate in custody investigations. Family counsellors are usually qualified social workers appointed by the family advocate. Custody evaluations can be ordered by the court

during the time of divorce or any time thereafter. The underlying philosophy of the court requesting custody evaluations is to aid the court in reaching a correct decision in the placement of the children (Bosman-Swanepoel et al 1998:33, 34, 38; Hoffmann W 1989:105, 107, 108; Mediation in Certain Divorce Matters Act 24 of 1987: Sec. 2.1 and 3.1; Van Staden, Grove and Kruger 1992:58).

Some literature stresses that the court should not automatically make an order for the children (as in the past) as part of the divorce package. The point is now that no parent will win a custody case or lose an access case, but instead that parents will share their responsibility towards their children after divorce as well (Neethling 1993:498).

### 3.3 NATURAL FATHERS OF CHILDREN BORN OUT OF WEDLOCK ACT 86 OF 1997

The Natural Fathers of Children born out of Wedlock Act 86 of 1997, was enacted to make provision for access, custody and guardianship of children born out of wedlock by their natural fathers. The Act came into operation on 4 September 1998 (Bosman-Swanepoel et al 1998:22, 23; Department of Justice Circular 33 of 1998).

This Act gives the father of a child born out of wedlock the opportunity to make application to the High Court for an order granting him access rights or custody or guardianship, on such conditions as may be determined by the Court. Such an application shall not be granted unless the court is satisfied that it is in the best interest of the child, and if any inquiry instituted by the family advocate, the Court has considered the report and recommendations of the family advocate. The family advocate will deal with an application in terms of the Act in the same way as after the institution of a divorce action or the variation, rescission or suspension of such an order (see 3.4.1). Where an adoption order is pending, the Court is obliged to request the family advocate to furnish it with a report and recommendations (Bosman-Swanepoel et al 1998:23, 26).

### 3.4 ROLES AND DUTIES OF THE FAMILY ADVOCATE AND FAMILY COUNSELLOR

Intervention in divorce matters by the family advocate means in fact intervention by both the legal and mental health professions. An attempt has been made to enable these professions to work together in an interdisciplinary fashion in order to ensure that the best interests of the child in divorce proceedings are achieved. The family advocate and family counsellor work together as an inter-disciplinary team and are the child's legal team. The family advocate acts as the child's advocate and the family counsellor is the family advocate's expert witness. Family counsellors are usually employed by the Department of Health and Welfare (McCurdie 1994:12). Social workers from other organizations or other professionals can also be appointed in addition to or in place of a family counsellor.

#### 3.4.1 Family advocate

In some cases the family advocate is obliged to institute an enquiry and in other cases he or she has a discretion to institute an enquiry. It is instituted:

- \* after the institution of a divorce action;
- \* after an application has been lodged for the variation, rescission or suspension of an order, with regard to the custody or guardianship of, or access to, a child made in terms of the Divorce Act 70 of 1979.

An obligatory enquiry must be instituted by the family advocate if requested by any of the parties or the High Court. The family advocate must furnish the court at the trial or the hearing of action or application, with a report and recommendation regarding the welfare of the minor child. He/she is obliged to appear at the trial or hearing if requested by the court, but also has the discretion to appear at a trial or hearing to adduce evidence and to cross-examine witnesses (Bosman-Swanepoel et al 1998:34, 36).

The family advocate may apply to the court to institute an enquiry similar to the above if he/she deems it necessary that it is in the interest of the minor child. Bosman-Swanepoel et al (1998:35) state that in the *Van Vuuren v Van Vuuren 1993 1 SA 163 (T)* case, the court mentions certain instances for the guidance of the family advocate in which he/she can apply to institute an enquiry:

- \* if there is an intention not to place young children in the custody and control of the mother;
- \* if there is an intention to separate siblings;
- \* if there is an intention to award custody and control of a child to a third person (not the child's parents);
- \* if there is an intention that the arrangements made for the child is not in the best interest of the child.

The family advocate has wide powers including the following:

- \* the right to require any person to submit to him/her affidavits, statements in writing, reports, documents or other things as he/her may deem necessary;
- \* the family advocate may gain access to medical or psychiatric records in the event of averments of mental instability;
- \* the family advocate or family counsellor may appoint any other person to assist them with an enquiry (Bosman-Swanepoel et al 1998:39).

The family advocate's functions are to monitor, evaluate and mediate:

#### Monitor

Bosman in Hoffmann W (1992:55,56) notes that the family advocate monitors the completed Annexure "A" forms which are completed by each party instituting an action for divorce or an application for variation of a divorce order in regard to guardianship, custody or access of

the child. This form contains a number of questions related to the children. Their full names, gender and date of birth are required, as well as full particulars of their care relating to the possibility of change of schools, health and support of the children. Annexure "A" also covers the full particulars of each of the parties together with a synopsis of the income and expenditure of each of the parties. The other party may respond by completing the same form (Bosman-Swanepoel et al 1998:37).

The family advocate can also review all settlement agreements (Bosman in Hoffmann W 1992:56).

### Mediate

One of the tasks of the family advocate is to mediate certain divorce matters if necessary. Although the Mediation in Certain Divorce Matters Act 24 of 1987, contains the word *mediation* in the title, it is not defined in the Act. It points more to the process of custody evaluation. The family advocate aims to settle the matter between the parties on terms most favourable to the welfare of the children. Should mediation be conducted by the family advocate, it appears different from mediation as commonly viewed by mediators because of the following:

- \* mediation by the family advocate is mostly not voluntarily submitted to by the parties;
- \* the family advocate and experts actively participate in the decision-making process;
- \* it often involves establishment of facts on which the parties disagree and although cross-examination is avoided questioning takes place;
- \* mediation by the family advocate also involves the evaluation of the parenting abilities of the parties and the family counsellor is usually the key figure in this evaluation process;
- \* the children participate in the mediation or evaluation process (depending on their ages and intellectual and emotional maturity) (Bosman in Hoffmann W 1992:57, 58).

## Evaluate

In some cases mediation is not appropriate, specially because of the high level of conflict between the parties. Parents cannot be forced into a settlement with regard to their children and it is therefore necessary that in many of these cases evaluations be made (Bosman in Hoffmann W 1992:56). Custody evaluations are conducted in conjunction with the family counsellor and the aim must be the following:

- \* to remove the child from the arena of conflict as soon as possible;
- \* to assist the High Court in its role as upper guardian of minor children in making decisions;
- \* to create an informal atmosphere in which parents can speak openly;
- \* to attempt to reduce conflict and to establish facts, while avoiding the use of cross-examination;
- \* to include the children in the decision making process regarding their future (McCurdie 1994:12, 13).

Bosman et al (1997:65) note that very little has been written on how efficiently the family advocate operates, but although they experience many constraints and limitations inherent in the Mediation in Certain Divorce Matters Act 24 of 1987, the family advocate's work is valuable. He/she helps in settling cases and so enables the parties to avoid the financial and emotional cost of litigation.

### 3.4.2 Family counsellor

The family advocate is usually assisted by a family counsellor who is normally a qualified social worker. The court documents and sworn declarations (made by the parties involved) are studied by the family advocate and family counsellor. The family counsellor arranges the dates for interviews with the parties concerned. Initially, the family advocate and family counsellor jointly interview each parent separately. The family counsellor then interviews

the children alone and contacts references - the details of which are submitted by the parents. After the investigation is completed, the family counsellor submits a report and recommendation to the family advocate, who drafts the final report (the report of the family counsellor is attached to the family advocate's report). The family advocate usually accepts the recommendation made by the family counsellor (Scholz 1998). The Mediation in Certain Divorce Matters Act 24 of 1987, does not describe the powers of the family counsellor, but the regulations stipulate that the family counsellor who institutes an enquiry in terms of section 4 of the Act may appoint a person or persons to assist him with such an enquiry (Mediation in Certain Divorce Matters Act 24 of 1987:4).

It is important that the family counsellor conduct the custody investigation timeously in order to keep this painful time for the families as short as possible. The family counsellor must not be seen as a "detective", but must conduct the investigation in a respectful, open and honest manner. The family will then be more open in sharing information. Prolonged litigation about a child's future is deeply damaging to the child, because of the uncertainty it brings and the harm it does to the relationship between the parents. The children must be able to depend on the social worker to recognize their distress, to act to remedy it and to speak for them (Uys 1985:100; Neethling 1993:497; Reder and Lucey 1995:3).

The family counsellor must be an expert on basically all aspects including the following: adult pathology, children, adolescents, families, psychodiagnostics and even certain aspects of the law. Social workers are often not trained in all the aspects of parenthood, or on the needs and functioning of children (Venter et al 1995:107).

### 3.5 HOW THE COURT AND FAMILY BENEFIT FROM AN EVALUATION

#### 3.5.1 Court

Judges may feel poorly trained to understand the dynamics of family relationships.

Sometimes, for example according to King (1994:207), both parents can appear to be good

in parenting and therefore the judge may have a difficult time making a ruling which might be the best for the children. Judges must make decisions based on both legal and psychological principles. Mental health experts can assist in understanding the complex psychological issues and parental fitness, psychological attachment, sibling relationships and the developmental needs of the child. The mental health expert therefore serves as a consultant to the court. Stahl (1994:4) notes that evaluations can help to identify appropriate issues and to define the complex family dynamics. The court does not always accept the recommendation of a social worker on appropriate custody, but judges are usually willing to seek every assistance in making such troublesome decisions and rely heavily on the reports compiled by the family advocate. However, they are not bound to act in accordance with the recommendation (Schroeder 1995:152; Hlophe in Kahn 1997:441).

### 3.5.2 Family

A lot of conflict and disagreement usually exists between parents by the time the family is referred for an evaluation. During the evaluation the parents have the opportunity to voice their concerns to an expert dealing with custody cases. It is important that the evaluator spends considerable time with each parent trying to understand his or her concerns and perceptions of the children's needs. Although custody evaluation is not intended to be therapeutic, the evaluator may provide the first therapeutic contact for a child, assisting the child to look at his or her feelings about their parents and the divorce. The evaluator can also help the child to understand and express themselves in clearer and more direct ways (Stahl 1994:5).

The evaluator has the opportunity to observe all the family members during the evaluation process. Often the parents and children see different therapists and attorneys who have different agendas for their clients (Stahl 1994:5).

Another benefit for the family is educational. Most families know little about the effects of divorce on themselves and their children. The evaluator must be up to date on current

research and must be able to educate the family to understand issues like custody and visitation, shared parenting, how to reduce conflict, child development, etc. (Stahl 1994:6).

#### 4. TYPES OF CUSTODY ARRANGEMENTS

##### 4.1 INTRODUCTION

As stated previously in this study (see 3.1), section 6(3) of the Divorce Act 70 of 1979 states that a court may, with regard to the “custody or guardianship of, or access to, a minor child of the marriage, make any order which it may deem fit”. The order cannot be granted until the court is satisfied that the arrangements made with regard to the welfare of the minor and dependent children are satisfactory or the best during the circumstances (Clark et al 1995:315; Bosman et al 1997:58; Van Westing in Sonnekus 1995:608; Divorce Act 70 of 1979: Section 6.1 and 6.3).

The following definitions distinguish between guardianship and custody:

Definition of guardianship: It applies when the parents are married and live together and it includes custody. It involves the administering of the child’s estate on his or her behalf and also to assist the child in juristic acts and in legal proceedings. The court may deprive a parent of guardianship if the parent has been shown to be incompetent, absent or, not at all interested in the child or children concerned (Bosman et al 1997:53, 59).

Definition of custody: “...is that part of parental authority which relates to the child’s day-to-day life and activities” (Bosman et al 1997:54). The parents have the duty to provide for the necessary creature comforts, to maintain, educate, protect and generally care for the physical and emotional well-being of the child. Cronje (1990:365) adds that the custodian parent is also responsible for deciding with whom the child may associate and ensuring his/her safety. The parent must be able to discipline the child and the child must obey the parents.

Sole guardianship or sole custody of the child could be awarded to either parent. The South African courts generally separate custody and guardianship. The custodian parent has the care and control of the minor person and the guardian parent administers his property and business affairs. The sole guardian is appointed by the court to act alone, but the “guardian” or “custodian” may be appointed jointly with someone else. The “sole guardian” or “sole custodian” may in his will appoint any person to succeed him (Van der Merwe 1990:28). If the court does not make an order regarding guardianship, both parents have equal powers of guardianship after the divorce (Bosman et al 1997:53).

#### 4.2 ONE PARENT CUSTODY

If custody is awarded to one parent, the children will reside with this parent and he/she will control the children’s daily lives. An important factor is that the other parent does not lose his parental status (Cronje 1990:349).

This type of custody arrangement is dominant in South Africa. Generally the courts order that the custody of young children and of daughters is awarded to the mother, unless the mother is a less responsible parent than the father. In exceptional cases the court may grant custody of the children to a third party (Cronje 1990:349; Van der Merwe 1990:28; Sinclair 1996:154).

In the literature study of Van der Merwe (1990:29), it was mentioned that the South African courts are inclined to award guardianship of a minor child to the father and custody to the mother, but the constitutional question is whether fathers are entitled to an equal opportunity to obtain custody of their children after divorce. According to Sinclair (1996:155), there is no formal legal rule favouring mothers. It is stated in some literature that usually the courts do not favour either sex as the more suitable parent. A preference for maternal care is no longer adhered to as a matter of principle. However, as mothers are usually the chief-carers in marriage and are likely to continue to fulfil this role after divorce, they frequently receive custody of the children (Roberts 1997:73).

### 4.3 JOINT CUSTODY

This type of recommendation should only be made in special cases, and the best interest of the child must be taken into consideration. The literature focuses on different criteria to consider when joint custody is recommended:

- \* the parents must not retain any hostility towards each other, with no tension and conflict between them (in other words, a good relationship);
- \* both parents must be able to communicate and co-operate in promoting the child's best interest, as well as being supportive of each other;
- \* they must have a great deal of respect for each other and naturally desire joint custody;
- \* both parents must be fit;
- \* both parents must be perceived by the child as a source of security and love;
- \* successful probation period;
- \* the practicality of joint custody;
- \* the wishes of the child (Hoffmann A and Pincus 1989:53, 54; Clark et al 1995:319; Van Westing in Sonnekus 1995:611-616).

Traditionally, the courts in South Africa have not been in favour of making orders regarding joint custody (Eckard in Hoffmann W 1992:42; Sinclair 1996:154). Bosman et al (1997:61) note that section 6(3) of the Divorce Act 79 of 1970 allows for joint custody although it is not explicitly stated in the Act. However, the courts are generally reluctant to grant such an order, and have come to the conclusion that where the parties were able to communicate reasonably well at the time of divorce, their future behaviour could not be predicted (Van Westing in Sonnekus 1995:609). Therefore, the attitude of the courts to joint custody is that shared responsibility by divorced parents is a legal impossibility because it does not work in practice (Eckard in Hoffmann W 1992:44).

Many people in the United States of America favour joint custody. It provides the child with access to both parents and gives the parents equal rights and responsibilities regarding their

children. In contrast, other courts are of the opinion that such arrangements can create instability for children, it causes loyalty conflicts, makes parental authority difficult, and aggravates the already stressful divorce situation by requiring interaction between hostile ex-spouses (Saltzman and Proch 1990:283). Joint custody tends to affirm that the family ties are not severed by divorce, but the parents can use the child in their own private war, so that joint custody may prove extremely detrimental to the child (Clark et al 1995:318).

#### 4.4 ACCESS

“Access is the right of children to see the parent with whom they are not living” (Cox and Desforges 1987:84).

The courts usually make an order in general terms, such as “reasonable access”. The custodian parent may from time to time decide what is reasonable. Other access orders may refer to the following:

Supervised access: Access is usually in the presence of the parent or a person “in loco parentis” such as a teacher. This order is made if there is a risk for the child or in cases where there has been a prolonged absence of the non-custodian parent.

Divided access: If custody is awarded to a third party, access may be divided between the parents. In other cases where a parent is allowed access to only one or more of the children but not to others, this type of access may be stipulated.

Visiting access: This allows the parent to visit the child (particularly a child of tender age or illness) and not remove him/her.

Staying access: The parent is allowed to remove a child for a weekend or school holiday.

Deferred access: This is temporary denial of access - application for access can be made at a later stage (Bosman et al 1997:62).

Non-physical access. This type of access could be restricted to telephone calls and letters (Schäfer 1993:74).

Bosman et al (1997:63) stress that failure to allow access by the non-custodian parent can be seen as a criminal offence in terms of section 1 of the General Law Further Amendment Act 93 of 1962. The other parent still has a right of reasonable access to the children, even when sole custody is awarded to the other parent (Cronje 1990:349).

## 5. CRITERIA SOCIAL WORKERS EMPLOY IN MAKING CHILD CUSTODY RECOMMENDATIONS

### 5.1 INTRODUCTION

Child custody evaluation is not intended to be therapeutic. The social worker plays a different professional role and has a different responsibility towards the disclosure of information. The social worker will use his/her clinical skills to conduct the custody evaluation, but the primary goal is to gather sufficient information to make a sensitive and intelligent recommendation (Lytle-Vieira 1987:7). I agree with Uys (1985:98, 99) that the decision regarding custody of children is one of the most difficult and complicated tasks. It is questioned which criteria are important when conducting the investigation: the parents' behaviour or misbehaviour or their specific parenting abilities? The family counsellor is often faced with specific questions in the middle of complex and competing needs of the children and their parents. Although the office of the family advocate emphasizes the best interest of the child, it is often necessary to set up the needs in a hierarchical pattern in order to reach a conclusion (Stahl 1994:24). The process of custody evaluation can be stressful for the children, the parents and the social worker who must evaluate and then be ready to be examined in a court. The purpose of custody evaluation is not to judge who will be the

better parent, but to involve and work out with the parents the real needs of the children and the best way these needs could be met (Cigler 1986:174, 370).

An important and interesting factor is that although certain criteria is taken into consideration when making child custody evaluations, professionals serving children recognize increasingly that the custody decision (even when carefully made), cannot guarantee to meet all the needs of the child (Weisz 1995:11).

## 5.2 BEST INTEREST OF THE CHILD

The best interests of the child is a common law rule which is firmly entrenched in the Constitution of the Republic of the South Africa, Act 108 of 1996. This is also the paramount concern of the court. The former emphasis which was on the rights of the parents, has shifted to the responsibilities of the parents and the rights of the child (Bosman et al 1997:49; Hlophe in Kahn 1997:440; Cronje 1990:366; Sinclair 1996:153).

During custody disputes the child is the focus of the dispute, but is usually the one most damaged thereby. The shift in attention away from adult grievances towards the needs of the child is essential. Although parents can share a goal - the child's best interest - the problem arises of agreeing what those interests are and how they should be pursued (Davis and Roberts 1988:94, 99). Cumes and Lambiase (1987:119) stress that the concept "best interest" cannot be defined operationally by the law and therefore have different meanings for different legal professions.

When comparing the South African law with other countries, Saltzman and Proch (1990:270, 271) note that the idea that custody evaluations should be based on the best interest of the child is part of the law in every state in the United States of America. In certain states the factors which should be considered by a judge in deciding what is in a child's best interests are set out in the specific Act. These factors are used in making initial custody and visitation determinations, as well as when a parent seeks to change an initial

custody or visitation determination. According to Weisz (1995:4,5) the “best interests of the child” standard is the basic guideline in the United States of America governing civil cases involving children. The parents’ rights and responsibilities must be balanced against the child’s best interest. The social worker must take into consideration that a child’s needs change with age and in response to daily experiences. The recommendation and plans for children must keep these changes in mind (Saltzman et al 1990:273). However, other literature questions whether the best interests should be viewed from a long-term or a short-term perspective (Hoggett and Pearl 1987:480).

### 5.3 CRITERIA ACCORDING TO DIFFERENT LITERATURE

Legal texts and case precedents point out the criteria judges consider when deciding what the best interest of the child is. These criteria used by the courts have mainly been formulated by legal professionals, although knowledge of child development and psychology falls into the domain of mental health professionals (Cumes et al 1987:119). It is interesting that a study conducted by Cumes et al (1987:127-130) about the differences in views of legal and mental health professionals regarding the major criteria used in custody decisions, proved that the legal and mental health professions gave similar rankings to the 14 major criteria.

In 1990 Van der Merwe explored the major criteria used by social workers for decision-making, identified in international literature. This study concentrated on 50 court reports submitted by social workers in terms of the Divorce Act 70 of 1979. During a custody dispute in South Africa, *McCall vs McCall 1994 3 SA 201 (C) 204-J* (King 1994:202), the judge stipulated some criteria regarding custody decision-making. According to this decision, the court must decide which parent is better able to promote and ensure the child’s physical, moral, emotional and spiritual welfare. Due to the broad spectrum of criteria, I selected the criteria stipulated by Van der Merwe (1990:40) and King (1994:202) to compare with other literature (table 1 on page 29).

**Table 1: Criteria according to Van der Merwe (1990) and King (1994)**

| <b>VAN DER MERWE (1990)</b>   | <b>KING (1994)</b>   |
|---|--|
| <b>Each parent's moral character and mental stability</b><br>(Cumes et al 1987:120,122)   | <b>The mental and physical health and moral fitness of the parent</b>  |
| <b>Length of time in each parent's custody</b><br>(in Cumes et al 1987:120)   |  |
| <b>Keeping a child with his/her siblings</b><br>(in Hoffmann W 1989:108; Cumes et al 1987:121)  | <b>The desirability or otherwise of keeping siblings together</b>  |
| <b>Wishes of the child</b> (in Hoffman W 1989:108; Theart 1988:17; Bosman-Swanepoel et al 1998:89; Hoggett et al 1987:494; Cumes et al 1987:121)  | <b>The child's preference, if the court is satisfied that in the particular circumstances the child's preference should be taken into consideration</b>          |
| <b>Recommendations and comments from other mental health professionals</b> (in Cumes et al 1987:124)  |  |
| <b>Financial capacity of each parent</b><br>(in Cumes et al 1987:121)   | <b>Ability of the parent to provide for the physical needs of child</b> (in Hoggett et al 1987:493;494)  |
| <b>Each parent's ability and intention to provide a two parent home</b> (in Cumes et al 1987:122)   |  |
| <b>Wishes of parents</b> (in Cumes et al 1987:122)  |  |
| <b>Keeping a young child with the mother</b><br>(in Cumes et al 1987:123)   |  |
| <b>Responsible parent/ primary caretaker of the child</b><br>(in Theart 1988:17; Cumes et al 1987:123)  |  |
| <b>Each parent's ability and intention to provide continuity in the home and environment, and continuity in the child's relationships</b><br>(in Roberts 1997:46; Cumes et al 1987:123) | <b>The stability of the child's existing environment, having regard to the desirability of maintaining the <i>status quo</i></b><br>(in Hoggett et al 1987:493)  |
| <b>Placing the child with the parent of the same sex</b><br>(in Cumes et al 1987:122)   | <b>The desirability of applying the doctrine of same sex matching</b>  |
|   | <b>Love, affection, emotional ties which exist between parents and children, and parent's compatibility with the child</b> (in Hoggett et al 1987:493)           |
|   | <b>Capabilities, temperament and character of the parents, and impact thereof on the child's needs and desires</b> (in Theart 1988:17; Hoffmann 1989:108)        |
|   | <b>The ability of the parents to communicate with the child, and the parent's understanding of, insight into and sensitivity to the child's feelings</b>         |
|   | <b>Ability of the parent to give the child the guidance which he requires</b> (in Hoggett et al 1987:494)  |
|   | <b>Parent's ability to provide for the educational well-being, security of the child (secular, religious)</b><br>(in Roberts 1997:46; Hoggett et al 1987:494)    |
|   | <b>Parent's ability to provide for the child's psychological, emotional, environmental, cultural development</b><br>(in Roberts 1997:46; Hoggett et al 1987:494) |
|   | <b>Any other factor which could be relevant to the particular case</b> (in Hoggett et al 1987:494)   |

Other important facets of a child's functioning are the following: child's appearance, behaviour, cognitive capacities, emotional life and relationships, as well as the child's age, sex, background, any characteristics of the child that the court considers relevant and any harm that the child has suffered or is at risk of suffering (Reder et al 1995:60; Roberts:1997:46; Hoggett et al 1987:494). It is also essential to evaluate the effect on the child if separated from the person with whom he has been living (Hoggett et al 1987:493).

Other criteria such as maturity and handling the other parent with respect, not using the child for own benefit, use of support systems and the part of the family which keeps the healthy unit, are emphasized by Uys (1985:99). I agree with Theart (1988:17) that dishonesty towards the family counsellor could also have an effect on decision-making, as one could question the credibility of other information provided by the parent. If a parent is dishonest, the motivation of the parent to have custody could also be questioned.

It is possible that some of the above criteria will overlap and the criteria are not placed in sequence of importance. The above criteria would help to ensure that the same basic factors are being used to implement the welfare criteria by the wide range of professionals involved, including judges, magistrates, registrars, welfare officers and legal advisers. The law commission is of the opinion that the use of the criteria must not be too rigid, and the court will still have the discretion to consider any other relevant factor (Neethling 1995:475, 476).

Each of the above criteria according to King (1994:202) and some of the criteria selected from other literature will be discussed. The reason for focusing mainly on the criteria according to the *McCall vs McCall 1994 3 SA 201 (C) 204-J* case, is that it was set out in the South African Law Reports of 1994. The researcher also used these criteria as part of her study and discussions during the interviews with the respondents.

### 5.3.1 The love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child

Children must feel that they are welcome, wanted, and loved. Without this type of environment a child would find it difficult to develop a healthy self-esteem and to form lasting, meaningful relationships (Hoffmann A et al 1989:33).

The attachment and interrelationships between children and their parents are important. Bosman-Swanepoel et al (1998:65) defines attachment as “a bond of caring and craving that binds the child and caregiver” and Craig (1996:66) as “a strong bond of affection between one person and another which connects them in space and time”. The strength of the attachment will not always depend on the time spent together, but rather on the quality of the parent's involvement and responsiveness to the child. Secure attachment will be formed when parents are available, responsive and helpful, in other words they must be committed to the child. The parent will be sensitive to the child's signals and will respond when the child seeks comfort and help. The family counsellor must also be aware of parents who are inconsistent, which could make the child tend to cling and be too afraid to explore or experiment within their environment. This is called “anxious resistant attachment.” These children are usually attention-seeking, overtly anxious, have impulsive acting out behaviour, are easily frustrated and feel helpless. The parent is usually overprotective (Bosman-Swanepoel et al 1998:66, 67; Hill in Gopfert, Webster and Seeman 1996:8; Nash, Stoch and Harper 1992:32).

Therefore, parents should promote secure attachment for young infants, and then gradually allow them greater autonomy. Children also need to experience freedom for their development of independence and self-control. This is established by mutual agreement and clear understandings and by trusting the good instincts and nature of children (Reder et al 1995:8; Cromwell 1994:330).

Some authors appear to disagree regarding the importance of attachment and a bond with the parents. Bosman-Swanepoel et al (1998:65) stress that during a custody evaluation the social worker must determine the person to whom the child is attached and on whom he/she is mostly dependent for his/her needs. However, according to other literature it is incorrect to assume that the person with whom there is the main bond is necessarily the most important person in the child's life. There is a difference between the parents, siblings, friends, teachers, roles and impact on the child's development. A "psychological parent" will on a continuing, day-to-day basis, fulfill the child's psychological needs for a parent, as well as the child's physical needs (Hoggett et al 1987:482). To perform these tasks, parents must spend quality and quantity time with their children. The child will feel loved and special if the parent is willing to spend time with him/her (Bosman-Swanepoel et al 1998:82).

### 5.3.2 Capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires

The parents' personality characteristics play a central role in the development of children, as children model themselves on their environment (Bosman-Swanepoel et al 1998:77; Nash et al 1992:180; Hoffmann A et al 1989:44). There have been changes in societal ideas as to what is acceptable behaviour among males and females. The roles of males and females overlap and it is generally tolerated by society. It is interesting that some literature notes that when determining custody arrangements, the personality of the parents is important and not the gender (Bosman-Swanepoel et al 1998:77). In making objective psycho-social judgements, the family counsellor is occasionally faced with critical ethical considerations. During custody evaluations, the influence of specific conditions need to be considered, for example, parenting by a homosexual (Lytle-Vieira 1987:8). Saltzman et al (1990:279) state that some states in the United States of America consider homosexuality as immoral and would deny custody to a gay or lesbian parent and others would consider it as having an adverse impact on children. According to Bosman-Swanepoel et al (1998:68) the quality of the relationship with and the care of the child are more important than the sexual orientation of the parent.

Bosman-Swanepoel et al (1998:70, 71) describe the following undesirable attitudes and characteristics of parents:

Over-emotional parents: They tend to be unaware of their excessive emotionality and explosive behaviour.

Over-protective parents: They discourage the children to become mature and the children have weak ego's.

Childish parents: They need motherly care and security and mostly want it from their children.

Alcoholic parents: They tend to have mood swings and are unpredictable. Children have to take over the responsibility of caring for the parent. Hart (1993:199) adds that these children could experience a range of psychological difficulties, including learning disabilities, eating disorders, compulsive achieving, depression, shame and guilt.

Seductive parents: The parents are unaware of the child's perception of them and the child may respond to the parent sexually.

Rejecting parents: These parents do not provide their children with a loving and caring environment which is essential for their growth.

Over-conscientious parents: They attempt and strive to avoid all possible frustration in their children's lives.

Uninvolved and neglectful parents: These parents are unable to give any encouragement or love to the child and will make no effort to control the child. Krantz (1994:349) adds that these parents are uninvolved in their children's lives and consider their responsibilities as parents as a burden. They will distance themselves emotionally from their children.

It is important for parents to be aware of their children's needs so that they are able to respond appropriately. Other factors that may influence a parent's ability to perceive their children's needs could be the following: depression, mental retardation, schizophrenia and the preoccupation with his/her own problems during the time of the divorce. The parents must also remember that the needs of the child change according to age (Bosman-Swanepoel et al 1998:71). It is necessary that the evaluator requests the parents to describe his/her perceptions and needs of the child. The evaluator will then be able to assess the parent's ability to understand the child developmentally and respond to his/her emotional and structural needs (Stahl 1994:83).

Some of the literature describes an adequate, capable and stable personality as follows: a person who has a positive outlook on life, who accepts responsibility for himself, who has a clearly defined focus in life, who recognizes the value of an adequate support-system, who values himself as his own person, who is trusting in attitude, warm in approach, who is reliable in behaviour, has a healthy respect for others and himself, who is well disciplined, sensitive to the needs of others, sets a good example in the home and is aware of his weaknesses and external threats (Hoffmann A et al 1989:43, 44; Nash et al 1992:181).

### 5.3.3 The ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings

Communication between parents and children are important. The secret of communication is the unconditional acceptance of a child. The child will accept himself if a parent accepts a child with his shortcomings. It also relates to genuineness, which means that both parents and the child must be able to be themselves within the relationship. The parents must show the child that they understand his/her feelings as well as share their own feelings with the child (Bosman-Swanepoel et al 1998:81). It is also necessary that parents help children to learn to deal with all their feelings and give them the freedom to express both their positive and negative feelings, in order to help them to live their own lives fully and freely (Hart 1993:46; Harrison 1996:61).

Communication skills are the most basic, important skills one needs in life. Some literature stresses that children who grow up under the children-should-be-seen-and-not-heard rule, have a distinct handicap. They are deprived of the opportunity to express their thoughts and opinions and to gain confidence in their own abilities (Hart 1993:33, 34). The parent's style of behaving, thinking communicating and resolving conflict are all critical factors in the development of the personality of the child. Faulty communication can occur when children are given ambivalent double-bind messages, which could cause insecurity with the children. The child could doubt his own perception and as a result, experience difficulty in seeing reality without distortion (Nash et al 1992:176).

It is important that parents be able to communicate effectively with their children to maintain a satisfying relationship. Both talking and listening demonstrate mutual respect. Then children and adults will allow each other to express their feelings honestly without fear of rejection or disapproval (Harrison 1996:58).

Another relevant issue is that the parent must be able to empathize with the child. Parents can show concern for and interest in their children's general well-being and particular experiences. They must place themselves in their children's position and appreciate experiences from their perspective. The child must be recognized as an individual with feelings, ideas and an identity that is different from the parent. With relevance to sensitivity to the child's feelings, parents should put their children first whenever necessary (Reder et al 1995:10).

#### 5.3.4 The capacity and disposition of the parent to give the child the guidance which he requires

Children cannot hope to cope effectively with life without some form of order or guidance. Effective discipline of the child can help the child to develop self-discipline and to take responsibility for his/her own behaviour. Parents should give their children choices between socially acceptable options and then teach them the consequences of their actions. Parents

who fail to encourage their children to accept responsibility for their behaviour and do not allow their children autonomy, do not act in the best interest of their children (Hoffmann A et al 1989:51; Hart 1993:116; Craig 1996:323). Therefore, the short-term goal of discipline must be to guide behaviour on a daily basis and to protect the children from hurting themselves and others (Hart 1993:116).

I agree with Hoffmann A et al (1989:52) that the family counsellor should be alert to the need for discipline in the home of the child and should assess which parent is best able to cope with the demands of a growing and sometimes demanding young person. During a custody evaluation the family counsellor can determine what type of discipline the parents provide for the children.

Punishment must suit the transgression and be consistent, impersonal and constructive. It is important that an explanation of the reason for punishment accompanies the punishment. Therefore, punishment must be aimed at conscience building and not humiliate the child (Bosman-Swanepoel et al 1998:73).

Other literature stresses that parents must promote desirable behaviours rather than eliminating undesirable ones and remember to set realistic expectations and demands. It is important that parents avoid unnecessary use of power, but rather help children to gain a sense of control over themselves and their environment. An important method is for parents to use verbal reasoning to help children understand social rules (Craig 1996:323).

Van der Merwe (1990:58,59) notes that the “psychological parent” provides guidance and limits and offers a mutuality of relationships in which a child’s psychological and physical needs are met. This parent is responsible, which is visible in the parent’s past conduct in relation to the child.

5.3.5 The ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs - generally speaking, the provision of economic security

Parents must be able to anticipate the child's physical needs in order to provide them. It must already start with antenatal preparation (Reder and Lucey 1995:8).

Some authors argue that finances and the economic status of the parents are important. The child must know that he/she has a stable and secure environment to grow up in. Parents who are unable to meet their financial commitments and who are unable to provide adequate housing, are at risk. It is important to remember that children need stability and an environment that would enhance positive values, a sense of pride in themselves and an attitude of self-respect (Hoffmann A et al 1989: 24, 25). Cox et al (1987:30) agree that the economic status of the parents is important, as it will determine if there will be any fundamental changes in lifestyle after the divorce. The custodian parent could be forced to move to a smaller house in a different area and school and relationships with friends could be disrupted.

Saltzman et al (1990:278) note that finances may or may not be considered in awarding custody in the United States of America. However, many argue that financial considerations must not outweigh other factors like the primary caretaker rule.

The general trend in law is not to emphasize the financial status of the future custodian. The future custodian must have a "home" which is seen as an abode rather than the psychological climate with in which the child develops. Although the greater wealth of a parent should not be a consideration in custody decision-making, the stability of their economic environment is a vital concern to all families. Newly divorced families, especially those headed by a woman, often experience economic strain (Van der Merwe 1990:46, 47, 48; Cumes et al 1987:121).

In a study of 50 custody cases conducted by Van der Merwe (1990:87, 135), the financial capacity of each parent was considered in 44 (88%) of the cases. This author recommends in his study that the best interest of the child must be taken into consideration regarding the financial capacity of each parent. Emphasis should also be placed on the future and the parent's ability to make necessary financial provisions. However, in a study conducted by Cumes et al (1987:128) the legal and mental health professions ranked this criteria as the twelfth most important criteria out of 14 criteria.

#### 5.3.6 The ability of the parent to provide for the educational well-being and security of the child, both religious and secular

Children need to establish acceptable behavioural patterns in society. When giving democratic and effective guidance, children must be stimulated into desirable ways of behaving, by using principles such as social equality, mutual respect, trust, co-operation and shared responsibility (Harrison 1996:16). However, the child must not be expected by the parents to be responsible for his/her own protection. The parents are responsible to monitor whether the children are protected from exposure to dangerous people or circumstances. Sometimes parents attribute their responsibility for their parenting behaviour to someone else such as their partner. They can also attribute all their responsibility for what has happened in their lives to others. Parents will be able to plan for their children's future protection if they accept responsibility for their behaviour (Reder et al 1995:9).

The morality of the parent relates to the practices, norms, values and belief systems of the parent. If the parents fail to adhere to recognized standards set by the community in which they live, the children can be subjected to a great deal of stress (Van der Merwe 1990:41). Hoffmann A et al (1989:18) note that if a child is subjected to the pressures of cultural and religious change, in addition to the divorce of his parents, it would confuse and undermine his self-esteem and sense of identity.

The educational well-being of the child also refers to the involvement of the parent with the schooling of the child. Parents can play an important role in creating a supportive environment and encourage the development of specific skills in order to help children to succeed academically when their parents provide support and guidance (Craig 1996:349).

### 5.3.7 The ability of the parent to provide for the child's emotional, psychological, cultural and environmental development

It is important that the family counsellor assesses the developmental needs of the child. Stahl (1994:31) is of the opinion that some evaluators focus more on the rights of the parents than on the developmental needs of the child. Children of different ages have different developmental needs, with some children more sensitive and reactive to their environment.

Some of the literature stresses that the parental role is to facilitate the child's developmental lines within a safe environment. Parents must be able to attend to the early helplessness and dependency of the child, but they must also motivate the child to differentiate and develop a separate identity. There must be a balance between the child's need for socialisation and exploratory learning versus the need for protection and limit setting (Rheder et al 1995:6). Children can develop a sense of independence by exploring and testing the environment. This involves a trial and error process in the judgement and behaviour of the child. It will be successful if the parents are tolerant, understanding and love their children unconditionally. Children will interpret their environment with a greater sense of trust and security, if they perceive their parents as willing to fulfill their needs (Bosman-Swanepoel et al 1998:91,91).

Another relevant factor is the parent's ability to create an emotionally safe environment for the child and be able to provide age-appropriate emotional care. This will depend on the ability of the parent to control himself/herself and to let the child feel safe and secure. The parent must show understanding of the child's feelings and the child must be able to trust the parent with his/her feelings. The self-esteem of the child must be reinforced and the parent

must be sensitive to cues during spontaneous interaction between them (Bosman-Swanepoel et al 1998:74; Reder et al 1995:8). It is therefore important that parents be sensitive to their children's emotions, but also to recognize the children's rights to private thoughts and feelings (Krantz 1994:365). Hoffmann A et al (1989:25) note that a home is more than a pile of bricks, it is an environment in which a child is reared according to certain values and principles, as well as in which he feels safe and secure. Parents are responsible to guide their children in personal, social and intellectual development and must therefore encourage children to explore their environment and to act independently (Bosman-Swanepoel et al 1998:92).

### 5.3.8 The mental and psychological health and moral fitness of the parent

The moral character of the parent will be taken into account by the courts only if it influences the parent's suitability to look after the child. It could be considered as a factor in awarding custody if the misconduct directly affects the child or parental abilities (Van der Merwe 1990:41; Cumes et al 1987:120). An example is the abuse of alcohol or drugs, especially in the presence of the children.

The family counsellor must have knowledge of the divorce process and be able to recognize which stages of divorce the parties are experiencing. It can happen that the "emotional divorce" takes longer than the legal divorce, and it can be very upsetting for the children if they are used as a pawn between the parents. The parents do not always have the insight that they need professional help and not to use their children as support systems. The social worker must be able to recognize an intense period of shock, anger, depression and grief. It is important that the social worker evaluate the parent's sporadically disturbed behaviour to see whether it is only an isolated incident, or if the behaviour is a tendency of his/her life style (Bosman-Swanepoel et al 1998:6). King and Trowell (1992: 55) add that "few people are able to behave totally rationally and unselfishly at times of crisis, uncertainty and great unhappiness in their life". It is essential to determine how the emotional disturbance of the parent affects the interaction with the child (Van der Merwe 1990:52). One must bear in

mind that parents in custody disputes are often dealing with their own feelings of loss, rejection and diminished self-esteem. The parents tend to be preoccupied with their own needs. It can sometimes cloud the parent's view of his/her children's best interests (Ash in Alessi 1997).

Parents must be able to acknowledge problems. Some parents do not acknowledge that change in their parenting behaviour is needed or that therapeutic intervention will be helpful (Rheder et al 1995:9). Bosman-Swanepoel et al (1998:61) note that the court and mental health professions must take into consideration that parents who are ready to utilize professional help, will enhance their parental skills. This parent is better equipped than the parent who lacks the insight to realize that he or she has a problem.

When evaluating the moral fitness of a parent, the family counsellor can assess the following: if the parent has a healthy self-esteem, if the parent is able to address realities in a positive and constructive manner and does not lose self-control in the face of a crisis (Hoffmann A et al 1989:44). The theory comments that mentally stable or healthy people react adequately. They will set realistic goals and make the necessary adjustments if necessary. The disturbed parent could show signs of loneliness and social isolation, even in the presence of an extended family (Van der Merwe 1990:51).

Another important factor is the attitude of the parent to the tasks of parenting. Parents' view of their parenting role usually derives from their own childhood experiences. If they can recognize this link, they are less likely to repeat blindly any of their own adverse experiences (Reder et al 1995:90).

In a study conducted by Van der Merwe (1990:75, 34) where a sample of 50 custody reports were studied, each parent's moral character was mentioned in 42 (84%) of the reports and the mental stability of each parent in 34 (74%) of the reports. This author recommends in his study that rather than focusing on the negative aspects of the moral character of each parent, the social workers should concentrate more on the positive aspects

of the parent. The negative aspects may only be considered if they have a negative effect on the child or interfere with the parent's ability to care for the child. The social worker should assess the parent as a whole and not consider the parent's mental stability as a search for pathologies. In a custody report the mental health of an individual is best described in behavioural terms.

In another study of 14 criteria carried out by Cumes et al (1987:128), the moral character of the parent was ranked third most important by the legal profession and sixth most important by mental health professionals.

#### 5.3.9 The stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the *status quo*

Divorce is a serious and unnatural disruption of family life, can destroy stability and disrupt the life style of every member of the family. It is advisable to allow the child to stay in well-known surroundings. The social worker must take into account the support systems that the children have and not totally cut them off from systems such as friends, school, neighbourhood and the domestic help in the house, specially if she has been present for a long period. It is also important to be aware of the parent's support system, which can contribute to the parent's positive self concept (Bosman-Swanepoel et al 1998:59, 63; Graig 1996:375). Cox et al (1987:29) note that both the short- and long-term outcomes of the divorce for the child, will be influenced by the support available to that child and how closely that support matches the needs of the child. However, the disruption of continuity has different consequences for different ages (Hoggett et al 1987:483).

An important factor is the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity. This is essential for the normal development of the child. Psychological studies have found that children who experienced high degrees of environmental change were generally low in self-esteem and felt angry about divorce. Other findings were that high degrees of environmental change are related to

children's depression, social withdrawal, aggression and delinquency (Van der Merwe 1990:44, 60; Cumes et al 1987:123, 124).

If the child has been in the custody of one parent during pre-divorce separation or pending an appeal, this could be a factor in favour of the parent who has custody. The courts are generally reluctant to move the child if he/she has found stability in the home of one parent. The courts give consideration to the continuity of the child's environment and that the frequent change of environment is regarded as prejudicial to the child. The maintaining of the "*status quo*" weighs heavily with the legal fraternity (Van der Merwe 1990:44, 60; Cumes et al 1987:123, 124).

It is essential that children not be allowed to move between parents at their own discretion after a divorce and therefore manipulating the situation. This will result in non-adherence to effective discipline and the assumption that commitments are not necessary. Hoffmann A et al (1989:43) add that if a child is allowed to move freely between parents, there could be a lack of adequate supervision at home, and the children are allowed to play one parent off against the other. These children are at risk and often lack stability in their lives. They can manifest manipulative behaviour and are frequently inconsiderate and disrespectful toward others.

On the other hand, the continual relationship between child and non-custodian parent is of utmost importance. Usually the child experiences the loss of continuous close contact with the non-custodian parent as the most serious disruption. Disruption of relationships can affect the child's emotional security and leave a permanent scar. The continuity of a contact relationship can be considered the most important consideration in decision-making about children (Bosman-Swanepoel et al 1998:59; Van der Merwe 1990:62).

Van der Merwe (1990:113, 135) found in his study of 50 custody cases that this criteria was mentioned in 47 (94%) of the reports. He recommends that the length of time in one parent's custody should only be a consideration if the child has settled into that parent's

home and the specific parent can offer stability in the home and the environment. In a study of 14 criteria conducted by Cumes et al (1987:128), the length of time that the child has been in one parent's custody was ranked the tenth most important by the legal profession and eighth most important by the mental health profession.

#### 5.3.10 The desirability or otherwise of keeping siblings together

The courts will not separate siblings if possible, as this may fragment their sense of stability and security. The legal writers and courts in South Africa appear to be in agreement on this issue (Bosman et al 1997:62, 63; Van der Merwe 1990:45; Cumes et al 1987:121).

Van der Merwe (1990:46) focuses on the different views of authors. Some feel that separating siblings may be justified where there is a gap in the age of the siblings, the children are of different sexes and each parent is particularly able to meet the different needs of the different children. In cases where siblings have to be separated, there should be sufficient access to each other to maintain their relationship. It is important that the siblings' companionship and mutual support should not be neglected or undermined, because their parents have proved to be incapable of establishing a lasting bond between themselves.

Others argue that siblings should not be separated from one another unless there are cogent reasons. Divorce often involves the redefinition of role relationships and repositioning of individuals. To separate children from each other during a divorce would further complicate matters. This could deny them free access to their siblings and the emotional support and would alienate them from their family (Hoffmann A et al 1989:38). Hetherington and Mekos in Alessi (1997:103) state that the quality of the sibling relationship is affected by the quality of the relationship between the divorced spouses.

When children are older and the role models become more important, boys may be placed with their fathers and girls with their mothers (Bosman et al 1997:63). An example is the case of *McCall v McCall* 1994 3 SA 201 (C) 2041-J (King 1994:202), where the boy was

placed with his father as his need for the discipline and guidance of a father was greater than his need for the protection of a mother.

In a study conducted by Van der Merwe (1990:85, 135) this criteria was considered in only 10 (20%) of the cases studied. He recommends in his study that a child should only be separated from his/her siblings if the child has expressly stated that he/she wants to be separated from the siblings or if special circumstances exist. However, the study of 14 criteria by Cumes et al (1987:128), revealed that the legal profession ranked this criteria as the fourth most important, and the mental health professionals as the fifth most important criteria.

### 5.3.11 The child's preference

Different opinions in the literature regarding the child's right to participate in decision-making, prove that this could be a contentious issue. Trinder (1997:293, 294) identifies two different perceptions. On the one hand it is harmful to ignore children's views and beneficial to them to participate in decision-making. It enhances the children's self-esteem and sense of personal autonomy. In the case of *McCall v McCall 1994 3 SA 201 (C) 204-J* (King 1994:202) the judge was of the opinion that the child had the necessary intellectual and emotional maturity to give a genuine and accurate reflection of his feelings towards and relationship with each of his parents. Therefore, the expressed wishes of the child is a factor taken into consideration by the court, depending on the appropriate age and understanding of the child. If children have approached the age of puberty and are emotionally mature enough, their needs regarding custody should be taken into consideration. Children of this age are already in the process of breaking away from their families and of establishing themselves as individuals in their own right. They are often capable of making adequate judgements (Saltzman et al 1990:273, 274; Neethling 1995:477; Hoffmann et al 1989:50; Cumes et al 1987:121).

Bosman-Swanepoel et al (1998:89) stress that if a child verbalizes a strong preference for a particular parent, it is necessary to ask him/her why they prefer to stay with the particular parent. I agree that the social worker must never ask a child directly whether he/she prefers to stay with his/her mother or father. The child is often not emotionally equipped to deal with the responsibility of making such a decision. Sometimes the child will express an opinion spontaneously. Then the social worker must acknowledge the child's opinion, but explain to the child that the final decision regarding custody remains with the court. A relevant factor stressed by Neethling (1995:477), is that if the wishes of a child are taken into consideration, it must be done through the expert witness who can evaluate the wishes and preferences of the child.

Contrary to the above, some argue that there are children who are unwilling or unable to choose and the act of expressing a preference or view is harmful, even for older children (Trinder (1997:293, 294). Most children prefer that both parents live together with them as a family. It happens that even children who refuse to see the absent parent can still dream of a united family (Cox et al 1987:30).

Some authors are concerned that with the emphasis on the importance of directly ascertaining the child's wishes and feelings - even if the child's chronological age with "maturity" and understanding of the world is taken into consideration - it could result in insufficient attention being given to the contextual family conflict and how this might affect the child's response. The child's emotional and behavioural response will depend on how the adults cope with that process. The children will, depending on the emotional state of the parents, say different things at different times, and the child could also be influenced by his/her parents' conflicting demands. Their responses will also be shaped by their own internal emotional processes. In the early days after parental separation many children are confused. They often do not know what divorce means and are too embarrassed to discuss it. It is therefore important that the social worker recognizes and makes sense of the child's reaction and response to the divorce. It could help to clarify specific terms with the child, for example what "divorce" means. It is important that the court should explore the reasons

behind the child's preference as carefully as the expression itself. Young children experience problems in thinking concretely and have a limited future time sense and lack of maturity to predict from experience (Cantwell et al 1995:341; Cox et al 1987:30; Bosman-Swanepoel et al 1998:89; Van der Merwe 1990:50.).

Cantwell et al (1995:342, 343) warn that courts should be careful not to draw long-term conclusions from wishes or opinions of adults, as well as children, as the expressed wishes and feelings should always take account of the emotional context within the family. It is not a simple matter to ascertain the child's wishes and feelings. Age or intelligence are probably much less important than the emotional context.

A study on children's competence to participate in divorce custody decision making by Garrison (1991:78-87), evaluated children aged 9 to 14 years from intact families. According to this study, there is evidence to suggest that the inclusion of children in custody mediation can reduce anxiety and enhance parent-child communication, but direct involvement in custody disputes may be problematic for some children. Children should not be pressured into making a decision.

Van der Merwe (1990: 92, 135) found in his study of 50 custody cases, that the wishes of the child was only considered in 28 (56%) of the cases. He recommends in his study that the wishes of the child should only be considered if the child is not made to feel that he/she must make a choice between the parents. The child must feel comfortable to express and motivate his/her preferences. In a study conducted by Cumes et al (1987:128) of 14 criteria, the legal profession ranked the criteria (wishes of the child older than 12 years) as the seventh most important, and the mental health professionals as the fourth most important criteria. The wishes of the child under the age of 12 years, was ranked thirteenth by the legal profession and eleventh by the mental health profession.

### 5.3.12 The desirability or otherwise of applying the doctrine of same sex matching

Some research indicates that children are better adjusted when they reside with a same-sex parent (Hetherington et al in Alessi 1997:103; Cumes et al 1987:122). According to legal texts and some reported cases, the custody of an adolescent son should be given to the father and custody of girls (of any age) should be granted to the mother. The reason is given that the same sex parent can provide the child with better “guidance” (Van der Merwe 1990:64; Cumes et al 1987:122). The judge in *McCall v McCall 1994 3 SA 201 (C) 2041-J* (King 1994:202) also stressed the importance of the teenage boy’s need for the discipline and guidance of his father, rather than the protection of his mother.

However, in both mother-and father-custody families, the important issues were the authoritative parenting characterized by warmth, support, communication, monitoring and responsiveness, but firm control. This is associated with social cognitive competence and low levels of psychopathology in children (Hetherington et al in Alessi 1997:103). Cumes et al (1987:122) note that a certain study was unable to find negative effects of single parenting on the adjustment or sex-role self-concept of children.

During a study on custody matters, both legal and mental health professionals ranked this criteria as the least important (Van der Merwe 1990:64; Cumes et al 1987:128). While in a study of 50 custody cases conducted by Van der Merwe (1990:118), this criteria was only mentioned in two (4%) of the cases. This author recommends in his study that placing the child with the parent of the same sex should only be considered as an important criteria if that particular parent seems to be better able to provide for the physical and emotional needs of the child.

5.3.13 Any other factor which is relevant to the particular case with which the court is concerned

Any important factor which is relevant to the specific case, could be evaluated by the family counsellor or be discussed in the custody report. The following examples which are highlighted by the literature, could possibly be grouped under this heading:

1) The parent's involvement in a new relationship and subsequently the child's relationship with this person. On the remarriage of one parent, custodial or not, it appears that the loss is the greatest for the child. The remarriage puts an end to the dream of parental reunion in the case of divorce (Stanton 1986:202). According to Parkinson (1987:58) there is evidence that if the children are allowed to maintain good relationships with both parents, it will rather help than hinder them in forming new relationships with stepparents. This is often not appreciated by parents who have remarried who can see their former partners as a threat to the stability of the new family. Stanton (1986:201) is of the opinion that the following are among the causes of stress in stepfamilies: discontinuities in children's socialization processes, conflicting lifestyles of biological families and stepfamilies, power and authority issues, distribution of material and emotional resources, different phases of family members' life cycles and changes in the children's ordinal position in the family.

2) The attitude of the parent towards access appears to be an important factor, that could be taken into consideration during custody evaluations. A point made by Bosman-Swanepoel et al (1998:90), is that parents must understand that it is the primary right of the child to visit a parent and not the right of the parent. For the parent to be with the child on visitation, is not enough. Children of divorce need their parents to provide the opportunities to relate to their parents in a more intimate manner as they grow older and develop. Graig (1996:375) is also of the opinion that the long-term involvement and emotional support from both parents help the child make a successful adjustment after divorce. The nature of the ongoing parent-child interaction is much more important than whether or not both parents are present in the home.

The importance of visitation is also stressed by Stahl (1994:29). This author is of the opinion that even in relatively dysfunctional situations, it is important for each parent to spend some time with the children, even if the visit is supervised. Other literature points out that if access is only confined to a few hours or even less per month, the child's relationship with the non-custodian parent can easily become tenuous and artificial and may gradually dwindle away. A child can easily feel rejected by the parent if contact does not take place. It is noted that parents who frequently obstruct access ought to be "frowned upon by the court". This could be a clear sign of immaturity and a lack of insight into and awareness of the child's needs (Parkinson 1987:18; Theart 1988:19; Hoffmann A et al 1989:52).

3) The parents' relationship with each other, could play an important role during the custody evaluation. It is essential that the one parent co-operate with the other parent in raising the children, regardless of feelings toward each other. In order to achieve this, one must be able to separate the couple's issues from the children's issues. This could be related to the parents' communication with each other (not through the children), about school, religion, health and other areas of importance to the children (Stahl 1994:28, 29). Children need to see their divorced parents behaving with the respect, courtesy, understanding and consideration towards each other (Bosman-Swanepoel et al 1998:90).

Craig (1996:375) stresses that hostility and bitterness following a divorce, make it harder for the children to adjust to the situation. Parental conflict is mainly responsible for children's lowered sense of well-being. Children develop fears and anger when parents fight. Theart (1988:19) notes that some authors are of the opinion that it is impossible for children to maintain positive relationships with parents that are in conflict with each other.

An important factor that is stressed by a few authors, is the parents' view of and attitude towards one another. The one parent must not attack the character of the other parent, as it always holds negative results for the child's feelings of self-worth. According to Craig (1996:375) children are sometimes forced to become a "sounding board" for their parents, as they have to listen to each parent describe the faults of the other parent.

The literature stresses that the courts in general evaluate such behaviour by a parent in an extremely negative light. Parents who constantly run each other down in front of their children and who involve them in their disagreements with each other, are highly insensitive and destructive in attitude. Such behaviour of parents confuses children, it undermines their self-esteem, their self-respect, their pride in themselves and their concept of the future. Warring parents must guard not to draw the child into loyalty conflicts, which could be detrimental to the development of the child (Hoffmann A et al 1989:40; Bosman-Swanepoel et al 1998:75; Reder et al 1995:11).

According to Gardner (Internet:1990) if abetted by one parent, the child develops an obsessive, irrational hatred of the other parent. The other parent is viewed as "the incarnation of evil". In severe cases of parental alienation syndrome, the alienating parent is so filled with rage, paranoia and delusions, that the only hope is a removal of the child to the other parent's home. In these cases, the primary psychological bond is strong but "sick."

4) An important factor which could have an influence on the custody investigation, is the allegation of child abuse or neglect by the parent. Stahl (1994:107) notes that there has been a growing increase in the nature and extent of violence in the society, especially child and spousal abuse, sexual and emotional abuse of children. However, there is also a rapid rise in the false allegations of violence or abuse. Graig (1996:381) stresses that sexual and physical abuse have long-term effects on the emotional well-being of the child. The child's self-esteem is irreparably damaged and he/she may find it difficult to trust people. Abused children tend to isolate themselves and display more aggressive behaviour. They could also have trouble concentrating at school and experience school-related problems. These children also have trouble regulating their emotions and behaviour and tend to be socially less competent.

The family counsellor sometimes has a difficult task to investigate allegations of child abuse. Stahl (1994:108, 109) advises that the evaluator has a good grasp of the many issues involved. He recommends a thorough evaluation in which there is a complete review of all

the physical evidence, psychological testing of both parents, and both separate and joint interviews with the child and each of the parents. It is also important that the timing of the allegations in connection with the custody dispute be considered. In false allegations, there could be a pattern in which the alleged event was discovered just when the custody dispute was erupting. An interesting comment made by this author, is that the evaluator must understand the psychological make-up of the parents and look for objective evidence which suggests that the mother could be overreacting or that the father is in denial.

Stahl (1994:112) concluded that the more the evaluator understands the exact nature of the allegations, the psychological dynamics of each parent and the beliefs and experiences of the child, the clearer it will be for the evaluator to make at least short-term recommendations that can help the family to move forward in meeting the immediate needs of the child.

#### 5.3.14 The value of an adequate support system

Support systems play a central role in the maintenance of stability, security, growth and development of the parent. Such support systems would include work, friends, interests, activities, stimulation and also utilizing professional help if necessary (Hoffmann A et al 1989:30). The parent who has an adequate support system is likely to have a good self concept. These parents will not utilise their children as support systems, especially when discussing the reasons for the divorce at the time of divorce. Both the parent and the child with a positive support system will have a better chance of re-adjusting and maintaining constructive social functioning. Social support will reduce the helplessness of the parent and inspire him/her to cope better (Bosman-Swanepoel et al 1998:63).

Reder et al (1995:12) state that families who experience internal and environmental stress, also need support from outside to complement their repertoire of coping mechanisms. Research has shown that socially isolated parents are more prone to neglect and abuse their children.

### 5.3.15 The child's primary caretaker

The primary caretaker/caregiver (for the purpose of this study both these terms will be used) is one of the most important factors in a child custody determination when the child is relatively young (Van der Merwe 1990:59). Some people argue that the court should first take into consideration which one of the parents is the primary caretaker, and must then presume that the specific parent deserves custody, unless the other parent can prove that it would not be in the best interest of the child. The labour market and the South African society are structured in such a way, that most mothers are the primary caretaker. However, children have a fundamental right to preserve the strongest possible bond with both of their parents despite the breakdown of the parental relationship (Sinclair 1996:156, 157).

In the judgement of *McCall v McCall 1994 3 SA 201 (C) 2041-J* (King 1994:202), the judge decided that the onus rests on the non-custodian parent to show that the existing situation is detrimental to the child's interest and that a variation of the custody order must be made. It seems that many courts in the United States of America will award custody to a child's primary caretaker (Saltzman et al 1990:277).

In a study of 50 cases, conducted by Van der Merwe (1990:111, 137), the primary caretaker was mentioned in 42 (84%) of the custody reports. He recommends in his study that the "primary caretaker" of the child is an important consideration in the child custody decision-making process. It is possible that the parent's past conduct towards the child may be an indication of the parent's future conduct. It could also indicate the parent's level of commitment towards the child.

### 5.3.16 Motivation (why the parent wants the child)

The social worker should recognize that requests for custody may be quite complex. The requests may come out of a genuine feeling of affection and belief of superior parenting, or may be from anger, fear and manipulation (Van der Merwe 1990:55). An interesting point

made, is that parents have a strong need for winning during a custody dispute and tend to suppress certain feelings, presenting a picture that is not necessarily accurate. They believe the other parent is doing exactly the same (Bosman-Swanepoel et al 1998:83).

The social worker must look at both the validity of the motivation and whether or not the child is being used as pawn to spite the other parent. Some parents cannot function adequately without their children or act responsibly towards them and therefore live through their children's lives. The presence of the children gives them a sense of existence (Bosman-Swanepoel et al 1998:83).

In a study of 50 custody cases by Van der Merwe (1990:106, 136), the wishes of the parents were only considered in 29 (58%) of the custody reports studied. He recommends in his study that the wishes of the parents should be carefully considered and their motives scrutinized, as these may not be in the interests of the children.

#### 5.3.17 The recommendations and comments from other mental health professionals

The family advocate may request the parents to give written consent to the release of social work, psychological or psychiatric information. This could cause a dilemma for the client. The client may know that the therapist has information that may "damage" her/his case. If the client refuses consent, a negative inference may be drawn. It could also present a dilemma for the therapist, as the client could be unaware of the consequences of giving consent and could not know what information the therapist will release. It is important that the family advocate and family counsellor ensure that the client is aware that such information will be contained in the report and that it becomes part of the court record and a public document (McCurdie 1994: 13, 14).

The family advocate may also appoint a psychiatrist or psychologist to evaluate the clients. The mental health professional, family advocate and counsellor, as well as the client must understand the goal of the assessment. This report will also become part of the family

advocate's report and part of the court record. Psychological testing has a legitimate place in such assessments, but must be used in conjunction with other standard information collection methods such as interviews and observations (McCurdie 1994:14, 15). According to Venter et al (1995:112) psychological tests are done to indicate which parent has the abilities and potential to ensure that his child's emotional, intellectual, physical, social and spiritual needs are met. With regard to children, the aim is to get a clear picture of developmental needs, psychodynamic functioning, relationships with family members and the circumstances of their environment.

It is interesting that in the study of 50 cases conducted by Van der Merwe (1990:96, 136), only 19 (38%) of the custody reports studied, included the recommendations and comments from other mental health professionals. However, he recommends in his study that the recommendations and comments of other mental health professionals should be incorporated as far as possible in child custody evaluations.

#### 5.3.18 Keeping a young child with the mother

“There is no one who quite takes the place of a child's mother “ (Hoffmann A et al 1989:33). An important factor in the normal psychological development of a healthy child, is that there is no one person whose presence and natural affection can give a child the sense of security and comfort that a child derives from his own mother.

As mentioned before, one of the most important aspects in child custody evaluation, is to assess the attachment between the child and his parents, or if there is a difference in the bond between the child and his mother or father. In previous years the belief existed that mothers, as a whole, were more nurturing and more important to the children than fathers, and the courts did not show concern for the qualifications of the father (Stahl 1994:26; Hoffmann A et al 1989:33). Some authors do not agree with this opinion, and view the tender years doctrine as the extreme form of maternal preference. This doctrine advocates that if the

mother is minimally fit, she should have custody. Therefore, the father's parenting ability and other factors are irrelevant (Van der Merwe 1990:56).

The literature agrees that an infant's basic need and basis for normal development is a secure attachment to a primary caregiver, usually but not necessarily the mother. Research has shown that fathers influence their children's development and attachment bonds can and often develop between child and both parents (and others). There is no evidence that the attachment to the mother, which is often the first, is different in the kind of attachments to others (Bosman-Swanepoel et al 1998:65; Stahl 1994:26; Hoffmann A et al 1989:34; Van der Merwe 1990:56).

It is important that the family counsellor realizes that attachment or emotional ties do not depend on the physical care by the caretaker, but the quality of the interaction between the caretaker and the child. In other words, attachment to a father may exist, despite the fact that the father spends less time with the child (Van der Merwe 1990:57). Hoffmann A et al (1989:33) suggest that the courts must regard the individual parent's capabilities, the situation they find themselves in and the matter of how custody will affect the child's needs and desires. This relates to the opinion of Bosman-Swanepoel et al (1998:65) that the family counsellor must determine the person to whom the child is attached and on whom he/she is mostly dependent for his/her needs.

According to Van der Merwe (1990:58) the South African legal fraternity are biased in favour of keeping a young child with his/her mother. The courts usually assume that is in the best interest of the child to keep him/her with the mother. This opinion of the courts could have changed in recent years as in the case of *McCall vs McCall 1994 3 SA 201 (C) 2041-J (King 1994:202)*, this criteria is not mentioned as an important factor. However, Hoffman A et al (1989:36) suggest that the court should be aware of the danger of separating especially young children from their mothers. Numerous articles have been written on the long-term affects of separating young children from their mothers. Research has shown that these children frequently experience difficulty in forming lasting and

meaningful relationships and often present with severe emotional and behavioural problems in later life.

Van der Merwe (1990:109, 136) found in his study of 50 custody cases, that this criteria was only used in four (8%) of the custody reports studied. He is of the opinion that no special consideration should be given to keeping a young child with his/her mother.

## 6. EVALUATOR BIAS

Most evaluators are biased which affects how they analyze the information and process it in an evaluation (Stahl 1994:9). The literature points out different reasons for the above mentioned. It can come from the evaluator's own style of thinking, the influence of prevailing professional cultures and ideologies or the policy of the welfare agency. It could also be difficult for mental health professionals to be objective as they carry unexamined assumptions about mother-child relationships and father-child relationships which could result from their own childhood (Braye and Preston-Shoot 1992:58, 59; Venter et al (1995:107).

Stahl (1994:9) points out that it can be due to the evaluator's understanding of the research on child development and divorce and they then assume justification for their bias. An evaluator's bias can contribute to the recommendations he/she makes. It is therefore important that evaluators remain up to date in knowledge of the literature as well as experiences in order to confront their bias and to understand if it is valid.

Another relevant factor is that social workers should do their work in a dispassionate and non-judgemental way, because they are professionals and have an ultimate duty to the child to respect those that form his or her immediate family. The social worker should therefore be careful about making moral judgements regarding parental performance or behaviour (Cantwell et al 1995:348).

According to Ash in Alessi (1997:95) the best interest of children are most likely to be served if the evaluator is impartial, in the sense that the evaluation is court-ordered and not requested from one side.

## 7. CUSTODY REPORTS

### 7.1 TOOLS FOR ASSESSING PARENTAL ABILITY

“Although child custody evaluation is baptism by fire and not recommended for the fainthearted, the social worker involved has a unique opportunity to use his or her professional skills” (Lytle-Vieira 1987:9).

#### 7.1.1 Interviewing

##### a) Parents

The literature stresses that several interviews should be conducted with each parent. The parent and children must also be interviewed together. The parents sometimes receive little information about what they can expect through the court process. During the first interview with the parents, the social worker can answer their questions, allay their anxiety, provide more information about the direction of the evaluation, establish neutrality and focus on the primary issues of the evaluation (Van der Merwe 1990:17; Stahl 1994:46, 48).

Although separate interviews with the parents are necessary, Stahl (1994:47, 48) prefers to meet face to face with both parents for the start of the first session. This opportunity is used to see firsthand the nature of interaction between the parents. One can see which parent acts more compliantly, angrily or controlled and which feels more powerless than the other. One begins to get an idea of the interaction precipitating such behaviours. The social worker can begin to understand the ways in which the couple's conflict is contributing to the custody dispute and the way that the parents can communicate about their child.

Uys (1985:100, 101, 102, 103) stresses that it is essential that individual observation, observation of marital relationship, observation of family relationships, as well as family members on the sideline must be performed during the custody evaluation.

Although the office of the family advocate does not emphasize home visits, Lytle-Vieira (1987:6) is of the opinion that the home visit is a valuable tool in assessing clients and their interaction with the environment. The social worker can then get a feel for the social atmosphere of a home, observe and better understand the parents' behaviour and emotional reactions as they occur in day-to-day life. It helps the parent and child as the interview is conducted in a familiar setting. The social worker is also able to view the actual parent-child interaction, which sometimes can only be gained by the description given by a parent. Van der Merwe (1990:17) points out that the safety of the home setting could be observed, as well as additional information about the sensitivity of the parents to the children's needs.

The social worker must bear in mind that parents always make a conscious or unconscious effort to maximize their strengths and minimize their weaknesses, but the inappropriate behavioural strategies they sometimes use with the social worker in a custody case, will also appear in other areas of their lives (Lytle-Vieira 1987:7).

b) Children

Interviews with the children are a crucial part of understanding both the relationship between the child and his parents, as well as the family dynamics. Many evaluators are used to conducting interviews with adults, but have little or no experience in working with children Stahl (1994:58).

Interviewing children can be difficult for the social worker, particularly if the child is silent. According to Crompton (1992:79, 86) silence on the part of the child can be an indication of anger, hostility, punishment, boredom, confusion, control or sulking. The social worker must be alert and sensitive and know something about the conceptual development of

children. Stahl (1994:58, 59) believes that two important things must be recognized. Firstly, the evaluator must help ease the child's anxiety and assist the child in feeling more secure about his/her relationship with both of his parents. Secondly, the evaluator must recognize that children's language skills are not the same as those of adults. The evaluator must develop a good feel for the language of children when the evaluation is done.

The social worker must avoid asking leading questions, because it could run the risk of altering a child's understanding or memory of an event. In addition to talking with children, evaluators can use the child's symbolic play as a means of understanding issues related to the parents and the divorce and a game called "my two homes" can be effective in explaining divorce to a child (Ash in Alessi 1997:95; Stahl 1994:69; Ravat 1998).

Van der Merwe (1990:17) notes that several interviews must be conducted with each child alone, and that preschool children should be interviewed three or more times. A home-visit to the child can help the social worker to assess the child's expression of parental preference, if any (Lytle-Vieira 1987:6).

c) Other significant people

Teachers, babysitters and other significant people in the children's lives could be interviewed. Grandparents who often play an important role must also be included. If the parents are in new relationships to which the children will be exposed, interviews can be conducted with those people (Van der Merwe 1990:17).

## 7.2 FORMAT OF THE REPORT

The recommendations of the family advocate carry much weight as the report is usually compiled by one or more experts totally independent of the parties (Bosman-Swanepoel et al 1998:39).

The written report is the final step in the evaluation process. The social worker must remember that the report is written for a judge and clinical jargon and diagnostic terminology must be avoided. The behaviour of the parties concerned is not classified but must be described in simple terms that relate to observables. This will avoid certain pitfalls in cross-examination (Cigler 1986:385, 386; Stahl 1994:75).

The literature stipulates several important issues regarding the composition of the custody report. Detailed backgrounds and social histories of the parents are not given. The report must be focused and evaluative and length or detail must not be used as a substitute for professional skill in evaluation. Therefore, the emphasis must be on the relevant issues and the problems of the family. Reports from other professionals are summarized and may be compared, contrasted and evaluated. The ethical or moral issues of the parents concerned must only be discussed as they relate to that parent's ability to parent. The social worker must avoid judgemental statements, phrases and attitudes. The report should be to the point and represent both facts and opinions as well as recommendations that were considered. The reason for certain opinions must be clearly stipulated (Cigler 1986:386; Bosman-Swanepoel et al 1998:86).

Other issues regarded as important by judges, are pointed out by Stahl (1994:75). The report must:

- \* be well reasoned, clear, credible and thoughtful;
- \* be balanced, fair and neutral, attempting to avoid the advocacy of one parent;
- \* be accentuating positives when possible;
- \* remain behaviourally focused.

The recommendations must be child-focused and must clearly flow from the material in the report.

Stahl (1994:76-93) is of the opinion that the following information should be contained in the report:

- \* background information (focus on the problems between the parents; difficulties they have in resolving differences);
- \* information regarding the parents (personality of the parent; parent's concerns regarding the other parent; sense of parent's own childhood; parent's perceptions of his child and needs; evaluator's clinical understanding of the parent);
- \* information regarding the children (how the children related in the evaluation; the child's feelings and concerns; child's perception of his/her relationship with parents; siblings; friends; community; school and other aspects of his/her life; observations of the child and his/her parents together);
- \* information from collaterals;
- \* summary;
- \* recommendations.

The office of the family advocate expects family counsellors to use a specific structure when compiling custody reports, but the contents of the report may be at the discretion of the family counsellor. It is important that the matters in issue (specific disputes) be covered in the report (Burse 1999).

**CHAPTER 3**  
**METHODOLOGY AND RESEARCH**  
**DESIGN**

## 1. INTRODUCTION

Research begins when a researcher attempts to define an interest, solve a problem, or explain an idea. Social research is defined as the process in which one attempts to check, revise, or extend the knowledge of the nature and functioning of social reality (Friedman 1998:6; Groenewald 1981:9). In this study which involves social research, I want to check and describe why certain criteria are taken into consideration by family counsellors in making custody decisions, as well as their views of the process of custody evaluation. These criteria refer to certain factors which can be considered in a custody evaluation, in determining which parent is better able to ensure and promote the child's physical, emotional, moral and spiritual welfare. The aim is not to solve certain problems, but to gain an understanding of the above. Problems and needs mentioned by the family counsellors could be addressed in future research.

## 2. RESEARCH DESIGN

An exploratory-descriptive design was used in this study. While authors such as Rubin A et al (1997:109) argue that exploratory studies rarely provide satisfactory answers to research questions, they are arguing from a position which assumes certain things about what can be viewed as a satisfactory answer. In research of this kind the aim is not so much to provide definitive answers (which rarely exist), but rather to build a foundation of general ideas and tentative theories, which could be explored later with more precise and more complex research designs and yield new insights into a topic for research. The exploratory-descriptive design is specifically useful in this study, as the focus is on exploring a relatively under-studied topic. It attempts to describe certain aspects, such as what criteria are presently being used by family counsellors, to explore the usefulness of these criteria from the perspective of social work and to contrast the criteria used with the content of the final custody reports. The problems and needs experienced by the family counsellors when conducting child custody evaluations, which are stated in the interviews, could be useful in

discovering new dimensions of the subject matter (Kvale 1996:100; Grinnell 1988:225; Rubin A et al 1997:109).

### 3. RESEARCH METHODOLOGY

Epstein in Grinnell (1988:185) states that one can use quantitative methods to count and correlate social and psychological phenomena. On the other hand one can use qualitative research methods to seek the essential character of these social and psychological phenomena. Both these methods attempt to describe and explain social reality.

In order to describe and explore the criteria used in custody evaluation, this study lends itself to the use of more than one research method. Firstly, the qualitative method was partly used, as it seeks to capture the subjectiveness of the human experience and the qualities of human behaviour. In other words, it attempts to understand people in terms of their own definitions or self descriptions and concepts of the world. In this study the feelings and perceptions of the family counsellors regarding the criteria and specific process they use in custody evaluations are of importance to me. I was able to acquire knowledge such as feelings and perceptions, specially when examples of the family counsellors' cases were discussed, which would be unavailable using other methods. Therefore, the natural and subjective components of their role as family counsellor could be emphasized (Jordan and Franklin 1995:121; De Vos 1998:241; Yegidis and Weinbach 1991:99; Mouton 1996:185, 186).

Secondly, in order to count and correlate how many of the respondents use certain criteria during child custody evaluations and apply it in the custody reports, it also seemed appropriate to use the quantitative research method. Apart from tables used, a measurement scale was utilized where the function was not to test how many times a certain criteria was used, but to gain insight into what the respondents feel or believe about using certain criteria (Robson 1993:255).

Thus, while a semi-structured interview was used to allow free expression of thoughts and feelings (usually viewed as qualitative), the topic required a structured method (usually quantitative) of analysing what was said in the interviews.

#### 4. SAMPLING PROCEDURE

Seaberg in Grinnell (1988:240) notes that once the researcher has stated the research problem in researchable form, the next step is to generate relevant data that would help solve or address the problem. The researcher must decide what or whom to observe, or who must answer the questions posed in the investigation. This phase of the research process is referred to as sampling. It is a small portion of the total set of objects, events or persons which together comprise the subject of the specific research study.

For the purpose of this study, I selected five family counsellors from the office of the family advocate serving the Eastern Cape, through purposive sampling. According to Bailey (1987:94), in purposive sampling the researcher does not necessarily have a quota to fill from within various strata, as in quota sampling. The researcher would also not simply pick the nearest warm bodies, as is done in convenience sampling. This type of sampling made it possible to use my own judgement and I selected the family counsellors on account of their position and experience, their willingness to participate, my own knowledge of family counsellors and the nature of the research aims (Huysamen 1994:175; Rubin A et al 1997:266; Babbie 1998:194). I obtained written consent from the family advocate in charge to interview five family counsellors and to study three custody reports of each family counsellor. Although the number of subjects is small and is not representative of all the family counsellors, this study provided valuable information regarding problems and limitations which are addressed in the recommendations.

I am aware that some literature points out the disadvantage of purposive sampling: the absence of a basis for estimating the sampling error. One must be aware of attempts to control non-sampling errors. Some errors are inevitably produced in collecting and

processing data, such as clerical errors, interviewer bias, poorly worded questions and evasions on the part of the respondent. I attempted to eliminate these type of errors by adhering to the questions on the interview schedule and asking the respondents to clarify certain matters when necessary (Grinnell 1988:257).

An advantage is that this method is inexpensive and easy to use. I do not want to generalise from the data, but wish to provide valuable information regarding problems and limitations which are addressed in the recommendations. This method is likely to stimulate new leads and avenues of research (De Vos 1998:244).

## 5. **THE INTERVIEW AS DATA COLLECTION TOOL**

### 5.1 The respondents and interview schedule

Semi-structured interviews were conducted with five family counsellors, because they allowed for spontaneity, naturalness, flexibility and control of the environment (Gochros in Grinnell 1988:267). For the purpose of this study semi-structured interviews were chosen to have a certain amount of control over the interview in order to cover certain subjects. An initial interview schedule (appendix 8) was compiled to cover the topics and their sequence in the interview. This schedule allowed me to adapt the sequence and wording of questions if necessary (Kvale 1996:129; Rubin A et al 1997:390). At first a pilot study was conducted and one family counsellor was interviewed using the initial interview schedule (appendix 8). However, it was evident in the pilot study that the questions in the interview schedule did not address the nature of the research aims, which are the following:

- \* to investigate the process employed by family counsellors in conducting evaluations and making decisions related to the process, as well as to provide insight into which criteria are currently being used;

- \* to explore the perceived usefulness of these criteria from the perspective of social work and to assess the adequacy of the requirements of the custody report in reflecting the above process and decision making.

It was clear that the initial interview schedule (appendix 8) did not specifically address the criteria which are used by the respondents when conducting child custody evaluations. The respondent was merely requested to state her view of the criteria stated by the *McCall vs McCall 1994 3 SA 201 (C) 2041-J* custody case (King 1994:202). Subsequently, the initial interview schedule was altered to address the nature of the research aims, covering the following subjects (appendix 1):

- \* what family counsellors view as important when conducting the investigation;
- \* how the investigation is carried out;
- \* what criteria they view as important;
- \* the family counsellors' view of the criteria stipulated on the criteria sheet (criteria from the *McCall vs McCall 1994 3 SA 201 (C) 2041-J* custody case, and criteria from other literature);
- \* the importance of objectivity;
- \* information contained in the report and the usefulness of the information;
- \* information regarding the training of family counsellors.

The use of semi-structured interviews gave me more freedom to pursue original ideas and to improvise with the questions. I could probe for more information to clarify vague responses which could have been difficult to do when using other methods (Huysamen 1994:145; Marlow 1998:16; Gochros in Grinnell 1981:256). The freedom to explore some matters in my own way, was helpful when the respondents named the specific criteria they used in their custody evaluations. I could focus on each criteria and requested the respondents to elaborate on each of the criteria, which provided me with information of how the family counsellors made their decisions. They used examples from their cases which made it easier for them to identify the criteria they use and view as important. This method also helped to

identify problems which the family counsellors experience and gave them the opportunity to suggest solutions.

A criteria sheet (appendix 2) was compiled with criteria according to King (1994:202) and criteria selected from other literature. The reason for focusing mainly on the criteria according to King (1994:202), is that it was stipulated in the South African Law Reports in 1994 and covers a wide range of criteria. The rest of the criteria on the criteria sheet (appendix 2), were selected from other literature and are not covered under the criteria according to King (1994:202). The respondents had to categorize the criteria in terms of the following categories: *Very important*, *important*, *not so important* and *not relevant*. This was also compared with information stated in the interviews and reports.

The interviews were conducted in the language that the respondents preferred. Four of the interviews were conducted in Afrikaans and one interview in English. I am fluent in Afrikaans and English.

## 5.2 The interview process

I contacted the subjects telephonically to request their willingness to be interviewed and to arrange the interview dates. The interviews were conducted at a place chosen by the subjects. They were informed of the written consent having been received from the family advocate (appendix 9), the researcher's right to publish the whole interview or parts of it, the subject's right to see the transcript and the interpretations and the importance of confidentiality (Kvale 1996:153, 154). The identities of the participants and the cases discussed will be protected to ensure co-operation from the respondents in the study and to protect the rights of clients. The family counsellors were requested to use pseudonyms to preserve the anonymity of the parties concerned during interviews (Hall and Hall 1996:197). As an additional safeguard no identifying information will be used in the thesis and the town(s) in which the counsellors work will not be reflected in the thesis (Rhodes University Policy Relative to Research on Human Subjects 1997:5, 6).

### 5.3 The study of the custody reports

The respondents selected three of their completed custody cases and I studied the final custody report and recommendation. To ensure confidentiality, I requested the subjects to provide the names of the three reports to the family counsellor in Port Elizabeth who made the reports anonymous by deleting names of the parties involved and references contacted. I studied some of the reports at the office of the family advocate in Port Elizabeth where all the completed reports are kept. Other anonymous reports were submitted to me by the respondents.

## 6. ANALYSIS OF DATA

This study consists of a lot of descriptive data. It was important for me to develop insight and understanding from patterns in the data. Therefore, the interviews with the family counsellors were taped and transcribed. The information was divided into categories, common themes and similarities which emerged from the data (Taylor and Bogdan 1984:5; Marshall and Rossman 1995:113; Hall et al 1996:196).

In order to select common themes and similarities, I made use of meaning condensation, which entails the following steps:

At first, the whole interview is read through to get a sense of the whole. Then, I determined the "natural units" as expressed by the respondents. The theme that dominates a natural meaning unit was stated as simply as possible (Kvale 1996:194). As a wide range of criteria was stated by the respondents and in the reports, I grouped the criteria under certain headings (classification of criteria - appendix 3). Subsequently, two of the respondents were requested to give their opinion regarding the grouping of the criteria. Both agreed with the grouping.

The following step was to “interrogate” the meaning units in terms of the specific purpose of the study (Kvale 1996:194). It is important to remember that when one is building towards “overarching” themes, one can examine and compare the material within categories and across categories. For the purpose of this study, I examined most of the data within categories. The rest of the information was divided into common themes and similarities (Marshall et al 1995:114; Rubin HJ et al 1995:251). A measurement scale was used to gain insight into what the respondents feel or believe about using criteria as stipulated on the criteria sheet (appendix 2).

Content analysis of the three custody reports written by the respondents was done, to determine whether they reflect the findings from the interviews, especially whether criteria/concerns of the family counsellors are reflected. The information in the reports were divided into tables for each criteria (appendix 2), and was subsequently compared with data received in the interviews. Marshall et al (1995:85) defines content analysis as “..the systemic examination of forms of communication to document patterns objectively.” I was able to obtain an objective description of various forms of communication and to check facts. The advantage of using content analysis is that it is unobtrusive, and would not have any effect on the subject being studied (Rubin A et al 1997:430).

## 7. LIMITATIONS OF THE RESEARCH

The number of subjects is small and is not representative of all the family counsellors, however this study provided valuable information regarding problems and limitations which are addressed in the recommendations.

Given the subjective process of decision-making, it could have been difficult for the respondents to focus on the criteria they use. However, examples of their different cases, as well as information on the criteria sheet (appendix 2) assisted them to remember the different criteria. After the respondents categorized the criteria according to the criteria sheet (appendix 2), they were given the opportunity to discuss any of these criteria.

Another limitation was that only three custody reports of each respondent were studied. It is possible that other criteria were used in the other reports. However, the respondents had the opportunity in the interview to discuss all the criteria they use.

It is possible that some of the respondents would have made different groupings, or view some of the criteria under a specific heading as being more important than the other criteria (classification of criteria - appendix 3). To verify this, two of the respondents were given the opportunity to give their view on the classification of the criteria. Both agreed with the grouping.

## 8. VALUE OF RESEARCH

The research provided insight into which criteria are currently being used by some of the family counsellors.

This study could also explore the perceived usefulness of these criteria from the perspective of social work. This could be of particular value to the family advocate and family counsellors.

The study gave some of the family counsellors the opportunity to state their views on the present custody evaluation process and the limitations and problems they experience.

This study contrasted the criteria used with the content of the reports and subsequently provided insight whether the specific criteria is reflected in the reports.

After recommendations have been made, this study can stimulate new ideas for further research.

## 9. CONCLUSION

The research design used in this study is exploratory-descriptive in nature. A purposive sampling method was used. Five family counsellors were interviewed and a semi-structured interview schedule was developed for this purpose. Three custody reports and the final recommendation of each family counsellor were studied. Afterwards, data was analyzed and the findings were displayed in various ways. The limitations of the study have been highlighted. The results of this study can now be assessed in the light of the methodological limitations of the study.

**CHAPTER 4**  
**PRESENTATION AND DISCUSSION OF**  
**FINDINGS**

## 1. INTRODUCTION

In this section I will present and interpret the findings elicited during the research study. The data and findings are presented according to the questions on the interview schedule (appendix 1). The following are covered: number of custody cases conducted for the office of the family advocate, structure of interviews, criteria used by the respondents grouped under the headings of the criteria sheet (appendix 2), training of the family counsellors, objectivity of the family counsellors and format of the custody report. Tables were utilized to indicate how many of the respondents stated a specific criteria in the interviews and applied it in the custody reports, as well as to show the number of custody cases conducted for the office of the family advocate by each respondent.

## 2. NUMBER OF CUSTODY CASES CONDUCTED FOR THE OFFICE OF THE FAMILY ADVOCATE

The respondents were requested to give an estimated number of custody cases which they have conducted for the office of the family advocate. Table 2 indicates the number of cases conducted by each respondent.

**Table 2: NUMBER OF CASES CONDUCTED FOR THE OFFICE OF THE FAMILY ADVOCATE**

| RESPONDENT | NUMBER OF CASES |
|------------|-----------------|
| 1          | 7               |
| 2          | 40              |
| 3          | 5               |
| 4          | 3               |
| 5          | 50              |

According to table 2, three of the respondents (1, 3, 4), have completed less than 10 custody evaluations, which could indicate that they are less experienced in custody evaluations than the other two respondents (2, 5), who completed more than 40 custody evaluations. It is important to mention that three of the respondents (1, 2, 5) could only give an estimated

number of cases that they have conducted for the office of the family advocate, while the other two respondents (3, 4) gave the exact numbers.

### 3. STRUCTURE OF INTERVIEWS

The respondents were requested to discuss the manner in which they carry out the investigation, with specific reference to the structure of the interviews, inclusion of other significant people, techniques used, problems they experienced and their view of the process. Responses to these questions revealed the following:

(a) Structure of interviews: All five respondents stated that the first interview with the parties separately are conducted by the family advocate and family counsellor together. The family counsellor then interviews the children. This is in contrast with Stahl (1994:48), who states that he initially interviews the parents together. During that time he will answer their questions, allay their anxiety and provide more information about the direction of the evaluation. During the first joint interview, the evaluator has the opportunity to see firsthand the nature of the interaction between the parents. Although Van der Merwe (1990:17) notes that the children and parents should also be interviewed together, none of the respondents indicated that they interview the children and parents together. The interviews with the parents are conducted in the office of the family counsellor.

With regard to the venue, only two of the respondents (1, 3) indicated that they usually interview the children in a special office that is made child-friendly with toys, while two other respondents (4, 5) interview the children in their office. It must be more difficult for these two respondents (4, 5) to conduct the interview in a relaxed manner, as one of these respondents (5) said that the building and offices were not "home friendly". She would recommend a more informal structure. One respondent (2) did not mention the place of this interview.

All five respondents stated that they would not include any other significant people in the first interviews, except for the parents and children.

(b) Number of interviews: Although the theory states that several interviews should be conducted with each parent and each child alone, two of the respondents (4, 5) informed me that they usually only conduct one interview with the parents separately and one interview with the child (Van der Merwe 1990:17; Stahl 1994:49). One of these respondents (4) gained the impression from the family advocate that it is necessary only to do one interview and she also interviews the children together, which is in contrast with the literature (Van der Merwe 1990:17). Another respondent (1) will seldom have more than two interviews with the parents and only one interview with the child. This does not agree with some of the literature, which notes the importance of the evaluator spending considerable time with each parent trying to understand his or her concerns and perceptions of the children's needs (Stahl 1994:5). One respondent (3) agrees with the literature and conducts "a lot" of interviews with the parties, depending on the conflict level of the parties. She has an open door policy - if the parties would like to discuss an issue, they are free to contact her telephonically or arrange an interview. One respondent (2) did not specifically mention the number of interviews conducted.

Although the above authors stress that a lot of time must be spent with the parties, an important factor noted by Uys (1985:100) is that the investigation must be conducted timeously in order to keep this painful time for the families as short as possible. Prolonged litigation about a child's future is deeply damaging to the child, because of the uncertainty it brings them and the harm it does to the relationship between the parents (Neethling 1993:497). In contrast with this opinion, two respondents stated that the time period given to complete the investigation - which according to one respondent (2) is approximately three months and according to the other respondent (4) approximately one month - is too short. Sometimes when given a longer period, the parties will solve the dispute themselves (2). It came to my attention that one of these respondents (4) takes one month to complete the investigation, while stating above that she only has one interview with the parties. One

could then conclude that it takes her one month to contact references and compile the report.

(c) Home visits: The home visit is a valuable tool in assessing clients and their interaction with the environment (Lytle-Vieira 1987:6). Only one of the respondents (1) believes that it is not important to do a home visit, unless it is absolutely necessary. This respondent (1) contradicted herself later in the interview, when she agreed with the literature that a home visit is necessary to evaluate how the child reacts in his/her environment, mostly in the case of a young child (Lytle-Vieira 1987:6).

Although the other four respondents (2, 3, 4, 5) believe that it is important that home visits be included in the custody investigation, not all of them do home visits with every investigation. One of the reasons given by one of these respondents (2), is that she will only do a home visit if the home circumstances are in dispute. In contrast she views the first office interviews as unnatural and suggests that a home visit will be a better option in order to interview the children. She stated that because the interviews are conducted with the parents first, the children have to wait for about an hour or longer. The reason being that the family advocate prefers that the children accompany their parents to the office, in order for the family counsellor to observe the interaction between parent and child.

Another respondent (3) will usually not do a home visit if the other party has already informed her that the living conditions are suitable, which does not fully agree with her opinion that is important to "look at the home to see if it is conducive to child rearing and if the children will be comfortable in that environment". Others agree that it is important to see where the children will be staying (4) and important to evaluate the family's interaction at home (5). These opinions are consistent with the theory that the family counsellor can get a feel for the social atmosphere of a home, observe and better understand the parent's behaviour and emotional reactions as they occur in day-to-day life. The family counsellor is also able to view the actual parent-child interaction, that sometimes can only be gained by the description given by the parent (Lytle-Vieira 1987:6).

(d) Specific techniques used: Two of the respondents (4, 5) will make use of normal interviewing techniques, but the three other respondents (1, 2, 3) said that the techniques they use are limited. One of the reasons given was that the family advocate structures the interview and asks most of the questions (1, 2). They are unable to use the normal social work techniques, as the family advocate becomes impatient and wants to conclude the interview. Then the parties have to be contacted afterwards by the family counsellor to gather more information (1). Some of the respondents prefer to conduct the interviews alone in order to use more techniques (2).

Another reason given was that it is difficult “to stick to interviews where your only aim is to get the facts” (3). The process is viewed as “cold” and “it does nothing to alleviate the feelings that the parties feel” (3). This respondent (3) stated that some family advocates are not sensitive to people’s needs and emotions and can appear “harsh”. They also sometimes appear biased and the manner in which they speak to the people offends the respondent (3). She recommends that the family advocate receives some training in social work skills and communication with clients.

Another respondent (1) also informed me that the family advocate does not explain the purpose of the interviews and what the role of each person is, to the client in detail. When doing an interview alone, the family counsellor will spend more time with the clients to explain the above to them. This respondent (1) is of the opinion that the family advocate “moet hou by die regsafdeling” (stick to the law section), and the family counsellor must deal with the social aspects. The theory notes that it is better to interview the parents together initially, and therefore give them the opportunity to ask questions, allay their anxiety, provide more information about the direction of the evaluation and establish neutrality (Stahl 1994:48).

In addition to talking to children, evaluators can use symbolic play as a means of understanding issues related to the parents and the divorce and games such as “my two homes” can be effective in explaining divorce to a child (Stahl 1994:69; Ravat 1998). In

practice four of the respondents (1, 2, 3, 5) make use of stories, play and drawings when interviewing the smaller children. These techniques could help to alleviate the “coldness” of the offices. With regard to older children one respondent (2) stated that she makes use of question and answer. Another respondent (4) only makes use of interviewing, but would first help the children to relax before continuing with the interview.

Other comments made by some of the respondents were: To interview the children in a non-threatening manner, and to “reach them at the environment where they can feel relaxed” (3). Using one of her cases as an example, this respondent (3) informed me that she took a child to the Queenspark Zoo during one of her investigations. Another respondent (5) stated that if a child cannot talk about something “wat nou so seer maak “ (which is hurting so much now), she will continue with the interview on another occasion.

#### 4. CRITERIA

##### 4.1 INTRODUCTION

During the analysis of the criteria used by the respondents when conducting custody evaluations for the office of the family advocate, the following were used:

- 1) Criteria sheet completed by the respondents (appendix 2). These criteria are from the *McCall vs McCall 1994 3 SA 201 (C) 2041-J (King 1994:202)* custody case and criteria according to other literature. The respondents categorized the criteria as *very important, important, not so important and not relevant*.
- 2) In-depth interviews with respondents.
- 3) Three custody reports written by each respondent.

Because the respondents applied such a wide range of criteria, the criteria elicited from the interviews and reports were grouped under the headings of the criteria sheet (classification of criteria - appendix 3). Subsequently two of the respondents (2, 5) were asked to give

their opinion regarding the grouping of the criteria. These respondents were chosen because they have the most experience in custody evaluations for the office of the family advocate (in comparison with the other respondents). Both respondents agreed with the grouping.

#### 4.2 The love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child

Table 3 indicates how many respondents stated this criteria in the interview and applied it in the custody reports. It seems that this criteria is viewed as important, as all five respondents categorized this criteria as *very important* on the criteria sheet (appendix 2), while four of these respondents (2, 3, 4, 5) stated the criteria in the interview and applied it in all three custody reports. Although one of the respondents (1) did not mention this criteria in the interview, she applied it in two of the custody reports (table 3).

**TABLE 3: THE LOVE, AFFECTION AND OTHER EMOTIONAL TIES WHICH EXIST BETWEEN PARENT AND CHILD AND THE PARENT'S COMPATIBILITY WITH THE CHILD**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          |           | X      | X |   |
| 2          | X         | X      | X | X |
| 3          | X         | X      | X | X |
| 4          | X         | X      | X | X |
| 5          | X         | X      | X | X |

When using this criteria the following specific issues were viewed as important (appendix 3):

All five respondents stated the parent's contact and relationship with the child, which is consistent with the theory that the attachment and interrelationships between children and their parents are important. A psychological parent will on a continuing, day-to-day basis, fulfill the child's psychological needs for a parent, as well as the child's physical needs (Hoggett et al 1987:482). However, only one respondent (3) focused on the attachment between parent and child and one respondent (4) on the bond between parent and child. The

literature stresses that parents must spend quality and quantity time with their children in order for them to feel loved and special, which was also stated by some of the respondents (3, 4, 5) (Bosman-Swanepoel et al 1998:82).

Despite the fact that only one respondent (3) said that the parent's affection towards and the acceptance of the child are important, the literature notes that children must feel that they are welcome, wanted and loved. Without this type of environment a child would find it difficult to develop a healthy self-esteem and form lasting meaningful relationships (Hoffmann A et al 1989:33).

Other statements made by the respondents which are consistent with the literature, are the availability of the parents (5), the parent's knowledge of the child's friends (4) and how well the parent knows the child (2). Secure attachment will be formed when parents are available, responsive and helpful. Parents must show the child that they understand his/her feelings and the child must be able to be themselves within the relationship (Bosman-Swanepoel et al 1998:66, 81).

#### 4.3. The capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires

The information regarding this criteria provided on the criteria sheet (appendix 2), does not correspond with the information given in the interviews and custody reports, that are indicated in Table 4. Although four of the respondents (2, 3, 4, 5) categorized this criteria as *very important* and one respondent (1) categorized it as *important* on the criteria sheet (appendix 2), it is evident that only three of the respondents (1, 2, 4) stated this criteria in the interview and applied it in some of their custody reports (2, 4, 5). Despite the fact that one of the respondents (3) views this criteria as *very important* (appendix 2), she did not state it in the interview, or apply it in the reports. Table 4 also shows that although one respondent (1) stated the criteria in the interview, it was not applied in any of the custody reports.

**TABLE 4: THE CAPABILITIES, CHARACTER AND TEMPERAMENT OF THE PARENT AND THE IMPACT THEREOF ON THE CHILD'S NEEDS AND DESIRES**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         |        |   |   |
| 2          | X         | X      |   |   |
| 3          |           |        |   |   |
| 4          | X         | X      | X | X |
| 5          |           | X      | X | X |

Hoffmann A et al (1989:43, 44) and Nash et al (1992:181) describe an adequate, capable and stable personality which is an important criteria when doing custody evaluations (see page 34 of literature study). Three of the respondents (2, 4, 5) focused on the stability and the character/personality of the parent (appendix 3). A possible contentious issue which receives attention in some of the literature, is that the personality of the parents is important and not the gender. The quality of the relationship and the care of the child are more important than the sexual orientation of the parent (Bosman et al 1998:68, 77). Two of the respondents (2, 3) commented on the issue of homosexual parents and agree with the literature that the relationship between the parent and child is important and that the child must be exposed to the norm in addition to that of a homosexual relationship.

The issues of alcohol (1, 2, 4), dagga and drug abuse (1, 2) were focused on. The conclusion can be made that these issues were mainly used by the respondents as a criteria after accusations were made by the other party. It appears that alcohol or drug abuse by the parents could sometimes influence their parenting abilities, as some of the theory claims that the alcoholic parent has an undesirable attitude and characteristic. These parents tend to have mood swings and are unpredictable. The children could then experience a range of psychological difficulties (Hart 1993:199).

4.4 Ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings

The parent's style of behaving, thinking, communicating and resolving conflict, are all critical factors in the development of the child's personality (Nash et al 1992:176). Table 5 indicates how many of the respondents stated this criteria in the interview and applied it in the custody reports. Although all the respondents categorized this criteria as *very important* on the criteria sheet (appendix 2), it contradicts the information in table 5, which shows that only two respondents (3, 4) stated it in the interviews and applied it in some of their custody reports (table 5).

**TABLE 5: ABILITY OF THE PARENT TO COMMUNICATE WITH THE CHILD AND THE PARENT'S INSIGHT INTO, UNDERSTANDING OF AND SENSITIVITY OF THE CHILD'S FEELINGS**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          |           |        |   |   |
| 2          |           |        |   |   |
| 3          | X         |        | X | X |
| 4          | X         | X      |   |   |
| 5          |           |        |   |   |

When using this criteria, the following specific issues were viewed as important by these two respondents (appendix 3):

The parent's ability to give attention to the child. The literature also stresses this particular issue and focuses on the parent's ability to show concern for and interest in the general well-being and particular experiences of the child. The children must be recognized as individuals with feelings, ideas and an identity that is different from the parent. Parents must put children first whenever necessary (Reder et al 1995:10).

Parents must be able to communicate effectively with their children to maintain a satisfying relationship. Both talking and listening demonstrate mutual respect. Children and adults must allow each other to express their feelings honestly without fear of rejection or disapproval (Harrison 1996:58). This is in agreement with the respondents' (3, 4) view that the communication between parent and child is important and a comment made is the importance of determining what type of communication exists, "who does the children feel more close to in terms of discussing serious issues" (3).

#### 4.5 The capacity and disposition of the parent to give the child the guidance which he requires

The parent's ability to give guidance to the child appears to be an important factor, as three of the respondents (2, 3, 4) regard this criteria as *very important* and two of the respondents (1, 5) as *important* on the criteria sheet (appendix 2). Table 6 indicates how many of the respondents stated this criteria in the interview and applied it in the custody reports. In contrast to the information on the criteria sheet (appendix 2), it appears that only three respondents (2, 3, 4) stated this criteria in the interview. However, four of the respondents (1, 2, 3, 5) applied it in some of the custody reports.

**TABLE 6: THE CAPACITY AND DISPOSITION OF THE PARENT TO GIVE THE CHILD THE GUIDANCE WHICH HE REQUIRES**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          |           |        |   | X |
| 2          | X         |        | X |   |
| 3          | X         |        |   | X |
| 4          | X         |        |   |   |
| 5          |           | X      | X | X |

The guidance (1, 2, 3, 4) and disciplining (2, 5) of the child that are viewed as important by the respondents, agree with the literature that children cannot hope to cope effectively with life without some form of order or guidance. Effective discipline of the child can help the

child to develop self-discipline and to take responsibility for his/her own behaviour (Hoffmann A et al 1989:51; Hart 1993:116; Craig 1996:323).

An important factor to assess, is the child's guidance in terms of moral development (3). The literature notes that parents should give their children choices between socially acceptable options and then teach them the consequences of their actions. Parents who fail to encourage their children to accept responsibility for their behaviour and do not allow their children autonomy, do not act in the best interest of their children (Hoffmann A et al 1989:51).

One of the respondents (2) made an important comment, saying that the family counsellor should evaluate the ability of the parent to give guidance and must guard against imposing his/her own values on the parent.

#### 4.6 The ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs - generally speaking, the provision of economic security

It seems that the basic physical needs of the child are viewed as an essential part of the custody evaluation, as two of the respondents (3, 4) regard this criteria as *very important*, and three of the respondents (1, 2, 5) as *important*, on the criteria sheet (appendix 2). The information in Table 7, that indicates how many respondents stated this criteria in the interview and applied it in the custody reports, correlates with the opinions given on the criteria sheet. All five respondents stated this criteria in the interview and applied it in all the custody reports.

**TABLE 7: THE ABILITY OF THE PARENT TO PROVIDE IN THE BASIC PHYSICAL NEEDS OF THE CHILD, THE SO-CALLED 'CREATURE COMFORTS' SUCH AS FOOD, CLOTHING, HOUSING AND THE OTHER MATERIAL NEEDS - GENERALLY SPEAKING, THE PROVISION OF ECONOMIC SECURITY**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      | X | X |
| 2          | X         | X      | X | X |
| 3          | X         | X      | X | X |
| 4          | X         | X      | X | X |
| 5          | X         | X      | X | X |

A wide range of issues were viewed as important by the respondents when using this criteria:

It appears that the most important issues are housing, employment and finances (1, 2, 3, 4, 5). In terms of housing, focus was on the time period the family have lived in the particular house and if the children are relaxed (1), the size of the house and if there is enough space for the children to play (2). Hoffmann A et al (1989:24, 25) state that parents who are unable to meet their financial commitments and who are unable to provide adequate housing, are at risk of not being able to provide the stability the child needs.

The literature also stresses that the economic status of parents is important, as it will determine if there will be any fundamental changes in lifestyle after divorce (Cox et al 1987:30). Some of the respondents addressed this issue in terms of the parent's stability regarding employment (4), the payment of maintenance, the medical care of the child and the parent's ability to provide in the child's material needs (3). On the whole, the finances of the parents could be a contentious issue, as the literature notes that finances may or may not be considered in awarding custody in the United States of America. Many argue that financial considerations must not outweigh other factors, like the primary caretaker rule. This is in agreement with some South African literature that the general trend in law is not to emphasize the financial status of the future custodian. The greater wealth of a parent should

not be a consideration in custody decision- making (Saltzman et al 1990:278; Van der Merwe 1990:46, 48).

It is interesting that only two of the respondents (2, 5) believe that the emotional care of the child must be given preference when the factor of finances is considered. Other aspects such as the basic needs of the child (3, 5), physical needs of the child (1, 5) and the physical care of the child (1, 2, 3, 5), must also be assessed.

#### 4.7 The ability of the parent to provide for the educational well-being and security of the child, both religious and secular

The importance of the educational well-being and security of the child was clearly stipulated when some of the respondents (3, 4) categorized this criteria as *very important*, and as *important* (1, 2, 5) on the criteria sheet (appendix 2). These views are also disclosed in table 8, which indicates how many of the respondents stated this criteria in the interview and applied it in the reports.

**TABLE 8: THE ABILITY OF THE PARENT TO PROVIDE FOR THE EDUCATIONAL WELL-BEING AND SECURITY OF THE CHILD, BOTH RELIGIOUS AND SECULAR**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      | X | X |
| 2          | X         | X      | X |   |
| 3          | X         |        | X | X |
| 4          | X         | X      | X | X |
| 5          | X         | X      | X | X |

Appendix 3 shows that a wide range of issues were covered when applying this criteria:

All five respondents focused on the parent's involvement in the child's schooling and the child's adjustment at school. These issues could also relate to the child's progress at school (1, 2) and the parent's interest in the child's educational well-being (4, 5). This is consistent with the literature stating that parents can play an important role in creating a supportive

environment and encourage the development of specific skills in order to help children to succeed. Children tend to succeed academically when their parents provide support and guidance (Craig 1996:349). An important issue raised by one of the respondents (3) is the mechanism of communication between the parent and the teacher regarding the progress of the child. The teacher is utilized as a very important reference. Therefore, it is essential to assess which parent takes responsibility to inform the teacher of the present divorce (2).

Other issues focused on were: schooling in general (3), ability of the parent to provide in the child's educational needs (3), parent's involvement with the child's extra-mural activities (4), ability of the parent to provide in the child's moral development (3), religion (3) and attendance of church (1). It is evident from the literature that children need to establish acceptable behavioural patterns in society and if the parents fail to adhere to recognized standards set by the community in which they live, the children can be subjected to a great deal of stress (Harrison 1996:16; Van der Merwe 1990:41).

One of the respondents (4) made an interesting comment in terms of religion. Although she stated her personal opinion, it is important to her that the parent encourages and guides the child to attend church. The literature agrees with the statement that it is necessary to assess to what extent the child's religion will have to change after the divorce (3). If a child is subjected to the pressures of cultural and religious change, in addition to the divorce of the parents, it would confuse or undermine his/her self-esteem and sense of identity (Hoffmann A et al 1989:18).

#### 4.8 The ability of the parent to provide for the child's emotional, psychological, cultural and environmental development

Table 9 indicates how many of the respondents stated this criteria in the interview and applied it in the reports. It is evident that all the respondents take this criteria into consideration when doing custody evaluations, as all five respondents categorized this

criteria as *very important* on the criteria sheet (appendix 2) and stated it in the interviews. According to table 9, only one respondent (1) did not apply the criteria in the reports.

**TABLE 9: THE ABILITY OF THE PARENT TO PROVIDE IN THE CHILD'S EMOTIONAL, PSYCHOLOGICAL, CULTURAL AND ENVIRONMENTAL DEVELOPMENT**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         |        |   |   |
| 2          | X         |        | X | X |
| 3          | X         |        | X | X |
| 4          | X         |        |   | X |
| 5          | X         | X      | X | X |

The literature notes that parents must be able to create an emotionally safe environment for the child. The parent must show understanding of the child's feelings and the child must be able to trust the parent with his/her feelings (Bosman-Swanepoel et al 1998:74). Taking these statements into consideration, the respondents would assess the emotional care and support of the child (2, 3, 5), as well as the ability of the parent to provide in the child's emotional needs (3, 5). With specific reference to the child, the emotional stability and security of the child (1) and the emotional state and abuse of the child (3) are factors which should receive attention. I agree with a comment made by one respondent (3), that love and acceptance (which was the first criteria discussed) form part of the process of emotional support.

To emphasize the importance of applying this criteria, several issues were highlighted by the respondents, such as the stimulation of the child, the ability of the parent to provide in the child's social needs, the ability of the parent to provide in the child's cultural needs, the moral development of the child and the ability of the parent to encourage normal childhood development (3). One should also bear in mind that the social development and education of the child (4, 5) and in general the child's behaviour and adjustment (2) could be assessed when applying this criteria. These could all relate to the family's involvement in the community (1) that compares to theory stating that parents are responsible to guide their

children to explore their environment and to act independently (Bosman-Swanepoel et al (1998:92).

After discussing housing as an important criteria, it must be noted that a home is more than just a pile of bricks, it is also an environment in which the child feels safe and secure (Hoffmann et al 1998:25). A parent must be able to pass his/her own security on to the child (5). Some respondents would place a lot of emphasis on the stability and security of the child (1, 2, 4, 5) and the ability of the parent to provide in the stability and security of the child (5).

A difficult issue to prove, is the indoctrination of the child by one parent and subsequently the alienation of the child (2, 3, 4, 5). One must always assess this possibility when the child gives his/her preference (2). According to Gardner (Internet:1990), if abetted by one parent, the child develops an obsessive, irrational hatred of the other parent. In these cases, the primary psychological bond is strong, but "sick". The one parent must not attack the character of the other parent, as it always holds negative results for the child's feelings of self-worth. Bosman-Swanepoel et al (1998: 75) stress that the courts in general evaluate such behaviour by a parent in an extremely negative light.

#### 4.9 The mental and psychological health and moral fitness of the parent

The criteria sheet (appendix 2) and table 10, that indicates how many of the respondents stated this criteria in the interview and applied it in the custody reports, reveal that the mental and physical health and moral fitness of the parent are viewed as important in custody evaluation by the respondents. One respondent (3) regards this criteria as *very important* and the other four respondents (1, 2, 4, 5) as *important* on the criteria sheet (appendix 2). All five respondents stated this criteria in the interview and applied it in some custody reports (table 10).

**TABLE 10: THE MENTAL AND PHYSICAL HEALTH AND MORAL FITNESS OF THE PARENT**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      | X | X |
| 2          | X         | X      | X |   |
| 3          | X         | X      | X |   |
| 4          | X         |        | X | X |
| 5          | X         | X      |   |   |

Several issues viewed as important when using this criteria, can be discussed (appendix 3):

When assessing the psychological fitness (1, 2, 3, 4, 5) and emotional stability (2, 3, 5) of the parents, one must take into consideration that divorce is a time of crisis. A few people are able to behave totally rationally and unselfishly at times of crisis. Therefore, the family counsellor must be able to recognize an intense period of shock, anger, depression and grief (King et al 1992:55; Bosman-Swanepoel et al 1998:6). One respondent (4) specifically stated that when assessing the mental health of the parent, focus would be placed on the influence it has on the ability of the parent to care for the child, which is in line with the theory (Van der Merwe 1990:52). This could also be linked to the emotional bond which is "transferred" to the child (5). The parent would be referred to a psychologist or psychiatrist if necessary.

The moral fitness of the parent that was stated by three respondents (1, 2, 3), could include various factors such as: extra-marital affair by one parent (1, 4), gay relationship, of parent (2, 3, 5) and the parent's value system (3). An opinion stated was that an extra-marital affair does not necessary mean a "bad" parent, but the family counsellor has to assess the impact thereof on the child (1). In terms of the value system of the parent, one respondent (3) said that she would focus on whether the child is exposed to any physical or emotional abuse.

When facing ethical issues such as a gay relationship by one of the parents, the literature stresses that the moral character of the parent will be taken into account by the courts only if it influences the suitability of the parent to look after the child. It could be considered as a factor in awarding of custody if the misconduct directly affects the child or parental abilities

(Van der Merwe 1990:41; Cumes et al 1987:120). Some of the respondents (2, 3) agreed with the literature and stated that it is the duty of the gay parent to expose the child to what is the norm in addition to that of a gay relationship. If the child is comfortable with and not threatened by the relationship, it should not necessarily make that parent not suitable as a custodian parent (3). The physical and emotional needs of the child must be provided for and priority must be given to the relationship between parent and child, rather than the sexual preferences of the parent (2).

One of the respondents (1) expressed the opinion that it is difficult to assess the moral fitness of the parent, as she does not have the right to specify moral fitness. One should evaluate if that parent adheres to the criteria of his/her community.

Only two of the respondents (1, 4) focused on the physical health of the parent in their reports, which could be an indication that the physical health of the parent will not be given priority.

#### 4.10 The stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the *status quo*

The stability of the child's existing environment and the desirability of maintaining continuity are highlighted in the theory (Van der Merwe 1990:44; Bosman-Swanepoel et al 1998:59). The respondents seem to agree with the literature that this is an essential part of the custody investigation, as three of the respondents (1, 3, 5) regard this criteria as *very important* and two of the respondents (2, 4) as *important* on the criteria sheet (appendix 2). Table 11, which shows how many respondents stated this criteria in the interview and applied it in the custody reports, correlates with the criteria sheet (appendix 2).

**TABLE 11: THE STABILITY OR OTHERWISE OF THE CHILD'S EXISTING ENVIRONMENT, HAVING REGARD TO THE DESIRABILITY OF MAINTAINING THE STATUS QUO**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      | X |   |
| 2          | X         | X      |   | X |
| 3          | X         |        | X | X |
| 4          | X         | X      | X |   |
| 5          | X         | X      | X |   |

Most of the respondents (1, 2, 4, 5) view the present circumstances of the child and the continuity of the child's present circumstances and caring position (3, 4, 5) as important (appendix 3). These factors could be linked to less disruption of the child's life (1, 3), what a change will bring to the child's life (2) and if the child will be taken out of the environment (3). This is consistent with theory stating that the courts give consideration to the continuity of the child's environment and the frequent change of environment is regarded as prejudicial to the child (Van der Merwe 1990:60). One of the respondents (4) agreed that the move to another environment should be avoided as far as possible. Although a stable and secure environment are important, one of the respondents would look at what arrangements were made for the child if the custodian parent intends to move to another town (3).

In order to assess the above, one respondent (1) stated that she would concentrate on the time period the children have stayed in a specific place and would focus on the community involvement, friends of the children, school, church and the other support systems. The theory stresses the importance of support systems and that the children must not be totally cut off from these systems (Bosman-Swanepoel et al 1998:63). During the assessment one can also evaluate the child's happiness with his present circumstances (according to the child) (4) and if the child benefits from the present routine (5). An example taken from one of the custody reports, is the alcohol abuse by the grandparents with whom the child was residing (3). This could also have an influence on the child's present circumstances and stability.

#### 4.11 The desirability or otherwise of keeping siblings together

Table 12 indicates how many of the respondents stated this criteria in the interviews and applied it in the custody reports. Despite the fact that most of the respondents (2, 3, 4, 5) regard this criteria as *very important* on the criteria sheet (appendix 2), only one of the respondents (5) stated it in the interviews (table 12). Only four of the 15 custody reports studied, indicated that this criteria was applied (3, 4, 5). A reason could be that in six of the custody reports only one child was involved.

**TABLE 12: THE DESIRABILITY OR OTHERWISE OF KEEPING SIBLINGS TOGETHER**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          |           |        |   |   |
| 2          |           |        |   |   |
| 3          |           |        |   | X |
| 4          |           |        |   | X |
| 5          | X         | X      | X |   |

Apart from the importance of keeping siblings together (3, 4, 5), some of the respondents (3, 5) focused specifically on the relationships between siblings in the custody reports. Agreeing with the literature that siblings should not be separated from one another unless there are cogent reasons, one of the respondents (5) used an example of one of her custody cases where the one child preferred to stay with the other parent, away from his siblings. In this particular case, it was to the child's benefit to be separated from his siblings. The literature claims that a child should only be separated from his/her siblings if the child has expressly stated that he/she wants to be separated from the siblings or special circumstances exist (Van der Merwe 1990:45, 135; Cumes et al 1987:121; Hoffmann A et al 1989:38).

An unusual issue received attention in one of the reports (5) about an allegation that one of the children was physically abused by her siblings. The allegation was unfounded and the siblings were kept together.

Although the respondents seem to view this criteria as important, they do not specifically stress this in the custody reports. On the whole, some of the theory notes that family

counsellors must bear in mind that the courts are reluctant to separate siblings, “as this may fragment their sense of security and stability” (Bosman et al 1997:62, 63).

#### 4.12 The child’s preference

This criteria appears to be an important factor to take into consideration when conducting child custody evaluations, as one of the respondents categorized it as *very important*, and three other respondents (2, 3, 4) categorized it as *important* on the criteria sheet (appendix 2). Table 13 indicates how many respondents stated this criteria in the interview and applied it in the custody reports. One of the respondents (1) contradicted herself when she viewed the child’s preference as *not so important* on the criteria sheet (appendix 2), but stated it in the interview and applied it in all three custody reports. She verified this by stating that although this criteria would not be the most important factor, the child has a right to state his opinion and feelings. Table 13 also indicates that all five respondents have applied this criteria in some of the reports.

**TABLE 13: THE CHILD’S PREFERENCE**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      | X | X |
| 2          |           | X      | X |   |
| 3          | X         |        |   | X |
| 4          | X         | X      |   | X |
| 5          | X         | X      | X |   |

Although most of the respondents view the child’s preference as important, the literature claims that this could be a contentious issue. On the one hand it is harmful to ignore the children’s views. The expressed wishes of the child is a factor taken into consideration by the court, depending on the appropriate age and understanding of the child (Saltzman et al 1990:273, 274; Neethling 1995:477; Trinder 1997:293). One respondent (3) believes that it is important to “gauge at least who they gave preference to”, as there is no point in placing the child with someone he has no relationship with. Another respondent (4) agreed that it makes her decision-making easier if the child states his preference.

On the other hand, some argue that children are unwilling or unable to choose, and the act of expressing a preference or view is harmful, even for older children (Trinder 1997:293, 294).

The interviews revealed that the respondents have different opinions regarding asking the child directly what his/her preference is. Although one respondent would only ask older children (from about 11 years old) directly what his/her preference is, I agree with other respondents (1, 3, 4) that the family counsellor should never ask a child directly for his/her preference. These respondents believe that it could create feelings of guilt with the child and it is not fair on the child. This could be combined with the theory stating that the child is not emotionally equipped to deal with the responsibility of making such a decision (Bosman-Swanepoel et al 1998:89).

The respondents (1, 3, 4, 5) who said that they would take the child's preference into consideration, all agreed with the theory that a child's motivation for a specific preference must be determined before coming to a conclusion (Bosman-Swanepoel et al 1998:89). However, the family counsellor must give consideration to and be aware of the fact that the children will, depending on the emotional state of the parents, say different things at different times. Their responses will also be shaped by their own internal emotional processes (Cantwell et al 1995:341).

#### 4.13 The desirability or otherwise of applying the doctrine of same sex matching

The respondents gave different views of the importance of this criteria on the criteria sheet (appendix 2). It was categorized as *very important* (3), *important* (4, 5), *not so important* (2) and *not relevant* (1). However, table 14, which indicates how many of the respondents stated this criteria in the interviews and applied it in the custody reports, shows that this criteria is of no significance.

**TABLE 14: THE DESIRABILITY OR OTHERWISE OF APPLYING THE DOCTRINE OF SAME SEX MATCHING**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          |           |        |   | X |
| 2          |           |        |   |   |
| 3          |           |        |   |   |
| 4          |           |        |   |   |
| 5          |           |        |   |   |

Although one of the respondents (1) categorized this criteria as *not relevant* on the criteria sheet (appendix 2), she applied it in one of the reports. It appears that the respondent mentioned the importance of placing the young girls with their mother in the *evaluation* part of the report, in order to motivate her recommendation. She stated in the interview that “ek het dit nog nooit teëgekome nie ( I have never come across this)”. The respondent (1) regarded the parent’s ability to care for the child on a longterm basis as more important.

Some research indicates that children are better adjusted when they reside with a same sex-parent (Hetherington et al in Alesi 1997:103; Cumes et al 1987:122). However, a certain study was unable to find negative effects of single parenting on children’s adjustment or sex-role self-concept. During a study on custody matters, both legal and mental health professionals ranked this criteria as the least important (Van der Merwe 1990:64; Cumes et al 1987:128).

#### 4.14 Any other factor which is relevant to the particular case with which the court is concerned

Each custody case appears to have different factors with which the court could be concerned. After interviewing the respondents and studying the custody reports, a wide range of issues were selected which could be relevant to a particular case (appendix 3). It appears that most of the respondents would take this criteria into consideration, as they categorized it as *very important* (3) and *important* (1, 2, 4, 5) on the criteria sheet (appendix 2). Table 15, that shows how many of the respondents stated this criteria in the interviews

and applied it in the custody reports, specifies that although only three respondents (2, 3, 4) stated the criteria in the interview, all the respondents applied it in some of their custody reports.

**TABLE 15: ANY OTHER FACTOR WHICH IS RELEVANT TO THE PARTICULAR CASE WITH WHICH THE COURT IS CONCERNED**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          |           | X      | X | X |
| 2          | X         | X      |   |   |
| 3          | X         | X      | X |   |
| 4          | X         |        | X | X |
| 5          |           | X      | X | X |

The various factors selected from the interviews and reports, can be discussed:

An important issue stated by one respondent (2), is to determine the opinion of one parent with regard to the positive points of the other parent. The aim of asking this question is to assist the parents to gain insight in the abilities of the other parent and the importance of the child spending time with the non-custodian parent. Two other important aspects relating to the above, are the relationship and communication between the parents (4). It is evident from the literature that it is important that the one parent co-operate with the other parent in raising the children regardless of how the parents feel about each other. Children need to see their divorced parents behaving with respect, courtesy, understanding and consideration towards each other, or it will be impossible for them to maintain positive relationships with parents that are in conflict with each other (Stahl 1994:28; Bosman-Swanepoel et al 1998:90; Theart 1988:19).

I agree with one of the respondents (3) that the attitude of the parent towards access arrangements must be given consideration. This respondent stressed that it is in the best interest of the child to maintain contact with both parties. According to the literature the nature of the ongoing parent-child relationship is much more important than whether or not

both parents are present in the home (Graig 1996:375). Bosman-Swanepoel et al (1998:90) stress that parents must understand that it is the primary right of the child to visit a parent and not the right of the parent. Even in relatively dysfunctional situations, it is important for each parent to spend some time with the children, even if the visit is supervised. Children can easily feel rejected by the parent if contact does not take place (Parkinson 1987:18; Theart 1988:19).

If the parents are involved in new relationships during the custody battle, the relationship of the child with the new partner of the parent must be assessed (3, 4, 5). Focus could be placed on the communication and “how committed is that person with future involvement in assisting the custodian parent with the child’s development” (3). The literature notes that there is evidence that if the children are allowed to maintain good relationships with both parents, it will rather help than hinder them in forming new relationships with stepparents. This is often not appreciated by the parents who have remarried who can see their former partners as a threat to the stability of the new family (Parkinson 1987:58).

An issue which was not stated in the interviews, but applied in the custody reports, is the physical abuse of the wife by her husband during their marriage (1, 4, 5). This aspect was mentioned in the reports, but appears incomplete, as the influence of the abuse on the children was not discussed. It is therefore difficult to determine how the criteria was applied and affected the family counsellor’s decision-making.

In certain custody cases allegations of child abuse and neglect are made (2, 3). Abuse has long-term effects on the emotional well-being of the child. Should allegations of child abuse be made by one of the parents, the evaluator must have a good grasp of the many issues involved. A thorough evaluation in which there is a complete review of all the physical evidence, psychological testing of both parents and both separate and joint interviews with the child and each parents, is necessary. It is also important that the timing of the allegations in connection with the custody dispute be considered. In false allegations, there could be a

pattern in which the alleged event was discovered just when the custody dispute was erupting (Graig 1996:381; Stahl 1994:108, 109).

An interesting factor which was stated by only one respondent (3), is the involvement of extended family members. According to this respondent the family counsellor could assess how committed the custodian parent is to encourage the involvement with other family members. I could not find information in the literature regarding using the involvement of extended family members as part of a criteria when conducting child custody evaluations.

Other issues stated by some of the respondents and written in some custody reports, could be mentioned briefly (appendix 3): the social life of the parents (2); one parent stealing the child from the other parent (3); mother had an interdict against the father (3); the mother had an abortion (4). Although these issues could also refer to the moral fitness of the parent, one should always evaluate the influence it has on the child.

#### 4.15 The value of an adequate support system

The literature notes that support systems play a central role in maintaining stability, security, growth and development of the parent (Hoffmann A et al 1989:30). According to the respondents this criteria appears to be an essential part of the custody evaluation, as they (1, 2, 3, 4) categorized this criteria as *very important* and as *important* (5) on the criteria sheet (appendix 2). If compared with table 16, which indicates how many of the respondents stated the value of an adequate support system in the interviews and applied it in the custody reports, the importance of this criteria is evident. Most of the respondents (1, 2, 3, 4) stated this criteria in the interview and applied it in the custody reports (1, 2, 3, 5).

TABLE 16: THE VALUE OF AN ADEQUATE SUPPORT SYSTEM

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      | X | X |
| 2          | X         | X      | X | X |
| 3          | X         |        | X | X |
| 4          | X         |        |   |   |
| 5          |           |        |   | X |

Appendix 3 indicates that the support system of the family (1, 2, 3, 4, 5) and alternative care for the child (1, 2, 3, 4) are viewed as important. It appears necessary to evaluate who will help the parent in a time of crisis (1) and do the parents make use of alternative care arrangements for the children when they are not available (1, 2, 3, 4). Such support systems would include work, friends, interests, activities, stimulation and also utilizing professional help if necessary. The parent who has an adequate support system is likely to have a good self concept (Hoffmann A et al 1989:30; Bosman-Swanepoel et al 1998:63).

An important aspect that is noted from the literature, but was not stated by any of the respondents, is that the parents must not utilize their children as support systems, especially when discussing the reasons for the divorce at the time of the divorce. This issue could be assessed by assisting the child to look at his/her feelings about his/her parents and divorce (Bosman-Swanepoel et al 1998:63; Stahl 1994:5).

#### 4.16 The child's primary caretaker

The importance of the primary caretaker rule is noted by various authors (Van der Merwe 1990:59; Sinclair 1996:156; Saltzman et al 1990:277). The respondents seem to agree with the literature as it was categorized as *very important* (2, 3, 4, 5) and as *important* (1) on the criteria sheet (appendix 2). Table 17 indicates how many of the respondents stated the primary caretaker in the interview and applied it in the reports. The information in this table agrees with the criteria sheet, as four of the respondents (1, 2, 4, 5) stated this criteria in the interview and all the respondents applied it in most of the reports.

TABLE 17: THE CHILD'S PRIMARY CARETAKER

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      |   | X |
| 2          | X         | X      | X | X |
| 3          |           | X      | X | X |
| 4          | X         | X      | X | X |
| 5          | X         | X      | X | X |

When using this criteria, it appears that apart from the primary caretaker (1, 2, 3, 4, 5), the involvement of the parent in the care of the child (2, 4, 5) often received attention. One of the respondents (1) made a comment that “ ek staar my nie blind daarteen as die ma nie werk nie, dat sy die primêre versorger is” (I will not be blinded by the fact that the mother is not working and is the primary caretaker). I agree with the respondent (1) that if the mother is the primary caretaker and she is not suitable, the abilities of the father to function as single parent must be determined. This opinion seems to correspond with the literature which states that some people argue that the court should first take into consideration which parent is the primary caretaker and must then presume that the specific parent deserves custody, unless the other parent can prove that it would not be in the best interest of the child (Sinclair 1996:156; King 1994:202).

In determining the primary caretaker, respondents (2, 4, 5) would focus on the parent who makes lunch for the child for school, who reads a story to the child in the evenings, who takes and fetches the child to and from school - in general, who is more involved with the care of the child. That parent who is “meer in voeling” (more in touch) with the child (2). This could be linked to statements made in some of the literature that it is possible that the past conduct of the parent towards the child may be an indication of the future conduct of the parent. It could also indicate the level of commitment of the parent towards the child. Although not stated by any of the respondents, it is further noted from the literature that the primary caretaker is one of the most important factors in a child custody determination when the child is relatively young. (Van der Merwe 1990:59, 137).

#### 4.17 Motivation (why the parent wants the child)

It appears important to determine the parent's motivation, as with custody disputes parents have a strong need for winning and they could suppress certain feelings (Bosman-Swanepoel et al 1998:83). Agreeing with the literature, the respondents (1, 2, 3, 5) categorized this criteria as *very important* and as *important* (4) on the criteria sheet (appendix 2). Table 18 indicates how many of the respondents stated the motivation of the parent in the interview and applied it in the custody reports. The importance of this criteria is evident in table 18, that reveals that all the respondents stated it in the interviews and only one respondent (4) did not apply it in any report.

**TABLE 18: MOTIVATION (WHY PARENT WANTS THE CHILD)**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         |        | X | X |
| 2          | X         | X      | X |   |
| 3          | X         |        | X | X |
| 4          | X         |        |   |   |
| 5          | X         |        | X | X |

The literature and one of the respondents (1) agree that some parents will apply for custody out of spite towards the other parent. Once they are confronted with the facts of the situation, they do not mind if the other parent is awarded custody of the child (1). The family counsellor must look at both the validity of the motivation and whether or not the child is being used as a pawn to spite the other parent (Bosman-Swanepoel et al 1998:83).

A relevant factor which was stated by one of the respondents (3), is that one must determine if the parent is applying for custody to "get back at the other party", or does he/she genuinely have the love and acceptance for that child. Van der Merwe (1990:55) states that the request for custody may come out of a genuine feeling of affection and belief of superior parenting, or may be from anger, fear and manipulation. A comment by Bosman-Swanepoel

et al (1998:83) is that parents often present a picture that is not necessarily accurate and they believe that the other parent is doing exactly the same.

In the custody reports the respondents stipulated the different reasons why the parents in the particular case wanted custody of the children. A few can be mentioned briefly: parent feels he/she is more stable than the other parent (5); primary caretaker; financially in a better position to care for the child (1); neglect of child by other parent; alcohol abuse by the new partner of the other parent; emotional instability of the other parent (2); parent is better equipped to care for the material, social and emotional needs of the child; the other parent will relocate to another country with the children (3). Other examples stated in the interviews, were that parents would sometimes apply for custody of the children only for financial reasons, in order for them to receive maintenance from the other parent (4), or some parents would rather apply for custody than to pay maintenance to the other parent (5).

Therefore, it appears necessary to determine the motivation of the parent, as various allegations made by the one parent against the other parent, could then be investigated and assist in decision-making.

#### 4.18 The recommendations and comments from other mental health professionals

Bosman-Swanepoel et al (1998:105) state that the ideal is to evaluate the custody dispute in a multi-disciplinary team consisting of a legal representative, clinical psychologist and social worker. When looking at the criteria sheet (appendix 2), most of the respondents (2, 3, 5) categorized it as *very important* and as *important* (4). Table 19 indicates how many of the respondents stated this criteria in the interview and applied it in the custody reports. Despite the fact that one of the respondents (1) believed that the recommendations from other mental health professionals were *not so important* (criteria sheet), she applied it in two of the custody reports. She is of the opinion that she would not build her whole investigation on

the psychologist's opinion, and would only make use of the opinion of the psychologist if she is uncertain about something.

**TABLE 19: THE RECOMMENDATIONS AND COMMENTS FROM OTHER MENTAL HEALTH PROFESSIONALS**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          | X         | X      |   | X |
| 2          | X         | X      | X | X |
| 3          | X         | X      | X |   |
| 4          | X         |        | X | X |
| 5          | X         |        | X |   |

Table 19 further indicates that all the respondents stated this criteria in the interview and applied it in some custody reports. In contrast with the opinion of respondent one, another respondent (4) stated that she would let a psychologist or psychiatrist guide her in decision-making, if necessary. I agree with this respondent (4), as family counsellors are not equipped to perform certain tests on the parties. The literature stresses the importance of psychological tests that could be done to indicate which parent has the ability and potential to ensure that his/her child's emotional, intellectual, physical, social and spiritual needs are met (Venter et al 1995:112; Bosman-Swanepoel et al 1998:85).

It is essential that the mental health professional, family advocate and counsellor, as well as the client must understand the goal of the assessment. Psychological testing has a legitimate place in such assessments, but must be used in conjunction with other standard information methods such as interviews and observations (McCurdie 1994:14, 15). This could be the reason why one of the respondents (2) stated that she would only involve a psychologist if the psychological health of the parent is in dispute, or when it is difficult to evaluate the relationship between parent and child. Another respondent (5) agreed and commented that some of the psychologists' reports are so comprehensive, that it is not necessary for her to continue with the custody evaluation. She would then submit the report of the psychologist to the court.

The custody reports of all the respondents indicate that they would contact various mental health professionals in order to assist them with their investigation. These professionals consisted of psychologists, psychiatrists and various ministers of churches. This is consistent with the theory which states that the recommendations and comments of other mental health professionals should be incorporated as far as possible in child custody evaluations (Van der Merwe 1990:136).

#### 4.19 Keeping a young child with the mother

In previous years, the belief existed that mothers, as a whole, were more nurturing and more important to the children than fathers. In more recent years, considerably growing evidence showed that the child has a bond with both parents and needs to maintain and grow in his/her relationship with both parents (Stahl 1994:26). The information on the criteria sheet (appendix 2) indicates different views regarding the importance of this criteria. Keeping a young child with the mother was categorized as *important* (4, 5), *not so important* (2, 3) and *not relevant* (1). Table 20 indicates how many of the respondents (2, 4, 5) stated this criteria in the interview and applied it in some of the custody reports (1, 3, 5). Despite the fact that two of the respondents (1, 3) did not state this criteria in the interview and categorized it as *not relevant* (1), they applied it in some of the custody reports. The reason could be that both these respondents (1, 3) used this criteria in the evaluation part of the report to substantiate their decision.

**TABLE 20: KEEPING A YOUNG CHILD WITH THE MOTHER**

| RESPONDENT | INTERVIEW | REPORT |   |   |
|------------|-----------|--------|---|---|
|            |           | 1      | 2 | 3 |
| 1          |           |        |   | X |
| 2          | X         |        |   |   |
| 3          |           | X      |   |   |
| 4          | X         |        |   |   |
| 5          | X         | X      |   | X |

Several reasons were given by the respondents regarding their opinion of using/not using this criteria. One of the respondents (2) commented that the relationship between parent and child is more important than keeping a young child with the mother. This decision must be well motivated as the courts are not always willing to accept such a recommendation. It agrees with the literature stating that there is no evidence that the attachment to the mother, which is often the first, is different in kind from attachments to others. The important factor is the quality of interaction between the caretaker and the child. In other words, attachment to a father may exist, despite the fact that the father spends less time with the children (Van der Merwe 1990:56, 57).

A relevant factor stated, is that although the tender age principle must be taken into consideration, the abilities of the father are sometimes overlooked. Then the family counsellor does not take the best interest of the child in consideration (4). Some authors are of the opinion that the tender years doctrine is the extreme form of maternal preference. This doctrine indicates that if the mother is minimally fit, she should have custody. Therefore, the father's parenting ability and other factors are irrelevant (Van der Merwe 1990:56).

Using one of her cases as an example, one of the respondents (5) illustrated the complexity of using this criteria in some cases: the circumstances of the father were better than of the mother, but the respondent had to leave the baby with the mother as she was still breast feeding the baby. She subsequently referred the mother for supervision services by a social worker. Hoffmann A et al (1989:36) state that the court should always be aware of the danger of separating especially young children from their mothers. Numerous articles have been written on the long-term affects of separating young children from their mothers.

## 5. TRAINING OF THE FAMILY COUNSELLOR

The respondents were requested to discuss the training they receive as family counsellors, their view of the effectiveness of the training and their opinion of the importance of training. The respondents gave the following comments and opinions:

All five family counsellors view regular training as very important, but some of them (1, 2, 3, 4) stated that they have never received intensive training from the office of the family advocate, except for basic or light training in the beginning (1, 5). It was also stated that the first family counsellor filling that particular post, received training that was more of an administrative nature (2).

Although one respondent (5) attended a workshop on mediation, she started working as family counsellor with little knowledge and had to improve her knowledge of her own accord. She made a comment that it is possible that she could have avoided certain mistakes if she had received training. Another respondent (3) completed the legal social work module at Rhodes University as part of a masters degree in social work.

According to the above information received from the respondents, adequate training regarding the role of family counsellor is not provided. I agree with the literature that the family counsellor must be an expert on basically all aspects including the following: Adult pathology, children, adolescents, families, psycho-diagnostics and even certain aspects of the law. Social workers are often not trained in all the aspects of parenthood, or of the needs and functioning of children (Venter et al 1995:107). Apart from improving your skills and knowledge of your own accord, I would suggest that regular organized training be arranged or made available for family counsellors in order to remain experts.

The respondents suggested the following regarding training:

- \* More input from the Department of Justice to train social workers (1).

- \* Physical training where role plays could be utilized as practice while the family counsellor receives training (2).
- \* Refresher courses (3, 4, 5). The following topics could be covered in these courses: interviewing, dealing with children, dealing with conflict, communication, information regarding child development (3). These courses must help the family counsellor to keep up to date on new developments in the field (2, 4).
- \* Closer co-operation between the local university and the Department of Welfare to create more formal training (1). It would not be cost-effective to only train the three permanent family counsellors in the province (1).

## 6. OBJECTIVITY OF THE FAMILY COUNSELLOR

Most evaluators have a bias that could have an affect on how they analyze the information and process it in an evaluation (Stahl 1994:9). The respondents were requested to discuss the importance of objectivity and factors which influence their objectivity as a family counsellor. All five respondents expressed in honesty that certain issues could sometimes influence their objectivity. The following were stated as examples:

One respondent (1) conceded that she would assess the circumstances of the father in more depth than the circumstances of the mother, should she recommend that the father receives custody of the child. She is aware that this attitude is unfair towards the father, as he should be assessed by the same criteria as the mother. This respondent (1) also becomes upset when parents neglect their children “ter wille van hulle eie genietinge” (for the sake of their own enjoyment). She would deal with these feelings by telling herself that this parent is not necessarily a ‘bad’ parent. This is consistent with the theory stating that the social worker should be careful about making moral judgements regarding parental performance or behaviour (Cantwell et al 1995:348).

Bias can come from the evaluator’s own style of thinking, the influence of prevailing professional cultures and ideologies or the policy of the welfare agency (Braye et al 1992:58,

59). This is evident in some of the statements made by the respondents. An issue of concern to family counsellors is the difficulty to distinguish which parent tells the truth (2). One would believe the parent who is interviewed first and then also believe the other parent who is usually interviewed afterwards (2). The family counsellor's objectivity could be influenced by the information received by the parents (4) and it is sometimes difficult to assess if the parent is manipulative (2). Another respondent admitted that she "feels more" for the party who shows his/her emotions (2).

A comment made by one of the respondents (3) was that one must guard against being caught up in the power struggles of the family. She used an example of one of her cases where she experienced this type of problem. She subsequently referred the matter to the attorneys to intervene and then afterwards finalized the investigation.

The theory states that it can be difficult for mental health professionals to be objective as they carry unexamined assumptions about mother-child relationships and father-child relationships which could result from their own childhood (Venter et al 1995:107). Although one respondent (5) acknowledged that "'n mens voel natuurlik vir die ma" (naturally one feels for a mother), she will remind herself that one cannot discriminate against the father, as some fathers can fulfill the role of the mother.

The interviews with the respondents revealed that they are aware that they are biased and would attempt to overcome that. They would deal with issues influencing their objectivity in the following way:

- \* Supervision (1, 3).
- \* Discussions with the family advocate (3).
- \* Always take the best interest of the child into consideration (3). The theory also notes that the best interest of children are most likely to be served if the evaluator is impartial, in the sense that the evaluation is court-ordered and not requested from one side (Ash in Alesi 1997:95).

- \* Support from other family counsellors (1, 2, 3).
- \* Refer the family to another family counsellor if you know them personally (5).
- \* Focus on the facts of the case (2, 4, 5).
- \* Training of the family counsellors (1). The literature suggests that evaluators must remain up to date in knowledge of the literature as well as experiences, in order to confront their bias and to understand if it is valid (Stahl 1994:9).
- \* Contact a lot of references to verify information (2).

## 7. **FORMAT OF THE CUSTODY REPORT**

I analyzed the format used in three of each respondent's custody reports, as well as the comments made by the respondents regarding the structure of the report. The criteria stated by the respondents, have already been compared with the content of reports (see analyzing of criteria).

Although some of the respondents (1, 2, 3) stated that they are allowed to put any information they deem necessary in the report, they use the same format in compiling the reports. The reports studied revealed the following format:

- 1) Qualifications of the family counsellor
- 2) The parties who were interviewed
- 3) References contacted
- 4) Information according to the different factors taken in consideration
- 5) Evaluation
- 6) Recommendation

The information is stipulated point by point without headings (except for evaluation and recommendation). Appendix 4 indicates the information which should be contained in the reports according to the respondents. After studying the reports, it appears that this is the information they mostly included in their reports.

The format used by the respondents agree with some literature which states that detailed backgrounds and social histories of the parents are not given. The report must be focused and evaluative, with emphasis on the relevant issues. Length or detail must not be used as a substitute for professional skill in evaluation. The report should be to the point and represent both facts and opinions as well as recommendations that were considered. The reasons for certain opinions must be clearly stipulated (Cigler 1986:386; Bosman-Swanepoel et al 1998:86; Stahl 1994:75).

However, in contrast with the opinion of some respondents (1, 5) and the South African literature mentioned, Stahl (1994:75-93) stresses that background information should be focused on (problems between the parents; difficulties they have in resolving differences). He also suggests that the following information should be contained in the report:

- \* information regarding the parents (personality of the parent; parent's concerns regarding the other parent; sense of parent's own childhood; parent's perceptions of his child and needs; evaluator's clinical understanding of the parent);
- \* information regarding the children (how the children related in the evaluation; feelings and concerns of the child; child's perception of his/her relationship with parents; siblings; friends; community; school and other aspects of his/her life; observations of the child and his/her parents together);
- \* information from collaterals;
- \* summary;
- \* recommendations.

When comparing the above format with the format used by the respondents which is stipulated point by point, it appears that the respondents do not discuss issues in detail. Examples such as the evaluator's clinical understanding of the parent, as well as observations of the child and parent together, can be mentioned. It came to my attention that only one of the respondents (4) stated that she "voel gebind" (feels bound) with the present format of the report. She suggested that the report needs more detail. I agree with her that for example,

if allegations of alcohol abuse are made by one parent, the extent of the alcohol problem must also be discussed in detail. To assist the judge to get a holistic view of the family, other factors such as the relationship between parent and child, the character of the parents, communication between parent and child, the guidance which the child requires, the physical needs of the child, etc., should also be focused on. Important issues which should be contained in the report are also addressed in the conclusions and recommendations (chapter 5).

The other respondents (1, 2, 3, 5) appear to be satisfied with the present format of the reports.

**CHAPTER 5**  
**CONCLUSIONS AND**  
**RECOMMENDATIONS**

## 1. INTRODUCTION

This chapter consists of conclusions drawn from the study, while specific recommendations are made. Focus is on the structure of interviews, number of interviews, home visits, specific techniques used by the family counsellors, the criteria family counsellors apply in the custody evaluations, training of family counsellors, the objectivity of the family counsellors and the format of the custody report. Recommendations are also made regarding the role of the family advocate, as well as recommendations regarding further studies.

## 2. STRUCTURE OF INTERVIEWS

This study revealed that the respondents interviewed all follow the same pattern, by interviewing the parents separately first, then the children. Although the literature stresses the importance of interviewing the children and parents together, this procedure is not followed by the respondents. A joint interview with parent and child together could help the family counsellor to learn more about the parent-child interaction (Van der Merwe 1990:17, 18).

Some of the respondents pointed out the “cold” building and offices, as well as the “cold” process of the investigation. Despite this opinion, some of these respondents still do not interview the children in a child-friendly office or other more relaxed venue, which could eliminate some of the difficulties in interviewing children.

Recommendation: It is recommended that apart from separate interviews, children and parents also be interviewed together as part of the evaluation. It is further recommended that the family counsellor attempts to interview a child in a child-friendly office or other more relaxed venue, depending on the child’s age.

### 3. NUMBER OF INTERVIEWS

The literature stresses that a lot of time should be spent with each parent and several interviews should be conducted with each parent and child (Stahl 1994:5; Van der Merwe 1990:17). In contrast to this, most of the respondents only conduct one or two interviews with the parents and only one interview with the children, in spite of the fact that some of the respondents stated that the decision of the family counsellor has an important impact on the life of the child. I am of the opinion that it is necessary to conduct several interviews with the different parties, but agree with some of the theory that the evaluation should always be conducted timeously to keep the painful time as short as possible (Uys 1985:100).

Recommendation: It is recommended that the family counsellor conducts several interviews with the parents and children alone, as well as parents and children together, during the custody evaluation.

### 4. HOME VISITS

The theory focuses on the importance of a home visit during custody evaluations, in order for the family counsellor to get a feel for the social atmosphere of the home, to observe and better understand the parent's behaviour and emotional reactions as they occur in day-to-day life (Lytle-Vieira 1987:6). Although most of the respondents believe that home visits should be included in the investigation, not all of them do home visits in every custody evaluation. I am of the opinion that home visits provide a more relaxed atmosphere in which interviews can be conducted (and eliminate the "cold" atmosphere of the office) and it will be easier for the family counsellor to conduct the joint interviews with parents and children in order to assess their interaction.

Recommendation: It is recommended that home visits be included in every custody evaluation, if possible.

## 5. SPECIFIC TECHNIQUES USED

Most of the respondents appear to experience difficulty in using the appropriate techniques when interviewing the parties. A reason given is the manner in which the family advocate structures the interview, not giving the family counsellors adequate opportunity to apply their techniques. The attitude of the family advocate towards the clients and inability to show sensitivity to the needs of the clients, are of concern to some of the respondents. It seems that some of the respondents would prefer to conduct the interviews alone with the parties.

This study revealed that most of the respondents use symbolic play when interviewing the children, which is in agreement with the theory (Stahl 1994:69).

Recommendation: It is recommended that the family advocate receives training in basic social work skills. It is also recommended that the family counsellors be given more opportunity by the family advocate to use the appropriate techniques when interviewing the parties. The family advocate could focus mainly on the law issues and the family counsellor on the social aspects. Another research study could explore the relationship between the family counsellor and family advocate, focusing on their separate roles during the investigation and interviews.

It is further recommended that the family counsellor always attempts to make use of symbolic play when interviewing younger children. I would suggest that family counsellors request the assistance of a play therapist, should he/she not feel comfortable or equipped to perform symbolic play with the children.

## 6. CRITERIA

### 6.1 The love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child

The respondents view this criteria as very important and applied it in most of their custody reports. This is consistent with the literature that states that the attachment and interrelationships between children and their parents are important (Hoggett et al 1987:482). I agree with the respondents that the focus must be placed on the quality time spent with the child, the affection of the parent towards and acceptance of the child, the availability of the parents and how well the parent knows the child. These issues are also highlighted by the literature (Hoffmann A et al 1983:33; Bosman-Swanepoel et al 1998:66, 81).

In conclusion it appears that this criteria is one of the most important to use when conducting child custody evaluations. It is therefore essential that the relationship between parent and child is also given attention in the custody reports.

Recommendation: It is recommended that the love, affection and other emotional ties which exist between parent and child and the compatibility of the parent with the child, be applied in all the custody evaluations conducted by family counsellors. It is further recommended that these issues be discussed in the custody reports.

### 6.2 Capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires

It can be concluded that all the respondents view this criteria as important. Despite these opinions, some of the respondents did not state the criteria in the interview, or applied it in the custody reports. A reason could be that the criteria was only applied in the custody reports when allegations were made by the one parent about the other parent's character.

I am of the opinion that the capabilities, character and temperament of the parent should be addressed in all the custody evaluations, in order to determine if the parents take the best interest of the child into consideration. It would help to consult the literature that describes an adequate, capable and stable personality (Nash et al 1992:181). Information like this in the reports should help the judge to form a clearer picture of the personality and abilities of the parents to care for the child.

Recommendation: It is recommended that the capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires, be taken into consideration in all custody evaluations conducted by family counsellors. It is further recommended that this criteria be applied in the custody reports.

### 6.3 Ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings

The literature stresses the importance of the ability of the parent to show concern for the general well-being of the child and ability to communicate effectively with the children (Reder et al 1995:10; Harrison 1996:58). Although all the respondents are in agreement with the literature, they do not apply it in all the custody reports. I agree with the literature and the respondents regarding the importance of using this criteria, but I am of the opinion that it is necessary to stipulate the ability of the parent to communicate with the child in the custody reports. This will provide a better picture of the relationship between parent and child.

Recommendation: It is recommended that the ability of the parent to communicate with the child and the insight of the parent into, understanding of and sensitivity to the feelings of the child be regarded as an important criteria which is applied in all the custody evaluations. It must also be discussed in the reports.

#### 6.4 The capacity and disposition of the parent to give the child the guidance which he requires

The respondents interviewed and literature, are in agreement that this criteria is an important factor to take into consideration during custody evaluations and that the guidance and disciplining of the children are important issues when assessing the family. The theory notes that children cannot hope to cope effectively with life without some form of order or guidance. The child can subsequently develop self-discipline and take responsibility for his/her own behaviour (Hoffmann A et al 1989:51; Hart 1993:116; Craig 1996:323).

Despite the fact that the respondents view this criteria as important, they did not apply it in all custody reports. Information like the ability of the parent to discipline the child, would be able to assist the judge in understanding the general ability of the parent to control the child and to guide him/her in the right direction. I am of the opinion that this criteria must be discussed in custody reports.

Recommendation: It is recommended that the capacity and disposition of the parent to give the child the guidance which he requires be applied as an important criteria in custody evaluations. It is also necessary to discuss this criteria in the custody reports.

#### 6.5 The ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs - generally speaking, the provision of economic security

It appears that all the respondents assess the parent's ability to provide in the basic physical needs of the child. However, the literature warns against emphasizing the financial status of the custodian parent and that the greater wealth of a parent should not be a consideration in custody decision making (Van der Merwe 1990:46, 48). I agree with some of the respondents that the emotional care of the child must be given preference above the financial position of the parent.

In general, I can conclude that the physical care of the child must be assessed during the custody evaluation. One must bear in mind that parents who are unable to meet their financial commitments and who are unable to provide adequate housing, are at risk to provide stability to their children (Hoffmann A et al 1989:24, 25). In a study of 50 custody cases conducted by Van der Merwe (1990:87), the financial capacity of each parent was considered in 44 (88%) of the cases.

Therefore, the physical care of the child is important, but when applying it as a criteria, it must not outweigh other factors, like the primary caretaker rule (Saltzwedel et al 1990:278). An indication in the custody reports regarding the ability of the parent to maintain the child financially, could assist the judge in decision-making.

Recommendation: It is recommended that the physical care of the child be assessed during custody evaluations and stipulated in the reports, but the greater wealth of a parent must not be a consideration in custody decision-making.

#### 6.6 The ability of the parent to provide for the educational well-being and security of the child, both religious and secular

Although not evident in all the custody reports, it seems that the educational well-being and security of the child play an important role in custody evaluations (according to the respondents interviewed). The literature supports these views by emphasizing the role of the parents in creating a supportive environment and to encourage their children in developing specific skills (Craig 1996:349).

It came to my attention that only one respondent focused on the moral development of the child, while the importance of this is stressed in the literature. Children need to establish acceptable behaviour patterns in society. If the parents fail to adhere to recognized standards set by the community in which they live, the children can be subjected to a great deal of stress (Harrison 1996:16; Van der Merwe 1990:41).

I am of the opinion that the educational well-being of the child should be addressed in all custody evaluations. This includes the schooling of the child and the involvement of the parents, as well as the ability of the parents to teach the child acceptable behaviour. It appears necessary to emphasize the role of the parents regarding the educational well-being of the child in the custody reports, to assist the judge in forming a holistic view of the child's upbringing.

Recommendation: It is recommended that the educational well-being and security of the child be used as a criteria in custody evaluations and be discussed in the custody reports.

#### 6.7 The ability of the parent to provide in the child's emotional, psychological, cultural and environmental development

This study revealed that this criteria can be used as an important tool when conducting child custody evaluations. Although the respondents focus on a wide range of issues when using this criteria, it can be concluded that the emotional, psychological, cultural and environmental development of the child are covered in the investigation. Statements made in the literature regarding these issues, include the ability of the parent to create an emotionally safe environment for the child, and the fact that parents must show understanding of the feelings of the child. Parents are also responsible to guide their children to explore their environment and to act independently. The home must be an environment with which the child feels safe and secure (Bosman-Swanepoel et al 1998:74, 92; Hoffmann A et al 1989:25).

A difficult and an important issue, is the indoctrination and alienation of the child by one parent. It appears that most of the respondents bear this issue in mind when conducting child custody evaluations. In general, the courts evaluate such behaviour by a parent in an extremely negative light (Bosman-Swanepoel et al 1998:75). I am of the opinion that the indoctrination and alienation of the child by one parent be addressed in the custody reports if

necessary. It will give a clear picture of the influence of the parent on the psychological development of the child.

Recommendation: It is recommended that the ability of the parent to provide in the child's emotional, psychological, cultural and environmental development be considered as a criteria when conducting child custody evaluations. It is also recommended that should these issues have a negative influence on the emotional and psychological development of the child, it be discussed in the custody reports.

#### 6.8 The mental and physical health and moral fitness of the parent

The mental and physical health and moral fitness of the parent are viewed as important by the respondents and are applied in most of the custody reports. It can be concluded that the emotional stability of the parent is assessed, as well as the impact on the child, which is in agreement with the literature (Van der Merwe 1990:52). The family counsellor must bear in mind that a few people are able to behave totally rationally and unselfishly at times of crisis (King et al 1992:55). Therefore, I agree with one of the respondents that the parent must be referred to a psychiatrist or psychologist if necessary. A decision regarding custody could then be made after the report is received from the psychiatrist or psychologist.

With reference to the moral fitness of the parent, the respondents hold the same opinion that the impact thereof on the child must be assessed. I agree with the respondents and literature stating that the moral fitness of the parent could be considered as a factor in awarding of custody if the misconduct directly affects the parental abilities (Van der Merwe 1990:41, Cumes et al 1987:120). In a study of 50 custody cases conducted by Van der Merwe (1990:75), the moral character of each parent was mentioned in 42 (84%) of the reports and the mental stability of each parent in 34 (74%) of the reports.

It is interesting that none of the respondents stated the physical health of the parents. It appears not to be important when conducting child custody evaluations.

Recommendation: I would recommend that the mental health and moral fitness of the parent be used as a criteria in child custody evaluations, but only be considered as a factor in awarding custody if the misconduct directly affects the child or parental abilities. This criteria should also be addressed in the custody reports. It is further recommended that the physical health of the parent not be considered as a criteria in custody evaluations, unless the physical illness of the parent is of such nature that he/she is not able to care for the child.

6.9 The stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the *status quo*

The literature and respondents seem to agree on the importance of the continuity of the child's present circumstances. I agree with one of the respondents (4) that moving a child to another environment should be avoided as far as possible. However, I also agree that if the custodian parent intends to move to another town, the family counsellor should assess what arrangements were made for the child.

It is of concern that only one respondent (1) stated that she would look at the time period the children have stayed in a specific place and the child's support systems, while the theory stresses the importance of the length of time the child has lived in a stable, satisfactory environment and not being cut off from the support system (Van der Merwe 1990:44, Bosman-Swanepoel et al 1998:63).

It can be concluded that the continuity of the child's environment is an important factor when conducting child custody evaluations, as the frequent change of environment is regarded as prejudicial to the child (Van der Merwe 1990:60). These issues should definitely receive attention in the custody reports, to give an indication what changes a move will bring to the child's life. In the study of 50 custody cases by Van der Merwe (1990:113), this criteria was mentioned in 47 (94%) of the reports.

Recommendation: It is recommended that the stability of the child's existing environment be regarded as important in all custody evaluations and be stipulated in the custody reports.

#### 6.10 The desirability or otherwise of keeping siblings together

The respondents' opinions stated on the criteria sheet (appendix 2) regarding the importance of keeping siblings together, do not correlate with the interviews and custody reports.

Although respondents view the criteria of keeping siblings together as important, it is not evident in most of the custody reports which were studied. The reasons could be that in six of the custody reports studied only one child was involved, or that the separation of the siblings was not a factor during the custody evaluation. Several authors stress the importance of keeping siblings together unless there are cogent reasons (Van der Merwe 1990:45; Cumes et al 1987:121; Hoffmann A et al 1989:38).

The fact that courts are reluctant to separate siblings, "as this may fragment their sense of security and stability", should be an indication to family counsellors to take this criteria into consideration when conducting child custody evaluations (Bosman et al 1997:62, 63).

It is interesting that in a study conducted by Cumes et al (1987:128) of 14 criteria, the legal profession ranked this criteria as fourth most important and the mental health profession as fifth most important. However, in Van der Merwe's study (1990:85) this criteria was only considered in 10 (20%) of the 50 cases studied.

Recommendation: I would recommend that the criteria of keeping siblings together be applied in every custody case where two or more children are involved, but that each case be evaluated on the individual circumstances, taking the children's best interest in consideration.

It is further recommended that the separation of siblings be discussed in the reports only if it was a considered factor during the evaluation. Further research regarding this matter is also recommended on page 141 of this study.

### 6.11 The child's preference

Although the literature stipulates different opinions regarding the child's right to participate in decision-making, I agree with most of the respondents that this is an important factor when conducting child custody evaluations. It appears that the wishes of the child is a factor taken into consideration by the court, depending on the appropriate age and understanding of the child (Saltzman et al 1990:173, 274; Neethling 1995:477). However, it is essential that the child is not directly asked what his/her preference is, as it is unfair and could create feelings of guilt with the child as stated by some respondents. The literature also stresses that the child is not emotionally equipped to deal with the responsibility of making such a decision (Bosman-Swanepoel et al 1998:89).

It seems that most of the respondents agree that the motivation of the child for a specific preference must be determined. However, an important factor stressed by the literature, is that the family counsellor must be aware that the children, depending on the emotional state of the parents, will say different things at different times (Cantwell et al 1995:341). This is one of the reasons why I recommended (page 117 of this study) that the family counsellor should conduct several interviews with the children alone, which could help them to evaluate the children's opinions at different times. It is also important that the intellectual and emotional maturity of the child is taken in consideration to give a genuine and accurate reflection of his feelings towards and relationship with each of his parents (King 1994:202).

The above indicates that the family counsellor must be skilled in interviewing children and as recommended, other techniques such as symbolic play could be helpful (page 118 of this study). If discussed in the custody reports, the judge could gain a better understanding of the views and opinions of the child.

In a study of 50 custody cases by Van der Merwe (1990:92, 135) the wishes of the child were only considered in 28 (56%) of the cases. It is recommended in this particular study of

Van der Merwe, that the wishes of the child should be considered if the child is not made to feel that he/she must make a choice between either parent.

Recommendation: It is recommended that consideration be given to the preference of the child, taking in consideration factors like the motivation, age, maturity and emotional state of the child at the time of divorce. It must also be discussed in the custody reports.

#### 6.12 The desirability or otherwise of applying the doctrine of same sex matching

Despite the fact that three of the respondents stipulated this criteria as *very important* and *important* on the criteria sheet, the impression was gained that the doctrine of same sex matching, is not applied by the respondents. I agree with one of the respondents (1) that the ability of the parent to care for the child on a long-term basis is more important than applying the doctrine of same sex matching. Although some research indicates that children are better adjusted when they reside with a same sex-parent, another study was unable to find negative effects of single parenting on the adjustment or sex-role self-concept of children (Hetherington et al in Alesi 1997; Cumes et al 1987:122, 128; Van der Merwe 1990: 64).

It can therefore be concluded that this criteria is not an important factor that should be taken into consideration when conducting a child custody evaluation.

In Van der Merwe's study (1990:118, 138) of 50 custody cases, this criteria was only mentioned in two (4%) of the cases. This author recommends that placing the child with the parent of the same sex should only be considered as an important criteria if that particular parent seems better able to provide for the physical and emotional needs of the child.

Recommendation: I recommend that the doctrine of same sex matching not be applied in child custody evaluation.

### 6.13 Any other factor which is relevant to the particular case with which the court is concerned

The interviews conducted with the respondents and study of the custody reports, revealed that every individual case could have different factors relevant to that particular case. The factors selected from the interviews and custody reports were discussed (page 99, 100, 101 of this study), but one must bear in mind that only three custody reports of each respondent were studied. Reports regarding other custody cases could reveal other factors which are relevant to that particular case.

It can be concluded that these criteria are viewed by the respondents as important and applied in most of their custody reports. The opinion one parent holds of the positive points of the other parent and the relationship and communication between the parents, seem to be relevant factors. The literature stresses that children need to see their divorced parents behaving with the respect, courtesy, understanding and consideration towards each other, or it will be impossible for them to maintain positive relationships with parents that are in conflict with each other (Bosman-Swanepoel et al 1998:90; Theart 1988:19).

The attitude the parent has towards access could have an impact on the family counsellors decision making. However, only one of the respondents (3) focused on the issue of access. In the literature a lot of evidence can be found regarding the importance of the ongoing parent-child relationship. It is the primary right of a child to visit a parent and not the right of the parent. It is important for each parent to spend some time with the children, even if the visit is supervised, as children can easily feel rejected by the parent (Craig 1996:375; Bosman-Swanepoel et al 1998:90; Parkinson 1987:18; Theart 1988:19).

This study also reveals that the relationship the child has with the new partner of the parent, must be taken into consideration. One would certainly look at the communication between the child and the new partner of the parent, as well as the commitment the new partner has towards assisting the parent with the development of the child.

All the other factors which were revealed in the interviews and custody reports, such as allegations of child abuse and neglect, physical abuse of the wife by her husband, the social life of the parents, one parent stealing the child from the other parent, interdict against the father and abortion undergone by the mother, must be evaluated in terms of the influence it has on the child. It is therefore necessary that this type of information be disclosed in the custody reports.

Recommendation: Despite the fact that only limited factors which are relevant to a particular case, are discussed in this study, it is recommended that these miscellaneous criteria be taken into consideration during custody evaluations. Factors such as the opinion of the parent of positive points of the other parent, the relationship and communication between the parents, the attitude of the parent towards access and the relationship of the child with the new partner of the parent, could receive attention if applicable. It is further recommended that these specific issues be stipulated in the custody reports, focusing on the influence that the behaviour of the parent (for example allegations of child abuse) has on the child.

#### 6.14 The value of an adequate support system

It can be concluded that the availability of an adequate support system is an important factor to consider in child custody evaluations. Most of the respondents view this criteria as important and apply it in the custody reports. It appears that parents need to arrange alternative care arrangements for the children when they are not available. These support systems which include work, friends, interests, activities, stimulation and the utilizing of professional help if necessary, must form part of the child's care (Hoffmann A et al 1989:30). Family counsellors must be made aware that it is also important to ascertain if the parent is not utilizing his/her child as support system (Bosman-Swanepoel et al 1998:63).

It seems appropriate to discuss the support systems of the family in the custody report, in order to show the judge that the family utilize their support system if necessary.

Recommendation: It is recommended that the support system of the parents be assessed in custody evaluations and used as a criteria in decision-making. It must be stipulated in the custody reports.

#### 6.15 The child's primary caretaker

The literature and respondents interviewed agree that the primary caretaker rule is one of the most important factors to consider in custody evaluations. However, one of the respondents (1) clarified that she will not be blinded by the fact that the mother who is unemployed, is the only primary caretaker. I can conclude that the family counsellor must take a holistic approach and not only apply this criteria as the overriding factor. Sinclair (1996:156) and King (1994:202) have a valid argument in that the court should first take in consideration which of the parents is the primary caretaker and must then presume that the specific parent deserves to have custody, unless the other parent can prove that it would not be in the best interest of the child. It is therefore also important that the role of the primary caretaker be discussed in the custody reports.

In the research study of 50 cases conducted by Van der Merwe (1990:111), the primary caretaker was mentioned in 42 (84%) of the custody reports.

Recommendation: It is recommended that the primary caretaker of the child be considered as an important factor in custody evaluations, provided that custody not be awarded to the primary caretaker if it is not in the best interest of the child. It must also be discussed in the custody reports.

#### 6.16 Motivation (why the parent wants the child)

The motivation of the parent to have custody of the child, appears to play an important role in child custody evaluations. The respondents interviewed as well as literature regard this criteria as important. The family counsellor must look at the validity of the motivation in

order to evaluate the circumstances (Bosman-Swanepoel et al 1998:83; Van der Merwe 1990:55). According to the literature, the respondents interviewed and custody reports written by the respondents, various reasons can be given by the parents (some of these reasons were briefly mentioned on page 105 of this study). It appears necessary to investigate these reasons and allegations made by the parents in order to reach a conclusion and to make a recommendation that will be in the best interest of the child. I agree with the literature that the family counsellor must distinguish between the genuine feeling of affection of the parent and belief of superior parenting, or is the child being used as a pawn to spite the other parent (Bosman-Swanepoel et al 1998:83; Van der Merwe 1990:55).

I am further of the opinion that the motivation of the parent to receive custody of the child must be mentioned in the custody reports.

Although this study reveals the importance of considering the motivation of the parents, Van der Merwe's study (1990:106) proved that the wishes of the parents were only considered in 29 (58%) of the 50 cases studied.

Recommendation: It is recommended that the parent's motivation to have custody of the child be determined in every custody evaluation and it be regarded as one of the most important criteria. It must be discussed in the custody reports.

#### 6.17 The recommendations and comments from other mental health professionals

The literature and most of the respondents interviewed regard the recommendation and comments from other mental health professionals as essential (Bosman-Swanepoel et al 1998:85; Van der Merwe 1990:136; Venter et al 1995:112). One of the respondents displayed quite a negative attitude towards the input of psychologists and would only use a psychologist if she is uncertain about something. However, most of the other respondents indicated a positive attitude towards the assistance of other mental health professionals, especially if the mental health of one parent is in dispute.

I agree with Uys (1985:98) that the decision regarding custody of children is one of the most difficult and complicated tasks. Family counsellors must be aware that they are often not equipped to deal with certain aspects, for example psychological testing of the parties. These tests which are performed by psychologists and psychiatrists, could assist the family counsellor in evaluating the abilities and potential of the parents to ensure that the emotional, intellectual, physical, social and spiritual needs of the child are met. Children can also undergo tests whereby they can freely express feelings without guilt or feelings of disloyalty (Venter et al 1995:112; Bosman-Swanepoel et al 1998:85). When looking at the interviewing of the children, I would suggest that the family counsellor request the assistance of a play therapist, should he/she not feel comfortable or equipped to perform symbolic play with the children.

The findings of other professionals assisting with the custody evaluation, must be included in the custody reports, in order to support the family counsellor's decision. It is interesting that in the study Van der Merwe (1990:96) conducted, in only 19 (38%) of the 50 cases studied, the recommendations and comments from other mental health professionals were included in the reports.

Recommendation: I agree with Van der Merwe (1990:136) in his study and recommend that as far as possible the recommendations and comments of other mental health professionals be incorporated in child custody evaluations. They must be stipulated in the custody reports.

#### 6.18 Keeping a young child with the mother

Considerable growing evidence shows that the child has a bond with both parents and needs to maintain and grow in his/her relationship with both parents (Stahl 1994:26). However, it appears that a decision to separate a young child from the mother, must be well motivated in the custody report. It is stated in the theory that the court should be aware of the danger of separating especially young children from their mothers. A good example was used by one of the respondents, that in spite of the fact that the circumstances of the father proved to be

better than the circumstances of the mother, the baby was left with the mother as she was breast feeding.

This study revealed that the respondents interviewed have different views regarding the importance of using this criteria in custody evaluation. However, it can be concluded that most of the respondents agree with the literature that the abilities of the father must not be overlooked and that the relationship between the parent and child is more important (Van der Merwe 1990:56, 57). In a study conducted by Van der Merwe (1990:109) this criteria was used in only 4 (8%) of the 50 cases studied.

Recommendation: It is recommended that the criteria of keeping a young child with the mother, not be regarded as important when conducting a child custody evaluation, but, a recommendation for placement of a young child with the father would need to be well motivated.

## 7. TRAINING OF THE FAMILY COUNSELLOR

The family counsellor must be an expert on basically all aspects including the following: adult pathology, children, adolescents, families, psycho-diagnostics and even certain aspects of the law. Social workers are often not trained in all the aspects of parenthood, or the needs and functioning of children (Venter et al 1995:107). According to this statement and the respondents interviewed, family counsellors need regular training. However, the present training is limited and some of the respondents have never received training regarding their role as family counsellor. Most of them are aware that they must also improve their skills and knowledge of their own accord, but suggested regular organized training in order to keep up to date with new developments in the field.

The literature stresses that the decision regarding the custody of children is one of the most difficult and complicated tasks. The process of custody evaluation can be stressful for the children, the parents and the social worker who must evaluate them and then be ready to be

examined in a court (Uys 1985:98; Cigler 1986:370). Therefore, family counsellors need regular training and assistance with such a difficult task, in order to make a decision that will be in the best interest of the child.

Recommendation: I recommend that all family counsellors involved with custody evaluations, receive regular training (at least once a year) in the form of refresher courses and workshops. The training could also include other disciplines, such as legal experts, psychologists, psychiatrists and clinical social workers.

## 8. OBJECTIVITY OF THE FAMILY COUNSELLOR

Although one would always aim to be impartial when conducting child custody evaluations, it seems that most family counsellors experience some form of bias. However, it became clear during the interviews with the respondents, that they are aware and honest about being biased and would make an effort to eliminate their bias.

The respondents stated different examples of bias (in agreement with some of the literature), that appear to come from their own style of thinking, moral judgements regarding parental performance, as well as assumptions about mother-child relationships and father-child relationships which could be a result from their own childhood (Braye et al 1992:58, 59; Cantwell et al 1995:348; Venter et al 1995:107).

Valuable suggestions to deal with issues influencing one's objectivity, were made by the respondents. Supervision, training and support from colleagues are the methods stated by most of the respondents. I agree with some of the respondents that with the best interest of the child kept in mind and receiving priority, bias could easily be eliminated.

Recommendation: I recommend that the family counsellors receive regular group training, as well as training in conjunction with the family advocate, in order to address issues of being biased.

## 9. FORMAT OF THE CUSTODY REPORT

Most of the respondents appear to be satisfied with the present format of the custody report. Despite the fact that they are allowed to use their own initiative and can select the relevant information to be covered in the custody report, it appears that not all the criteria they stated in the interviews, are discussed in the custody reports.

When looking at the format used by the respondents, it agrees mostly with the South African literature (Cigler 1986:386; Bosman-Swanepoel et al 1998:86). However, other literature stresses that focus should be placed on some background information, for example problems between the parents and difficulties they have in resolving differences (Stahl 1994:75-93). It further appears that the respondents do not discuss issues in detail, as the custody report is stipulated point by point. I am of the opinion that the criteria used in the custody evaluation report could be discussed in more detail to give a clearer picture to the judge and to guide him in making a decision regarding the best interest of the child (as already recommended in previous sections). However, one must guard against too lengthy custody reports and always attempt to maintain focus.

Recommendation: In view of the fact that only 15 reports of the family counsellors were studied, it is difficult to make a recommendation regarding the specific format of the report and information that should be contained in the report. In this study some general ideas about the format of the reports could be formed. I would recommend that the possibility of including all the criteria used in the custody evaluation and a more in-depth discussion of the issues in the reports, be explored with a more precise and more complex research design. This type of study could involve judges dealing with custody cases, in order to gain their views on the subject.

## 10. THE ROLE OF THE FAMILY ADVOCATE

During this study the respondents referred to several issues regarding the role of the family advocate during custody evaluations. In order to summarize, this section will concentrate exclusively on conclusions made and specific recommendations regarding the role of the family advocate (some of these recommendations have been covered in the previous sections).

1) The interviews conducted with the respondents revealed that the family advocate structures the first interview with the parents and takes the lead. The family advocate becomes impatient and wants to conclude the interview. As a result the family counsellors are not able to apply their general social work interviewing techniques, and have to contact the parties afterwards to gather more information which could have been covered during the first interview. The conclusion can be drawn that the family advocate's time is limited and therefore the interview is rushed. Some of the respondents prefer to conduct the interviews alone, in order to use more social work skills. One of the respondents also suggested that the family advocate concentrate on legal issues and let the family counsellor deal with the social aspects.

Recommendation: It is recommended that sufficient time be set aside for the first interviews with the parties in order to not rush the interviews. It is also recommended that the family advocate gives the family counsellor the opportunity to use her clinical skills and techniques in gathering the information during the interview and that the family advocate concentrates on the legal section.

2) Some of the respondents stated that the family advocate is sometimes not sensitive to people's needs and emotions and can appear harsh. Considering that the literature notes that divorce can be very traumatic and a far reaching event in human experience, it seems appropriate for evaluators to be sensitive to the needs and emotions of the parties (Venter et al 1995:106).

One of the shortcomings stated by one of the respondents, is that the family advocate does not explain the purpose of the interviews and what each person's role is, to the client in detail. The theory notes that it is better to initially give the parents the opportunity to ask questions, allay their anxiety, provide more information about the direction of the evaluation and establish neutrality (Stahl 1994:48).

Recommendation: I recommend that the family advocate receives some training in social work skills and communication.

3) This study also revealed that the family advocate prefers that the children accompany their parents to the office for the first interviews, in order for the family counsellor to observe parent-child interaction. The children sometimes have to wait for an hour or longer, which seems unnatural and unfair to the child who could have been traumatized by the divorce of his/her parents. A solution could be to interview the child at a later stage at a child-friendly venue. The literature states that with a home visit, the family counsellor is able to view the actual parent-child interaction, which sometimes can only be gained by the information given by the parent (Lytle-Vieira 1987:6).

Recommendation: It is recommended that the family advocate gives permission that the child not be interviewed during the first interviews with the parents, but be seen at a later stage in a child-friendly venue. This would also give the family advocate and family counsellor more time to conduct the initial interviews with the parents.

## 11. RECOMMENDATIONS REGARDING FURTHER RESEARCH

In this section recommendations regarding further research are made. Some of the recommendations have already been discussed in parts of this study, but are recapped under this section, in order to get a holistic view of the general ideas which could be explored at a later stage.

1) As already concluded (page 134 of this study), the family counsellors interviewed, received limited training. Some of the respondents have never received training regarding their role as family counsellor. While the literature claims that the social worker must be an expert on various aspects (page 134 of this study), one can make the conclusion that training should include the input of other mental health professionals.

Recommendation: It is recommended that further research be undertaken regarding the regular training of family counsellors in co-operation with other disciplines for example, legal experts, psychiatrists, psychologists and clinical social workers.

2) In this study some differences regarding the various roles of the family advocate and family counsellor were highlighted. Some of the respondents expressed certain concerns about the attitude of the family advocate towards the clients (page 79).

Recommendation: I would recommend that another research study explore the relationship between the family advocate and the family counsellor, with specific reference to their separate roles during the investigation and interviews. Such a study could further explore the family advocate's need for training in social work interviewing skills.

3) It has already been pointed out in this study that it is difficult to make a recommendation about the specific format of the custody report, as only 15 custody reports were considered as part of the study (page 136 of this study).

Recommendation: It is recommended that further research that could provide more insight in the possibility of including the relevant criteria used in the custody evaluation, and more in depth discussion of these criteria, be undertaken. I would also recommend that the opinion of the judges be incorporated in such a study.

4) An issue that did not receive attention in this study, is the role of the family counsellor in a multicultural society. Although not addressed in the literature study (chapter 2), it can be

mentioned in this section that the South African society is ethnically diverse. It includes a multiplicity of religious and cultural beliefs and practices. Differences that grew out of this diversity such as different household arrangements, child rearing and kinship patterns, as well as economic structures (De La Rey, Duncan, Shefer & Van Niekerk 1997:5). The literature notes that there is a high incidence of divorce and marital breakdown in all ethnic groups in South Africa and social workers sometimes have to deal with families of different ethnic groups. A handicap experienced by some social workers, is that they fail to understand the language of the client and what various expressions and terms mean to him/her (Nash et al 1992:183; Proctor and Davis in Evalt 1996:104).

It could therefore be valuable to explore what influence different cultures have on the role and tasks of the family counsellor. Focus could also be placed on how the above mentioned affects the decision-making process of the family counsellor.

Recommendation: I would recommend that further research be conducted regarding the role of the family counsellor in a multicultural society and the effect it has on the decision-making process in custody evaluation.

5) One of the criteria mentioned in this study regarding the desirability or otherwise of keeping siblings together, could be a contentious issue. Van der Merwe (1990:46) stipulates different views of authors arguing for and against the desirability of keeping siblings together (page 44 of this study).

While the respondents view this criteria as important, it is not evident in most of the custody reports that were studied. If compared to the study conducted by Cumes et al (1987:128) of 14 criteria, the legal profession ranked this criteria as the fourth most important and the mental health professionals, as the fifth most important. However, in the study of Van der Merwe (1990:85), this criteria was only considered in 10 (20%) of the 50 cases studied.

Using a larger sample, further research could provide valuable and interesting information regarding the importance of using the criteria of keeping siblings together, in custody evaluations. Various examples of completed cases could be included in such a study.

Recommendation: It is recommended that further research be conducted on the view of family counsellors regarding the desirability or otherwise of keeping siblings together. Such a study could include a large sample of family counsellors and the studying of court documents and previous custody cases.

## 12. CONCLUDING COMMENT

This study has revealed that some family counsellors experience problems with the process of custody evaluations and that certain aspects regarding this process are not in line with some of the literature. During the discussions of the structure of the interviews, it also became evident that some of the family counsellors do not agree with the role of the family advocate during the interviews.

This study provided insight into which criteria are currently being used by some of the family counsellors. These criteria drawn from the interviews with the respondents and the study of the custody reports, could be compared to previous studies of the same nature. Although previous studies did not use the same methodology as utilized in this study, valuable conclusions could be made regarding the perceived value of these criteria from the social work perspective.

The criteria used by the respondents were compared with the contents of the custody reports. It was revealed that not all the criteria stated by the respondents are stipulated in the custody reports.

It is of concern that this study revealed that in spite of the fact that custody decision-making can be one of the most difficult and complicated tasks, limited training is provided for the

family counsellors. The need for regular training was expressed by the respondents. This could alleviate problems like prejudice by the family counsellor, which also received attention in this study.

This study has stimulated new ideas for further research. The specific role of the family counsellor and family advocate during interviews, as well as the role of the family counsellor in a multicultural society seem to be the most valuable future research areas.

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# APPENDICES

**APPENDIX 1**

**INTERVIEW SCHEDULE**

## INTERVIEW SCHEDULE

1. How many child custody evaluations have you conducted for the office of the family advocate?
2. How is the investigation carried out (reference to structure of interview; inclusion of other significant people; techniques used during the interviews; problems experienced during the investigation)? Comment on your view of the process of custody evaluation.
3. What criteria do you regard as important when doing a custody evaluation in terms of three areas: parents, child, and other circumstances? How do you conduct the assessment, with specific reference to questions asked and factors which will be taken in consideration?
4. The following criteria were set by judge King J in 1994 during a custody case, *McCall v McCall* 1994 3 SA 201 (C) 2041-J, in South Africa (1-13 on criteria sheet), as well as criteria which I regard as important (14-18 on criteria sheet). Rank the criteria as follows on the criteria sheet: *very important, important, not so important, not relevant*. Are there any of these criteria you would like to discuss?
5. How often do you receive training regarding the role of the family counsellor? What is your view on training for the family counsellor?
6. Discuss the importance of objectivity and factors which influence your objectivity as family counsellor.
7. Discuss the specific structure and your view of the custody reports submitted to the office of the family advocate.
8. Discuss the information which should be contained in the report (according to your opinion).

9. Discuss any problems you experience in compiling a report for the office of the family advocate.

**APPENDIX 2**  
**CRITERIA SHEET**

**CRITERIA SHEET**

| CRITERIA   | R E S P O N D E N T S |            |                  |              |
|--|-----------------------|------------|------------------|--------------|
|  | VERY IMPORTANT        | IMPORTANT  | NOT SO IMPORTANT | NOT RELEVANT |
| 1. The love, affection and other emotional ties which exist between the parent and child and the parent's compatibility with the child.  | 1, 2, 3, 4, 5         |            |                  |              |
| 2. The capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires.  | 2, 3, 4, 5            | 1          |                  |              |
| 3. The ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings.  | 1, 2, 3, 4, 5         |            |                  |              |
| 4. The capacity and disposition of the parent to give the child the guidance which he requires.  | 2, 3, 4               | 1, 5       |                  |              |
| 5. The ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs - generally speaking, the provision of economic security. | 3, 4                  | 1, 2, 5    |                  |              |
| 6. The ability of the parent to provide for the educational well-being and security of the child, both religious and secular.  | 3, 4                  | 1, 2, 5    |                  |              |
| 7. The ability of the parent to provide in the child's emotional, psychological, cultural and environmental development.   | 1, 2, 3, 4, 5         |            |                  |              |
| 8. The mental and physical health and moral fitness of the parent.   | 3                     | 1, 2, 4, 5 |                  |              |
| 9. The stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the status quo.  | 1, 3, 5               | 2, 4       |                  |              |
| 10. The desirability or otherwise of keeping siblings together.  | 2, 3, 4, 5            |            | 1                |              |
| 11. The child's preference.  | 5                     | 2, 3, 4    | 1                |              |
| 12. The desirability or otherwise of applying the doctrine of same sex matching.   | 3                     | 4, 5       | 2                | 1            |
| 13. Any other factor which is relevant to the particular case with which the court is concerned.   | 3                     | 1, 2, 4, 5 |                  |              |
| 14. The value of an adequate support system.   | 1, 2, 3, 4            | 5          |                  |              |
| 15. The child's primary caretaker.   | 2, 3, 4, 5            | 1          |                  |              |
| 16. Motivation (why the parent wants the child).   | 1, 2, 3, 5            | 4          |                  |              |
| 17. The recommendation and comments from other mental health professionals.  | 2, 3, 5               | 4          | 1                |              |
| 18. Keeping a young child with the mother.   |                       | 4, 5       | 2, 3             | 1            |

**APPENDIX 3**  
**CLASSIFICATION OF CRITERIA**

## **CLASSIFICATION OF CRITERIA**

### **1. THE LOVE, AFFECTION AND OTHER EMOTIONAL TIES WHICH EXIST BETWEEN THE PARENT AND CHILD**

|   | <b><u>RESPONDENT</u></b> |
|---|--------------------------|
| Parent's contact with child                   | 1, 2, 3, 4, 5            |
| Child's relationship with parents             | 1, 2, 3, 4, 5            |
| Parent's love for child                       | 3, 4, 5                  |
| Quality time spent with child                 | 3, 4, 5                  |
| Attachment between parent and child           | 3                        |
| Parent's affection towards child              | 3                        |
| The availability of the parent                | 5                        |
| How well parent knows child                   | 2                        |
| Acceptance of child                           | 3                        |
| Emotional attachment between parent and child | 3                        |
| Knowledge of child's friends                  | 4                        |
| Bond between parent and child                 | 4                        |

### **2. THE CAPABILITIES, CHARACTER AND TEMPERAMENT OF THE PARENT AND THE IMPACT THEREOF ON THE CHILD'S NEEDS AND DESIRES**

|                                     |         |
|-------------------------------------|---------|
| Stability of the parent             | 2, 4, 5 |
| Character/personality of the parent | 2, 4, 5 |
| Alcohol abuse by the parent         | 1, 2, 4 |
| Dagga or drug abuse by the parent   | 1, 2    |

**3. THE ABILITY OF THE PARENT TO COMMUNICATE WITH THE CHILD AND THE PARENT'S INSIGHT INTO, UNDERSTANDING OF AND SENSITIVITY TO THE CHILD'S FEELINGS**

|   |      |
|---|------|
| Parent's ability to give attention to the child | 3, 4 |
| Communication between parent and child          | 3, 4 |

**4. THE CAPACITY AND DISPOSITION OF THE PARENT TO GIVE THE CHILD THE GUIDANCE WHICH HE REQUIRES**

|  |            |
|--|------------|
| Parent's ability to give guidance to child | 1, 2, 3, 4 |
| Disciplining of the child                  | 2, 5       |

**5. THE ABILITY OF THE PARENT TO PROVIDE IN THE BASIC PHYSICAL NEEDS OF THE CHILD, THE SO-CALLED 'CREATURE COMFORTS', SUCH AS FOOD, CLOTHING, HOUSING AND THE OTHER MATERIAL NEEDS - GENERALLY SPEAKING THE PROVISION OF ECONOMIC SECURITY**

|   |               |
|---|---------------|
| Housing   | 1, 2, 3, 4, 5 |
| Employment  | 1, 2, 3, 4, 5 |
| Finances  | 1, 2, 3, 4, 5 |
| Physical care of the child                                | 1, 2, 3, 5    |
| Physical needs of the child                               | 1, 5          |
| Paying of maintenance                                     | 3             |
| Medical care of child                                     | 3             |
| Parent's ability to provide in the child's material needs | 3             |

**6. THE ABILITY OF THE PARENT TO PROVIDE  
FOR THE EDUCATIONAL WELL-BEING AND  
SECURITY OF THE CHILD, BOTH RELIGIOUS AND  
SECULAR**

|   |               |
|---|---------------|
| Parent's involvement in child's schooling                         | 1, 2, 3, 4, 5 |
| Child's adjustment at school                                      | 1, 2, 3, 4, 5 |
| Ability of the parent to provide in the child's religious needs   | 3, 4          |
| Child's progress at school  | 1, 2          |
| Parent's interest in the child's educational well-being           | 4, 5          |
| Ability of the parent to provide in the child's moral development | 3             |
| Parent's involvement with child's extra-mural activities          | 4             |
| Religion  | 3             |
| Schooling   | 3             |
| Ability of the parent to provide in the child's educational needs | 3             |
| Attendance of church  | 1             |

**7. THE ABILITY OF THE PARENT TO PROVIDE  
IN THE CHILD'S EMOTIONAL, PSYCHOLOGICAL,  
CULTURAL AND ENVIRONMENTAL DEVELOPMENT**

|   |            |
|---|------------|
| Stability and security of the child                             | 1, 2, 4, 5 |
| Indoctrination of child by parent                               | 2, 3, 4, 5 |
| Emotional care and support of child                             | 2, 3, 5    |
| Ability of the parent to provide in the child's emotional needs | 3, 5       |
| Stimulation of child  | 3          |
| Ability of the parent to provide in the child's social needs    | 3          |
| Social education of child                                       | 4          |
| Emotional security and stability of child                       | 1          |
| Do parents encourage normal childhood development               | 3          |

|  |   |
|--|---|
| Social development of child                                    | 5 |
| Emotional state of child                                       | 3 |
| Emotional abuse of child                                       | 3 |
| Child's behaviour and adjustment                               | 2 |
| Family's involvement in the community                          | 1 |
| Ability of the parent to provide in the child's cultural needs | 3 |
| Moral development of child                                     | 3 |
| Ability of the parent to provide security to the child         | 5 |
| Ability of the parent to provide stability to the child        | 5 |

**8. THE MENTAL AND PHYSICAL HEALTH AND MORAL FITNESS OF THE PARENT**

|                                     |               |
|-------------------------------------|---------------|
| Psychological fitness of the parent | 1, 2, 3, 4, 5 |
| Moral fitness of the parent         | 1, 2, 3       |
| Emotional stability of parent       | 2, 3, 5       |
| Physical health of the parent       | 1, 4          |
| Extra-marital affair by one parent  | 1, 4          |
| Gay relationship of parent          | 2, 3, 5       |
| Parent's value system               | 3             |

**9. THE STABILITY OR OTHERWISE OF THE CHILD'S EXISTING ENVIRONMENT, HAVING REGARD TO THE DESIRABILITY OF MAINTAINING THE *STATUS QUO***

|  |            |
|--|------------|
| Present circumstances of child                               | 1, 2, 4, 5 |
| Continuity of child's present circumstances, caring position | 3, 4, 5    |
| Less disruption of children                                  | 1, 3       |
| Alcohol abuse by grandparents where child stays              | 3          |
| Stable and secure environment for child                      | 3          |

|   |   |
|---|---|
| What change a move will bring to the child's life | 2 |
| Will the child be taken out of the environment    | 3 |

10. **THE DESIRABILITY OR OTHERWISE OF KEEPING SIBLINGS TOGETHER**

|                              |         |
|------------------------------|---------|
| Keeping siblings together    | 3, 4, 5 |
| Relationships among siblings | 3, 5    |
| Physical abuse by siblings   | 5       |

11. **THE CHILD'S PREFERENCE** 1, 2, 3, 4, 5

12. **THE DESIRABILITY OR OTHERWISE OF APPLYING THE DOCTRINE OF SAME SEX MATCHING** 1

13. **ANY OTHER FACTOR WHICH IS RELEVANT TO THE PARTICULAR CASE WITH WHICH THE COURT IS CONCERNED**

|  |         |
|--|---------|
| Physical abuse of wife by husband                            | 1, 4, 5 |
| Child's relationship with concubine/new partner of parent    | 3, 4, 5 |
| Sexual molestation of child by parent                        | 3       |
| Sexual molestation of child by stepbrothers                  | 2       |
| Physical abuse of child by parent                            | 3, 5    |
| Parent's involvement in a new relationship                   | 3       |
| Relationships between parents                                | 4       |
| Positive aspect about other parent (opinion of other parent) | 2       |
| Special circumstances of case                                | 2       |
| Involvement of extended family members                       | 3       |
| Communication between parents                                | 4       |

|   |   |
|---|---|
| Social life of parents                  | 4 |
| Parent stealing child from other parent | 3 |
| Neglect of child by parent              | 3 |
| Mother has an interdict against father  | 3 |
| Mother had an abortion                  | 4 |
| Parent's attitude towards access        | 3 |

#### **14. THE VALUE OF AN ADEQUATE SUPPORT SYSTEM**

|                           |               |
|---------------------------|---------------|
| Support system            | 1, 2, 3, 4, 5 |
| Alternative care of child | 1, 2, 3, 4    |

#### **15. THE CHILD'S PRIMARY CARETAKER**

|                                      |               |
|--------------------------------------|---------------|
| Primary caretaker                    | 1, 2, 3, 4, 5 |
| Parent's involvement in child's care | 2, 4, 5       |

#### **16. MOTIVATION (WHY PARENT WANTS THE CHILD)**

1, 2, 3, 4, 5

#### **17. THE RECOMMENDATION AND COMMENTS FROM OTHER MENTAL HEALTH PROFESSIONALS**

1, 2, 3, 4, 5

#### **18. KEEPING A YOUNG CHILD WITH THE MOTHER**

|                                       |            |
|---------------------------------------|------------|
| Keeping a young child with the mother | 1, 3, 4, 5 |
| Keeping a baby with the mother        | 2          |

## **APPENDIX 4**

**INFORMATION WHICH SHOULD BE  
CONTAINED IN THE CUSTODY REPORT  
(ACCORDING TO RESPONDENTS)**

## **INFORMATION WHICH SHOULD BE CONTAINED IN THE REPORT (ACCORDING TO RESPONDENTS)**

### **RESPONDENT 1**

- 1) Date of marriage
- 2) Children born from the marriage
- 3) Place where children presently reside
- 4) Reason why the parents want custody of the children
- 5) Relevant information regarding certain accusations will be covered, for example alcohol abuse, unemployment.
- 6) Financial position
- 7) Information regarding the children: information received from the teacher  
information received from the children
- 8) Any other important factor which has not been covered in the report
- 9) Evaluation
- 10) Recommendation

### **RESPONDENT 2**

- 1) Qualifications and years experience
- 2) How office of the family advocate became involved
- 3) Housing
- 4) Employment and work hours
- 5) Financial position
- 6) Motivation of parents to receive custody of the children
- 7) Accusations are discussed
- 8) Circumstances of children: age  
schooling
- 9) Parents' relationships with the children

- 10) Parents' care of the children
- 11) Evaluation
- 12) Recommendation

### **RESPONDENT 3**

- 1) Qualifications and years experience
- 2) Brief background about the marriage: why it has broken down  
how many children
- 3) Schooling of the child
- 4) Criteria mentioned during the interview
- 5) Comments of references
- 6) Evaluation and motivation regarding conclusion
- 7) Recommendation

### **RESPONDENT 4**

- 1) Date of marriage
- 2) Birth dates of children
- 3) Marriage - circumstances regarding marriage
- 4) Present circumstances of both parents
- 5) Circumstances of children: caring of children  
school circumstances
- 6) Conclusion
- 7) Recommendation

### **RESPONDENT 5**

- 1) Identifying details
- 2) Date of marriage

- 3) Date of separation
- 4) Child's present caring position and date of placement
- 5) Housing
- 6) Work circumstances and work hours
- 7) Primary caretaker
- 8) Other information that is necessary
- 9) Complete discussion of children: age  
school  
teachers  
behaviour at school  
progress at school
- 10) Parent's involvement with child's schooling activities
- 11) Relationships between children
- 12) Child's preference according to age
- 13) Evaluation (professional opinion)
- 14) Recommendation regarding custody and access

**APPENDIX 5**  
**MEDIATION IN CERTAIN DIVORCE**  
**MATTERS ACT**  
**24 OF 1987**

# **MEDIATION IN CERTAIN DIVORCE MATTERS ACT 24 OF 1987**

As amended by:

Mediation in Certain Divorce Matters Amendment Act, No, 121 of 1991

General Law Amendment Act, No. 139 of 1992

The Act provides for mediation in certain divorce proceedings, and in certain applications arising from such proceedings, in which minor or dependent children of the marriage are involved, in order to safeguard the interests of such children; and to amend the Divorce Act, 1979, in order to provide for the consideration by a court in certain circumstances of the report and recommendations of a Family Advocate before granting a decree of divorce or other relief and to make the provisions of section 12 (1) and (2) of the said Act applicable to an enquiry instituted in terms of this Act; and to provide for matters connected therewith (Bosman-Swanepoel et al 1998:121).

For the purpose of this study, the following sections and subsections of the Act are extracted from Bosman-Swanepoel et al (1998:121, 122, 123):

## **Section 2: Appointment of Family Advocates.**

- (1) The Minister may appoint one or more officers in the public service at each division of the High Court of South Africa to be styled the Family Advocate, to exercise the powers and perform the duties granted or assigned to a Family Advocate by or under this Act or any other law and the Minister, or any person authorized thereto in writing by him, may appoint one or more persons, whether or not they are officers in public service, at any such division to act as a Family Advocate or Family Advocates for the

duration of a specific divorce action or an application or for more than one such action.

### **Section 3: Appointment of Family Counsellors.**

- 1) Subject to the provisions of the section the Minister may appoint at each division of the High Court of South Africa one or more suitably qualified or experienced persons to be styled the Family Counsellor, to assist the Family Advocate with an enquiry referred to in section 4 (1).
- (2) A Family Counsellor shall hold office for a period of three years, or for such shorter periods as the Minister determines at the time of his appointment.
- (3) A Family Counsellor may resign by written notice to the Minister.
- (4) The Minister may at any time withdraw the appointment of a Family Counsellor if in his opinion there is sufficient reason for doing so.

### **Section 4: Powers and duties of Family Advocates.**

- (1) The Family Advocate shall -
  - (a) after the institution of a divorce action; or
  - (b) after an application has been lodged for the variation, rescission or suspension of an order with regard to the custody or guardianship of, or access to, a child, made in terms of the Divorce Act, 1979 (Act No. 70 of 1979),

if so requested by any party to such proceedings or the court concerned, institute an enquiry to enable him to furnish the court at the trial of such action or the hearing of such application with a report and recommendations on any matter concerning the

welfare of each minor or dependent child of the marriage concerned or regarding such matter as is referred to him by the court.

- (2) A Family Advocate may -
  - (a) after the institution of a divorce action; or
  - (b) after an application has been lodged for the variation, rescission or suspension of an order with regard to the custody, or guardianship of, or access to, a child, made in terms of the Divorce Act, 1979, if he deems it in the interest of any minor or dependent child of a marriage concerned, apply to the court concerned for an order authorizing him to institute an enquiry contemplated in subsection (1).
- (3) Any Family Advocate may, if he deems it in the interest of any minor or dependent child of a marriage concerned, and shall, if so requested by a court, appear at the trial of any divorce action or the hearing of any application referred to in subsections (1) (b) and (2) (b) and may adduce any available evidence relevant to the action or application and cross-examine witnesses giving evidence thereat.

#### **Section 5: Regulations**

- (1) The minister may make regulations as to -
  - (a) the procedure to be followed in relation to the institution of an enquiry referred to in section 4, and the manner in which the report and recommendations mentioned in that section shall be produced in court;
  - (b) the conditions of service of a Family Counsellor;
  - (d) the appointment by a Family Advocate or a Family Counsellor of a person or persons

to assist him with an enquiry referred to in section 4 and the payment by the State of remuneration to such person or persons.

**APPENDIX 6**  
**NATURAL FATHERS OF CHILDREN**  
**BORN OUT OF WEDLOCK ACT**  
**86 OF 1997**

## **NATURAL FATHERS BORN OUT OF WEDLOCK ACT 86 OF 1997**

The Act makes provision for the possibility of access to and custody and guardianship of children born out of wedlock by their natural fathers; to provide for the limitation on the publishing of certain particulars of certain applications and enquiries; to provide for the notification of natural fathers of any intended adoption of their children born out of wedlock; to amend the Mediation in Certain Divorce Matters Act, 1987, so as to effect certain consequential amendments; and to amend the Births and Deaths Registration Act, 1992, so as to further regulate the alteration of the surname of certain minors; and to provide for matters connected therewith (Bosman-Swanepoel et al 1998:109).

For the purpose of this study, the following sections and subsections of the Act are extracted from Bosman-Swanepoel et al (1998:109-114):

### **Section 2: Access to and custody and guardianship of children born out of wedlock by natural fathers.**

- (1) A court may on application by the natural father of a child born out of wedlock make an order granting the natural father access rights to or custody or guardianship of the child on the conditions determined by the court.
- (2) A application referred to in subsection (1) shall not be granted -
  - (a) unless the court is satisfied that it is in the best interests of the child; and
  - (b) until the court, if an enquiry is instituted by the Family Advocate in terms of section 3, has considered the report and recommendations referred to in that section.

- (3) For the purposes of subsection (2) the court may cause any investigation which it may deem necessary, to be carried out and may order any person to appear before it, and may order the parties or any one of them to pay the costs of the investigation and appearance.
- (4) If it appears to a court in the course of any proceedings in respect of an application referred to in subsection (1) that an application for an order of adoption of the child concerned has been made in terms of the Child Care Act, 1983 (Act No. 74 of 1983), the court -
- (a) shall request the Family Advocate to furnish it with a report and recommendations as contemplated in section 3; and
  - (b) may suspend the proceedings in respect of the application referred to in subsection (1) on such conditions as it may deem appropriate.

**Section 3: Powers and duties of the Family Advocate.**

- (1) The Family Advocate shall, after an application has been lodged for -
- (a) an order granting access rights to or custody or guardianship of a child born out of wedlock under section 2; or
  - (b) the variation, rescission or suspension of such order,
- if so requested by any party to such proceedings or the court concerned, institute an enquiry to enable him or her to furnish the court at the hearing of such application with a report and recommendations on any matter concerning the welfare of the child concerned or regarding any such matter as is referred to him or her by the court.
- (2) The Family Advocate may, after any application referred to in subsection (1) has been lodged, if he or she deems it in the interests of the child concerned, apply to the court

concerned for an order authorizing him or her to institute an enquiry referred to in that subsection.

- (3) The Family Advocate may, if he or she deems it in the interests of the child concerned, and shall, if so requested by a court, appear at the hearing of any application referred to in subsections (1) and (2) and may adduce any available evidence relevant to the application and cross-examine witnesses giving evidence thereat.

**Section 4: Rescission, suspension or variation of orders.**

- (1) An order in regard to access rights to or custody or guardianship of a child born out of wedlock made under this Act, may at any time on application be rescinded or varied or, in case of an order in regard to access rights to such child, be suspended by a court if the court finds that there is sufficient reason therefore. Provided that if any enquiry is instituted by the Family Advocate in terms of section 3, and unless the court is of the opinion that the best interests of the child otherwise requires, such an order in regard to access rights to or custody or guardianship of such child shall not be rescinded or varied or, in the case of an order in regard to access rights to such child, not be suspended before the report and recommendations referred to in that section have been considered by the court.

**Section 7: Transitional provision.**

The regulations made under section 5 of the Mediation in Certain Divorce Matters Act, 1987, as they existed immediately before the commencement of this Act, shall, until amended by virtue of section 9 of this Act, also be applicable, with the necessary changes, in respect of enquiries by the Family Advocate in terms of this Act.

**Section 8: Amendment of section 3 of Act 24 of 1987.**

Section 3 of the mediation in Certain Divorce Matters Act, 1987, is hereby amended by the subsection (1) of the following subsection:

“(1) Subject to the provisions of the section the Minister may appoint at each division of the Supreme Court of South Africa one or more suitable qualified or experienced persons to be styled the Family Counsellor, to assist the Family Advocate with an enquiry in terms of any applicable law.”

**Section 9: Amendment of section 5 of Act 24 of 1987.**

Section 5 of the Mediation in Certain Divorce Matters Act, 1987, is hereby amended -

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) the procedure to be followed in relation to the institution of an enquiry by a Family Advocate in terms of any applicable law, and the manner in which the report and recommendations emanating from such enquiry shall be produced in court; and

- (b) by the substitution for paragraphs (c) and (d) of subsection (1) of the following paragraphs, respectively:

“(c) the payment by the State of remuneration and allowances to a Family Advocate appointed under section 2 (1) to act in a specific divorce action or an application in terms of any applicable law or in more than one such action or application and a Family Counsellor, for services rendered, the determination of criteria for the payment of such remuneration and allowances, the manner of calculation of such remuneration and allowances and the recovery thereof by the State from a party or parties to such action or application by means of an order as to costs by the court;

(d) the appointment by a Family Advocate or a Family Counsellor of a person or persons to assist him or her with an enquiry referred to in paragraph (a) and the payment by the State of remuneration to such person or persons.”

**APPENDIX 7**  
**INTERVIEW WITH RESPONDENT 3**

### INTERVIEW WITH RESPONDENT 3

11 June 1999

**RESEARCHER:** I am talking to respondent number 3. There are no right or wrong answers. If you do talk about cases or clients, you must not mention their names. You can look at my conclusions and my thesis any time you want to.

The first question I want to ask is more or less how many custody evaluations have you done for the family advocate's office?

**RESPONDENT:** For the current year, I have completed 3. As part of my practical in 1996, I did 2. So that is 5.

**RESEARCHER:** How is your investigation carried out? Now, I am going to talk about the structure of your interviews. How does it work?

**RESPONDENT:** From the initial interview?

**RESEARCHER:** Yes.

**RESPONDENT:** Initially, the interview is mostly conducted by the family advocate. She usually structures it in the manner that she sees the parties individually. After the conclusion of the initial interview, I proceed further with the investigation.

**RESEARCHER:** Do you sit with her during the first interview?

**RESPONDENT:** Mostly observing and taking notes. If I feel I am going to need information on certain aspects, I will then ask for further information regarding that.

**RESEARCHER:** How many interviews do you usually have with the people?

**RESPONDENT:** A lot. I have an open door policy. So, if the partners feel they would like to discuss an issue, they are free to contact me telephonically or to arrange a follow-up interview.

**RESEARCHER:** So there is no specific amount of interviews that you have? Is there a norm or can you generalize?

**RESPONDENT:** It depends on the conflict level of the parties. The higher the conflict level, the more focused the investigation.

**RESEARCHER:** In other words, the family advocate is only there for the first interview and then you carry on with the rest of the interviews?

**RESPONDENT:** Yes.

**RESEARCHER:** Do you have the interviews in your office or home visits?

**RESPONDENT:** It is a combination of both. We certainly go and look at the home to see if it is conducive to child rearing, and if the children will be comfortable in that environment. The interviews take mostly place in the office.

**RESEARCHER:** How do you feel about home visits?

**RESPONDENT:** To me it is essential that we get that information as it forms part of the report - the final report which is submitted. I do not have a problem with that.

**RESEARCHER:** Are there times that you do not do home visits in certain cases?

**RESPONDENT:** Yes, one case that I know of.

**RESEARCHER:** In those cases, why not? What would be the criteria that you would look at?

**RESPONDENT:** Maybe the other party has already informed me that the living conditions are suitable, and that they do not have a problem with that.

**RESEARCHER:** So, when there is no dispute about that, you feel it is not necessary?

**RESPONDENT:** Yes.

**RESEARCHER:** Do you include any family members or friends or anybody with your initial interviews or you interviews with your parties?

**RESPONDENT:** With the very first interview, it is just the parties and the children, if they are old enough, we talk to them. We have never really called in family or friends at that point. As the investigation progresses, they are the main resources that we consult - teachers, religious leaders, doctors who are familiar with the parties and the children.

**RESEARCHER:** So you consult them, but they will not be part of the interviews with the parties?

**RESPONDENT:** No.

**RESEARCHER:** Now, you said if the children are old enough. What age would you normally say they would be old enough?

**RESPONDENT:** I found that with one case where the child was involved, the little girl was eight years old. She could provide information, but she could not motivate it

on a deeper level. So eight years old is a bit young. But your ten year old can usually give you a clear indication what they feel is in their best interest.

**RESEARCHER:** Do you use specific techniques when you do the interviews - let's look at the parents first. Are there any other techniques, other than your normal social work techniques, that you use with your custody evaluation when you interview the parents.

**RESPONDENT:** That is one of the problems I have with these investigations. I am not enrolled as a counsellor. So, I found it very difficult to stick to interviews where your only aim is to get the facts. So, you cannot really apply the techniques. I consider myself as having a wealth of experience working with children, working in crisis situations. I cannot implement that, because it is not my role in the investigation. So, primarily, the only thing I am interested in, is getting facts, regarding the children, their housing and everything else.

**RESEARCHER:** What type of procedure do you follow when you interview the children?

**RESPONDENT:** I try at all times to have the interview in a non-threatening manner - if it is possible at all. Usually I try to reach them at the environment where they can feel relaxed. In one case I actually took the child to the Queens Park Zoo. At our offices, we made a child friendly room where the child can play.

**RESEARCHER:** So you do make use of play?

**RESPONDENT:** I had some training in play therapy, at a very basic level I use those skills when I interview younger children.

**RESEARCHER:** And the older children?

**RESPONDENT:** With the older children I found that they are often relieved that they get a say in the whole matter. It is very confusing for the children, because you find that the parents are not very open about the whole process and what it entails. So, I often find that children are relieved that at least through the interviews know what is going on and what role I will be playing. So, they are often relieved that they are involved in the process. You can get a clear indication from them about what is happening in the family home, what is happening while this legal process is continuing. That type of thing you can pick up easily with them. With older children you try to get on to their level. Fortunately I am still quite young and it is easy for me to built up a report with young older children, teenagers, they can relate quite comfortably.

**RESEARCHER:** So what you are saying to me, is that you will go and see them at home if it is going to be better for them. So, it is not just the office interview.

**RESPONDENT:** Yes.

**RESEARCHER:** Now this is the structure that you and the family advocate use. Do you have any problems with that specific structure?

**RESPONDENT:** I often feel that it is a very cold process en it does nothing to alleviate the feelings which the parties feel. I have experienced some of the family advocates to be very harsh, if I could use that word. I do not feel that they are sensitive to people's needs and emotions. It really puts me off as a social worker to work like that and not be able to control it. I feel that divorce is traumatic, and they need to take the consequence of that when they interview the parties. I have also sometimes experience that they can be biased. Underlined things, the manner in which they speak to the people also puts me off. I feel that this is a sensitive matter and it must be treated dually. They can think of all those emotions, feelings and attitudes people have.

**RESEARCHER:** What would you then recommend. What would be the best way to structure the interviews?

**RESPONDENT:** I feel that the advocates involved should certainly receive some training in social work skills, communicating with clients. I think ultimately it will give us the opportunity to make better recommendations, having taken into account what the people really feel. The more sensitive you are, the better the co-operation I get.

**RESEARCHER:** The next question is the criteria that you use when you do your investigation. What is important to you and what do you look at? Let's look at the parents first when you do your investigation. What sort of criteria will you look at when you do your assessment? What factors will be important to you?

**RESPONDENT:** My whole investigation focuses on what will be in the best interest of the children. I structure my interviews in such a way that both parties are aware that is going to be my role. I am not there to be used as a pawn in power struggles which they are in to. I remind them throughout the process. Ultimately, my only interest is what is in the best interest of the children. In order to determine that I would look at schooling, moral development, extra mural activities, that type of thing. Housing aspects, do the children get adequate medical treatment - is provision made for that, how much time is spent together with the children. I would look at access arrangements as they are currently in place. Are they suitable, does it give the non-custodian parent enough opportunity to maintain contact with the child. Those are the important things which forms the basis of my report.

**RESEARCHER:** You have mentioned a few. I am going back to the first one, schooling. When you do your assessment, what would you look at?

**RESPONDENT:** I would see who is the parent who is most involved in schooling. So you attend meetings at the school, how involved are you with the whole educational process. I would speak to the teachers to determine who is the parent most involved. If both the parents are involved, what mechanism of communication is placed between the teacher and the parent regarding the progress of that child in that particular school.

I also look at things like, say for instance the child is with the mother, does the father continue to make payments in terms of schooling and all the other fundraising things which are usually associated with when going to school.

**RESEARCHER:** Then moral development. What type of things would you look at there.

**RESPONDENT:** We look at the parent's value system. We look at abuse, whether the child is exposed to any physical or emotional abuse. Whether they witnessed something like that, sexual abuse. We look at which parent is most fit to provide the child with moral development and training in terms of molding that child with a good value system. The contribution of both parents in that respect.

**RESEARCHER:** What type of questions would you ask a parent when you look at that?

**RESPONDENT:** We look across the board at religion, sexuality in the cases of young children. Who taught you about sexuality? Has anybody spoken to you? What is your relationship with your parents regarding discussing personal issues, dating etc. Friendships - what interest does the parent take in the types of interest that the children form. Do they associate with a good positive peer group and the input that the friends have in moral development as well. We look at television programmes, do they allow the children to watch anything they want to. Just

to see if the child is receiving adequate guidance in terms of moral development.

**RESEARCHER:** You have mentioned something about communication in one of the criteria you mentioned earlier on. Would you say that communication is also a criteria that you use?

**RESPONDENT:** It is inherent in all the criteria. It is very important to determine what type of communication exists. Who does the children feel more close to in terms of discussing serious issues.

**RESEARCHER:** And guidance. It could also be a criteria. Would you use it the same as communication?

**RESPONDENT:** Yes.

**RESEARCHER:** So it falls in with the rest?

**RESPONDENT:** Yes.

**RESEARCHER:** The extra mural activities - what type of activities, and what would you look at there?

**RESPONDENT:** I will see that the parents are encouraging normal childhood development. I think involvement in extra mural activities is a good way to pick that up. Do they attend musicals, are they involved in art perhaps, choirs, sporting activities etc. I feel that if the parent gets custody that they focus on that aspect of the child's development as well.

**RESEARCHER:** Housing - what factors are important when you assess the housing?

**RESPONDENT:** We do not want to see the child in a mansion. We certainly want their basic needs to be met. They must be warm, they must be able to get their basic food, hygiene should be taken care of, that sort of thing. So nothing fancy, but we just want to be certain that the basics are in place.

**RESEARCHER:** Medical?

**RESPONDENT:** We want to assure that the parents would provide the child with medical attention when the child acquires it. Do the children go to the clinic for their vaccinations. Who is the parent who dealt with that? Who is the parent who will have the child's hearing tested if it is obvious that the child has some problems. In one investigation we discovered through talks with the teacher that the child had a speech problem. We waited to see which parent would take the initiative to arrange an appointment with a speech therapist etc.

**RESEARCHER:** Then you also mentioned the time spent together.

**RESPONDENT:** I think that is very important. Once couples decide to separate, there is a lot of feelings of resentment, anger and animosity. The child are inevitably drawn into that negative situation. We feel that despite the separation, each parent should be allocated sufficient time to spend with the children. We look at what is already in place. Can we change it while we are busy with the investigation. So that the children will have equal access to both parents as they are accustomed to in a normal family situation.

**RESEARCHER:** When you mentioned time spent, do you look at previously, before they decided to divorce, which parent spent the most time with them. Is that an important criteria?

**RESPONDENT:** Yes, the entire investigation we look at what was happening previously, what is happening now, and what will happen in the future.

**RESEARCHER:** With the access arrangements?

**RESPONDENT:** That could be a very contentious issue. Parents feel that the children should not see the other party and you try to intervene, because it is in the best interest of the child to maintain contact with both parties. We had one situation where the other party refused that the other party sees the child. We had to make an arrangement, even under the supervision of a third person, allow him to have access to that child.

**RESEARCHER:** When you look at the access and how it is presently while you are doing your investigation, how will that influence your decision or recommendation?

**RESPONDENT:** When you consult the literature, it is common knowledge that children should see both parents. I feel that a good starting point is while you are busy with your investigation, to put that in place. So, when we make our recommendation we pick up what type of problems there were regarding access. Then to advise the parents appropriately how to structure access. Often you find there are problems because the access is not structured. We pick that up as the investigation goes along. By the time that the final divorce order is made, we have structured access in place. We often find that they come back. The one case I had, they wanted access to be "wysig" (changed), because the father was having problems with the access arrangements of the initial investigation. The whole investigation was then around access. Why was it not working as it should have? How can we make it better? You feel that it does affect the child if you do not have structured access. The children are sometimes very young when the parents are separated or divorced. So they

do not know the other party and access is the only way to know the other party.

**RESEARCHER:** I just want to go back to the moral development of the child. I want to ask you and give you an example: say you work with a homosexual parent, but both apply for custody. What will be important when you do that investigation?

**RESPONDENT:** What will be important is that the child is not necessarily exposed to the homosexual relationship. I personally do not have problems with homosexuals and their sexual preferences. As long as that does not reflect on the child. The child should be given the option to explore his own sexuality in what ever manner the child feels necessary. I feel it is the homosexual parent's duty to expose the child to what is the norm in addition to that of a homosexual relationship. If the child is not threatened by that relationship, if the child is comfortable with that relationship, it should not necessarily make that parent not suitable as a custodian parent.

**RESEARCHER:** We are going to talk about the child now. If there are any other criteria regarding the parents that you can remember, you can mention it. When you look at the child, what sort of criteria are important to you?

**RESPONDENT:** I need to see that the child receives nurturing. You will often find that one parent would be the nurturer. I want to see that the child is loved and accepted, emotional support. I would look at affect emotions, I would look at the issues regarding that. I would look at their development and who plays a dominant role in that. On top of that I will look at issues such as hygiene and if the child has access to medical treatment. We will look at if this child is experiencing difficulty at school and what has been done regarding those difficulties. We will look if the child requires the intervention of a social

worker. The trauma is often so much that the children requires counselling. We will then normally refer them to the appropriate persons if that is required. So, it is comprehensive, to look at the child holistically - development in terms of every aspect. We had one situation where the one parent was a Moslem and the other parent was a Hindu. We looked at the religion, what was happening prior to the separation and divorce. What will happen afterwards. What were the children accustomed to while they were in the family unit. How has that changed since the separation and divorce?

**RESEARCHER:** Let's look at the nurturing. What type of things are important there?

**RESPONDENT:** In the smaller child obviously the mother plays a big role in cases where the child has to be breast feed. We want to look at imperentice that can take place, it does not mean to be the mother. We have had situations where the father was most suited to that duty or task.

**RESEARCHER:** The love and acceptance and emotional support?

**RESPONDENT:** You often find that there were questions about the child's paternity, that type of thing. We look at what is the motive for disputing the custody. Is it to get back at the other party or do you genuinely have emotions, or the love and acceptance for that child.

**RESEARCHER:** That is a criteria that you can use on you own. In other words their motivation for applying for custody.

Let's get back to the love and acceptance. Is that what you mean with emotional support?

**RESPONDENT:** Yes. Who provides the child with emotional support? Childhood is a face of

development of new things, adventures, new feelings, overwhelming face in a child's life. We feel that acceptance and love forms part of that process.

**RESEARCHER:** Stimulation and development that you mentioned?

**RESPONDENT:** That is also part of the child as a whole. Who spends time with the child in doing homework? Who teaches the child new skills, etc. Who is the parent most likely to take the child on educational outings to the zoo, to the aquarium, to the ballet, what ever.

**RESEARCHER:** You have mentioned the hygiene?

**RESPONDENT:** It is very basic. The hygiene is one factor where you can immediately pick up symptoms of neglect or abuse. So, that is very important

**RESEARCHER:** So when you look at the hygiene, where would you get information regarding that.

**RESPONDENT:** The references, people, friends, family members, the child itself and from general appearance. Does the child look sloppy, is the child neatly dressed.

**RESEARCHER:** You also mentioned difficulty at school, but I think we spoke about it previously, about the teachers.

**RESPONDENT:** We look at the child in the educational context. We try to pick up all the problems which are occurring in that context. So, anything related to school. What problems do the child experience. How does the child interact with other children? Does the child speak about the parents, does the child speak about the divorce, what change is taking place, that type of thing. The teacher is usually a very important reference because she spends such a lot of time with

the child. Often you find that they are aware of the whole process, because one of the parties have come and said this will be a difficult period in the child's life, I am going through a divorce where custody is being disputed. So, they form an important part of the investigation as well.

**RESEARCHER:** Earlier on during the interview we spoke about interviewing the child. You said when he tells you about his feelings. What is your view on the child giving you a preference of which parent he wants to stay with?

**RESPONDENT:** I really do not think it is fair to the child, because they are often torn between two parents. I feel to assist me with my final recommendation, it is important to gauge at least who they have preference to. There is no point in putting the child with someone whom he cannot get along with and who he has no relationship with. The child will just be miserable and it will ultimately come back to the office for reinvestigation. So it is not very important. You do not place pressure on them regarding that, but it does give us an indication of who would be most suitable.

**RESEARCHER:** If a child comes into your office and you start interviewing him and he starts telling you: I want to stay with my mommy or I want to stay with my daddy. What is your reaction after that? How do you handle that?

**RESPONDENT:** I try to determine what is the motivation for that. I try to look at the reason why the other party is being rejected. Why? Often it is just a general need to be with the one parent instead of the other. I had a little girl who was adamant that she wanted to remain with her father. That party actually wanted to separate the children. I did not feel very happy, but there was no proof that anything negative was going on with the child. She was just generally more attached to her father. We could not foresee a situation where the children would be separated. We did not feel it was in their best interest. So we

overwrote the child's preference, because we felt she needed to be with her other siblings and her mother. She would still be able to maintain contact with her father through structured access. In retrospect I have now discovered that in spite of my recommendation the child did end up with the father.

**RESEARCHER:** In other words, you look at that, but it is not so important and will not influence your decision dramatically?

**RESPONDENT:** We try to take their preference into account. We tell the children how we have come to our conclusion in who would be the best parent and why. So they are aware. I explain to them that they are the most important part of this investigation and I feel I have to be up front with the children. I try at all times to tell them what motivate me to make decisions. They are aware that the High Court will protect their interests. So, they also know that the final say does not lie with me or with the family advocate and that there is a higher person who will still look after their best interests.

**RESEARCHER:** Any other type of criteria with regards to other circumstances, except for the child and the parents we looked at, that you can think of in your investigation. Criteria that you will look at.

**RESPONDENT:** We look if there is a relationship - if either party is involved in a new relationship. That is very important, because that person will become part of that family unit. They will also play an important role in the upbringing of that child. It is part of the investigation.

**RESEARCHER:** What will you then look at?

**RESPONDENT:** We look at the child and that person, what is the relationship? What is the

communication pattern, how involved is that person, how committed is that person with future involvement in assisting the custodian parent with the child's development. We look at the relationship between that person and the other party. Will they at least be able to call a truce, will they both do what is in the best interest of the children. We have no control of alleviating the problems with stepparents, but we can look at the issues which might be problematic afterwards and make the parents aware of that. So that they can continue to focus on anything that was identified.

**RESEARCHER:** Any other circumstances?

**RESPONDENT:** We look at the involvement with other extended family members, like grandparents, uncles and aunts. How committed would the custodian parent be to encourage that involvement with other family members. Often you find that one party did not like his mother-in-law or father-in-law, so now divorce is a good way in getting back at that person. You will not see my child again etc. So that is also important and you will look at that.

**RESEARCHER:** Anything else you can think of?

**RESPONDENT:** No.

**RESEARCHER:** If you do, then you can mention it later.

**RESPONDENT:** We also look at will they be taken out of the environment. Often people want to move. That is also something I look at. The custodian parent - will he move to another town? What arrangements were made for schooling etc. Will they be moving to another country? I had one case where it was alleged that one party would immigrate, and it was very important to me to know that the

other parent would still be enjoying access. What will be the financial arrangement regarding holidays.

**RESEARCHER:** I do not know if you agree with me, but that could also relate to the continuity of the child. How do you feel about that?

**RESPONDENT:** I feel that the divorce should be the least disruptive to the child. So that they do not have adjustment difficulties. I motivate in my reports sometimes - you would probably pick it up as you go through those requested reports. Development plays a role, alternative care, permanence as a family unit must be maintained.

**RESEARCHER:** If you look at continuity and you look at the two parents, you have mentioned how disruptive it could be for the child, would continuity then influence your decision - to make it the least disruptive.

**RESPONDENT:** Yes, certainly.

**RESEARCHER:** Alternative care that you mentioned?

**RESPONDENT:** Most of the parents are working these days. What is in place when they are absent. Is the child in after-school care, is the child under the supervision of an adult. That is also very important to know.

**RESEARCHER:** Are you aware of McCall vs McCall, that case of 1994?

**RESPONDENT:** I read the case, but I read so many other things. Will you recap, but I have certainly read that case.

**RESEARCHER:** I have written all those criteria on a form from number 1 to number 13 and

then 14 to 18 are just other criteria that I thought was important. I want you to look at the criteria, I have mentioned on the list that it could be very important, import, not so important, not relevant. You must mark each criteria for me if it is very important, important, not so important, not relevant. After you have completed that, have a look if you want to discuss any of these. If you feel you want to mention something about it, we can do that.

Now you have completed the form for me. Are there any of these that you want to discuss?

**RESPONDENT:** Just number 18 - keeping a young child with the mother. That is not so important to me. We look at the tender years principle. But we feel that the father can provide the child with that just as well. So, we look at the emotional attachment of the child, certainly we look at it, but if the father is more fit to take care of the young child, we will then place the child with that parent.

**RESEARCHER:** Now we have discussed all the criteria. The next question - only about four questions left - how often do you receive training regarding the role of the family counsellor?

**RESPONDENT:** I did the legal social work module at Rhodes University as part of my Masters. So I had intensive training in that year - divorce counselling. I did the advance counselling course as well. I have worked with families, I have worked with couples, I have worked with children. I am continuously making myself available for further training. Since I have started at the Department of Welfare, I have had no formal training which was initiated by them.

**RESEARCHER:** How do you feel about that? What is your view on that?

**RESPONDENT:** I feel that is when you can really see the gap between social work and the law. They obviously do not see that as a need. We would prefer continuous support, continuous training. So that we would be able to deliver better quality service.

**RESEARCHER:** What type of training and how would it be structured?

**RESPONDENT:** I think we need to go to continued refresher courses regarding interviews, dealing with children, how to handle conflict, communication, all the basic things you need to get the required information. The child, you need to be clued up with children's development, you need to continuously read everything that is new and available concerning custody and access. I feel it is your responsibility to keep up with the latest developments. To look at cases - a lot of cases receive media attention. I feel it is important that you keep updated with the acts and the amendments, because certain things do not work. It is important for policy changes providing input. We have not had a situation in East London where we had a custody and access dispute for unmarried parents, because I know of the adoption matters amendment act. One day we will probably get a request about that to do an investigation of that nature. So I feel it is important as a family counsellor to keep up to date with what is relevant in that field.

**RESEARCHER:** You mentioned about refresher courses. Do you feel that it must be in conjunction with the family advocate?

**RESPONDENT:** Not necessarily, it can be part of the office inservice training. We are fortunate at this office that we have to provide in our inservice training needs and then we try to get experts to speak to us about certain things. Last year we had a whole seminar typed-talked thing about divorce and mediation. So, even if people are not family counsellors, they are aware of what we are busy doing.

**RESEARCHER:** You mentioned about problems in the beginning, not problems, but needs I would rather say, during your interviews and where the family advocates are different from your interviewing skills. How would you address that in training? Would you not say it will be better to have a combined workshop if I can use that as an example. How could you address that?

**RESPONDENT:** At the moment we are quite free to tell the family advocate that we do not like the manner the whole interview progressed. Often they are quite open, but they think in a legal manner. The legal manner is: give me the facts, all I need from you is the facts, I do not care about the feelings. Definitely, we would need some combined training on how to deal with the parties as well as the children.

**RESEARCHER:** What is the importance of objectiveness and factors that influence your objectiveness as a family counsellor?

**RESPONDENT:** I personally strive to be as objective as possible, but you become in these people's everyday life's. You get caught into that if you do not guard continuously. We are also human beings with personality clashes. You find the situation where you just cannot get along with one party. I feel that it is important to discuss that in supervision. I have had in the past on numerous occasions where I contacted the family advocate, discuss the issues so that it does not become an important or destructive issue in the whole investigation. Ultimately, it is not about my wishes, as I said the most important thing is what is in the best interest of the child. Thus far I have been able to remain as objective as I should be.

**RESEARCHER:** So what you are saying is that you keep that in mind all the time and it helps you to keep your objectiveness?

**RESPONDENT:** Yes, definitely. Because you do get caught up. You get caught up in the

power struggles, they are terrible things, allegations are running back and forth, one party would say you favour this one. Rumours are spread that one party have taken you out for lunch or something, and that is why you inclined to be on his or her side. It happens, it is frustrating.

On one occasion I actually stopped the investigation, because I felt I was not getting the co-operation from the parties. They were involving the child in the power struggle which was obvious and apparent. They were involving me in their power struggle. I just felt that we were not going anywhere, and unless the attitudes of the parties changed I was not prepared to continue with the investigation. So, we got the attorneys to intervene, and after having discussed it with the parties, I discussed it with the family advocate and then we proceeded to finalize that investigation.

It was a terrible phase in my life, because it was a terrible dispute with serious allegations flying back and forth. I suppose it was inevitable that they would draw me into it. In retrospect I did not handle the situation well, because I took some of the things personally. But with the support of the family advocate and the support from other family counsellors, I could deal with that issue. That was the important thing, that when I identified weaknesses in myself, I could deal with that issue, so that it does not effect this investigation.

**RESEARCHER:** You mentioned that if you do feel biased, you can discuss it in supervision, which is very important.

**RESPONDENT:** Yes.

**RESEARCHER:** Discuss the structure of the reports, what it should look like.

**RESPONDENT:** They have a format, but I do not particularly stick to a format. I found that in

the first section I would state my qualifications and experience. Then I would give a brief background about the marriage, why it has broken down, how many children are born from that marriage. Then I would look at certain things such as schooling of the child, all those criteria I mentioned.

**RESEARCHER:** So you will put the criteria in?

**RESPONDENT:** Yes, it comes through. I feel strongly that references requires a special section. I would mention that reference's comments. Then I usually evaluate the whole situation and motivate as to what my ultimate conclusion is - why I have come to that conclusion before making the final recommendation.

**RESEARCHER:** So you use your own format. You are saying to me that you do not have to use any specific format for the family advocate.

**RESPONDENT:** No, not necessarily. I do not use headings, for instance the subsection is number one, and then I may discuss the parents' physical or mental aspects. Under two, I would discuss allegations of abuse maybe. So, for each report it is different as priority things occur.

**RESEARCHER:** What happens after you have completed your report?

**RESPONDENT:** I usually type my report and forward a copy to the family advocate's office. She is in continuous contact with me, so she knows what progress there is regarding the investigation. She knows of any problems, if I have difficulty coming to a conclusion in order to make the recommendation, we discuss that. So, by the time that she does receive the report, she knows exactly what my recommendation would be. We discuss that. We have had disputes where she felt I did not motivate why I felt that that recommendation was the best recommendation. Because she uses my report to compile her final report.

**RESEARCHER:** Has she ever changed anything in your report?

**RESPONDENT:** Not without my permission.

**RESEARCHER:** I do you feel about that?

**RESPONDENT:** I do not have a problem at all, I prefer that. She obviously has more experience concerning the legal aspects. She usually assists with references in past cases. So, it really does not bother me.

**RESEARCHER:** Do you have any problems with the report? Any problems you can now think of that you experience with report writing?

**RESPONDENT:** Actually no, Petro. As I said I had intensive training. Report writing is one of the skills I have, I am very good at it. I am at all times able to bring into my work the necessary and relevant literature to support my decisions and my comments. So, I personally do not have a problem with report writing.

**RESEARCHER:** One of the questions I wanted to ask you is what you think should be contained in the report, but I think you have mentioned what you use in the report and obviously that is your view.

Something I forgot to ask you, is when you do contact references, how do you contact them? Is it office or telephonic interviews?

**RESPONDENT:** It is a combination of both.

**RESEARCHER:** Or home visits?

**RESPONDENT:** It is a combination of office interviews and telephonic conversations and

usually in the second part of the report you would say I had interviews with this person and telephonic contact with this person, I received a report from that person. So, when the family advocate gets my report, knows exactly who I spoke to, in what manner, how did I go about it.

**RESEARCHER:** When would you have office interviews with references rather than telephone interviews?

**RESPONDENT:** When they do not have telephones.

**RESEARCHER:** Are there any other criteria that you use when you distinguish?

**RESPONDENT:** When you suspect that the child is abused, that is something that you do not discuss over the telephone.

**RESEARCHER:** So, the more sensitive topics?

**RESPONDENT:** Yes, rather face to face interviews.

**RESEARCHER:** Is there anything else you can think of custody evaluations for the family advocate's office that you want to mention? Any problems or any positive things?

**RESPONDENT:** It is a very good service. Personally I would favour a situation of mediation without the family advocate, where couples can work through the process together in an adult and mature manner, where they can be referred to other sources if they need to be. So, that they can work together and come to an agreement. I would love to see that in practice happening.

**RESEARCHER:** Do you think that could be all couples - all parties who apply for custody and control?

**RESPONDENT:** I feel most of the parties have the potential to come to an agreement of their own accord. If they could just work through the baggage, the feelings of resentment. One must realize that these couples have been friends once, and they can achieve that once more.

**RESEARCHER:** There was something that actually attracted them together.

**RESPONDENT:** So, I feel strongly that if they could work through the associated feelings, they can meet each other half way to do what is in the best interest of the child. That they do not really need to fight, because of all the hassles it causes and makes the process more traumatic for each other. I have had some very smooth and free-sailing investigations. That was because those couples were mature and handled it in a mature manner.

**RESEARCHER:** Just to get back to the references, something I forgot to ask. Would you use other professional people as references.

**RESPONDENT:** Most definitely. If we feel we need to get a psychiatric report on one party, we would send both to a psychiatrist which they choose. So they should feel comfortable. They know exactly why we send them for such a psychiatric evaluation. We have spoken to medical practitioners, the family's GP, any person who is familiar with the family as a unit before the breakdown.

**RESEARCHER:** When they do make a recommendation, like a psychiatrist, how important is that for you to take in consideration?

**RESPONDENT:** It is important, but I would not say very important. They merely guide you in what your final recommendation should be. That is why they are important.

**RESEARCHER:** So, they guide you, but that will not be the ultimate?

**RESPONDENT:** They are the expert in that particular field. I usually go with my gut feelings.

**RESEARCHER:** I think we have spoken about everything, unless there are something that you can think of.

**RESPONDENT:** This is just a general comment. I think this is an important study, which is a bit overdue. Certainly the recommendations coming from this, would be a good starting point for us, together with the family advocate, to start looking at issues which will be identified. I am sure that your other respondents had different inputs which differ from mine, and once we can have that all together and present it to the family advocate, so that then we can start working, our service can only improve. Yes, that is basically it.

**RESEARCHER:** Thank you very much for your time.

## **APPENDIX 8**

# **INITIAL INTERVIEW SCHEDULE**

## INITIAL INTERVIEW SCHEDULE

1. How many child custody evaluations have you conducted for the office of the family advocate?
2. What do you view as important when conducting the investigation?
3. How is the investigation carried out?
4. What type of questions do you ask the following people?
  - \* parents
  - \* children
  - \* extended family
  - \* friends of family
  - \* other professionals
5. Criteria

The following criteria were set by judge King J in 1994 during a custody case, *McCall v McCall*, in South Africa. Rank the criteria in sequence of importance. Each of the criteria will be discussed in terms of what factors are taken in consideration when using the specific criteria, and why did you give the criteria the specific ranking?

- a) The love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child.
- b) The capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires.
- c) The ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings.

- e) The ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing housing and the other material needs - generally speaking, the provision of economic security.
- f) The ability of the parent to provide for the educational well-being and security of the child, both religious and secular.
- g) The ability of the parent to provide for the child's emotional, psychological, cultural and environmental development.
- h) The mental and physical health and moral fitness of the parent.
- i) The stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the *status quo*.
- j) The desirability or otherwise of keeping siblings together.
- k) The child's preference.
- l) The desirability or other otherwise of applying the doctrine of same sex matching.
- m) Any other factor which is relevant to the particular case with which the court is concerned.
- n) Other factors which researcher regards as important.
  - n.a) The value of an adequate support system.
  - n.b) The child's primary caretaker.
  - n.c) Motivation (why the parent wants the child).

n.g) Keeping a young child with the mother.

6. Culture

6.1 Have you conducted custody evaluations with families of a different culture than yourself?

6.2 If so, discuss problems and/or positive points which you experienced during these evaluations.

7. Evaluator bias

7.1 How often do you receive training regarding the role of a family counsellor? If so, what type of training do you receive?

7.2 Discuss the importance of objectivity and factors that influence your objectivity as a family counsellor.

10. Format of the report

10.1 Discuss the specific structure of reports for the office of the family advocate.

10.2 Discuss the information which should be contained in the report.

10.3 Discuss any problems you experience in compiling a report for the office of the family advocate.

**APPENDIX 9**  
**LETTER FROM FAMILY ADVOCATE**

KANTOOR VAN DIE  
GESINSADVOKAAT



OFFICE OF THE  
FAMILY ADVOCATE

DEPARTEMENT VAN JUSTISIE • DEPARTMENT OF JUSTICE  
REPUBLIC OF SOUTH AFRICA

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Tel : 041-5855718  
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ADVOKAAT R CLAASSEN

16 November 1998

Geagte Mevrou

**TESIS: MEESTERSGRAAD**

U telefaks gedateer 11 November 1998 verwys.

Ek bevestig hiermee dat u toestemming verleen word, om Gesinsraadgewers (aangestel ingevolge Wet 24 van 1987) en gevallestudies te betrek by u navorsing vir bovermelde graad.

Hierdie magtiging is egter onderworpe aan die voorwaarde dat die persoonlike besonderhede van die partye ten alle tye anoniem gehou sal word, asook dat die Gesinsraadgewers op 'n vrywillige basis u behulpsaam sal wees en onder geen verpligting in hierdie verband staan nie.

U word ook versoek om asseblief te verseker dat u navorsing nie sal inmeng met die Gesinsraadgewers se pligte en werksaamhede nie.

WAARNEMENDE KANTOORHOOF: PORT ELIZABETH  
ADVOKAAT R CLAASSEN