

## You've Been McIntoshed.

*(This article was bravely published by The Age in 2014 after a barrage of legal threats from Melbourne psychologist Jennifer McIntosh, who wasn't keen on me exposing the fact that an international panel of experts had denounced her work – research which had been used to deny fathers across the world overnight contact with very young children. My published article had the lawyer's finger prints all over it! Typically, despite this being a big story, most of the media, including almost all the ABC, refused to touch it.)*

Harold Bulman can't wait until Sunday. That's when he'll get the chance to spend four whole hours with his one year-old daughter, Cora. Since he split from his defacto partner 12 months ago he's only been allowed two hours a week with Cora, generally spent in a park near where she lives with her mum in Sale.

After mediation at Roundtable Dispute Management in Gippsland, he's now spending a little more time with her and will soon get six hours straight, enough time to take her to his home 80 kilometres away in Narracan. "I miss her so much and think of her every day. I can't wait to have her home so I can be a proper dad to her instead of hanging around in the park or shopping centre."

Bulman's ex-partner is still breastfeeding Cora which precludes any chance of having Cora stay overnight with him, but he's hopeful that will change after the next mediation session in six month's time. Bulman, 42, was lucky to have found a mediator who worked hard to encourage Cora's mother to allow gradual increases in the amount of contact Cora could have with him.

Across Australia, fathers are being told in mediation sessions or by lawyers that there's no hope of overnight contact with children under three. At Family Relationship Centres where couples attend compulsory mediation prior to any Family Court appearance, any sharing of overnight care of infants and toddlers tends to be discouraged.

"Sharing of overnight care of infants is problematic," states a South Australian Family Law Pathways document produced for local family law organizations. The document, funded by the Commonwealth Attorney General's department, is circulated by many FPAs throughout the country.

It stresses the "importance of the primary attachment relationship" with the mother and reassures dads that with regular contact, even of a few hours, they can "readily develop close and loving relationships" with their children.

But according to an academic paper endorsed by 110 leading international experts that is not the case. The paper "Social Science and Parenting Plans for Young Children: A consensus report" was published in February, 2014, in the American Psychological Association's journal, *Psychology, Public Policy and Law*.

It is backed by leading Australian academics including Don Edgar, the former head of the Australian Institute of Family Studies, Judy Cashmore, Associate Professor in Socio-Legal

Studies at Sydney University and Barry Nurcombe, Emeritus Professor of Child & Adolescent Psychiatry, University of Queensland.

This article analysed existing research and found that infants commonly develop attachment relationships with more than one caregiver and concluded that in normal circumstances children are likely to do better if they have overnight contact with both parents and that depriving young children of the opportunity to stay overnight with their fathers could compromise the quality of developing father-child relationships. The article makes compelling reading because it challenges current policy on the care of young children - policy which has such a firm grip on Australia's family law system.

The report also provided a review of the research underpinning that policy, specifically a study led by La Trobe university adjunct professor and clinical psychologist Jennifer McIntosh which suggested even one night a week of overnight care undertaken by the non-primary parent may increase the stress levels of children aged zero to two in certain circumstances.

The influence of this study on Australia's family law system has been so profound that barristers have a special phrase to describe the common experience of losing the battle for some overnight care of toddlers – they joke they've been "McIntoshed." But for the fathers concerned it is no joking matter.

The McIntosh era dates back to 2010 when the Labor government commissioned her to lead an investigation into the impact on pre-schoolers of overnight contact in their father's care. The previous Coalition government had implemented a series of reforms to family law aimed at enabling children to have more contact with their fathers after a divorce, including in 2006, a presumption of shared parental responsibility for children. John Howard was an outspoken advocate of father's role in children's lives but the Rudd government showed no such inclination.

"Our government supported the right of children to contact with both their parents, provided the child is not exposed to any risk," said Phillip Ruddock, the Attorney General who implemented the 2006 reform. "Labor has sought to wind that back. They've long been captured by the female lobby determined to retain sole control over their children."

In 2007, McIntosh published a report highly critical of the Coalition's shared custody reforms. When Labor Attorney General Robert McClelland appointed a lead researcher for the new "pre-schoolers" study, McIntosh was the obvious candidate.

The results brought bad news for fathers. McIntosh's key finding was that infants under two who spent one night a week and toddlers who spend 10 days a month of overnight time in their non-primary caregiver's care are more irritable, more severely distressed and insecure in their relationships with their primary parent, less persistent at tasks, and more physically and emotionally stressed.

However, the significance of these findings was questioned in two papers published online in 2014 in *Psychology, Public Policy and Law*. The expert report, "Social Science and

Parenting Plans for Young Children: A consensus report,” written by Richard Warshak, psychiatry professor from the University of Texas Southwestern Medical Center claimed that McIntosh and her colleagues “drew unwarranted conclusions from their data”. The report found that there are issues with the way the data in McIntosh’s study was collected and analysed and this led to problems with the way the findings were later applied in policy making and agenda setting. The report found that the study provided no reliable basis to support custody policy, recommendations or decisions and hence the findings from the data should not have been used as a platform for developing public policy in the area<sup>1</sup>.

Further criticisms of McIntosh's study and the way it has been used are laid out in the second paper by Linda Nielsen: “Woozles: Their Role in Custody Law Reform, Parenting Plans and Family Court” which was published much the same time in the same psychology journal. This claims the McIntosh research has been used by policy makers, the media and academic circles in a way that goes beyond its original findings.

McIntosh later co-authored a two-part paper published in the Family Court Review – “Parental separation and overnight care of young children: Consensus through Theoretical and Empirical Integration”- which examined the current research evidence and finally acknowledged that “cautions against any overnight care during the first three years have not been supported.”

This paper is welcome, says University of Sydney Law professor Patrick Parkinson. Parkinson applauds the emerging consensus that it is fine for infants and toddlers to stay overnight with their fathers provided the child is comfortable in his care.

“Blanket statements to the effect that children under 3 should never stay overnight with their non-resident fathers should now be treated as entirely incorrect,” he says. However he says that many family law practitioners, counsellors and mediators have had the impression that the research supported such a policy.

McIntosh claims she has “never suggested that children under 3 should never stay overnight with the father.” While acknowledging that the limitations of her study have always been on clear view, she defends the reliability of the data upon which her study was based.

McIntosh, through her lawyer, says she never published “conclusions that have found any overnight care of infants is necessarily harmful”.

Yet, in a discussion paper for the Australian Association for Infant Mental Health (AAIMH) in 2011, McIntosh wrote that: “Regardless of socio-economic background, parenting warmth or cooperation between parents, the shared overnight care of children less than four years of age had a significantly negative impact on the emotional and behavioural well-being of the child. Babies under two years who lived one or more overnights a week with both parents were significantly stressed.”

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<sup>1</sup> Warshak has recently published an update of this article confirming the earlier results: <http://www.warshak.com/e-libe/wp-content/uploads/2017/05/CR68-e-Stemming-the-Tide-6.5.pdf>

The same year she also wrote a guest editorial for *The Family Court Review* which included the following summary: “Repeated overnight stays away from the primary caregiver in the first year or two may strain the infant and disrupt formation of secure attachment with both parents. Overnight stays away from the primary caregiver in early infancy are generally best avoided unless of benefit to the primary caregiver.”

In response to questions I asked at the time of writing this article McIntosh said the overnight studies “should not on their own dictate any kind of policy.”

McIntosh's background papers were used to prepare guidelines on infant care for a number of leading organizations such the Australian Psychology Society and AAIMHI. She is listed as the lead author of the APS position paper which states “infants (under 3) have biologically grounded needs for continuous reliable care from a primary caregiver”.

McIntosh claimed Richard Warshak and Linda Nielsen are “impassioned advocates who have sought to discredit me... to further political agendas.” Warshak is an international authority on parental alienation in child custody who has worked as a White House consultant on family law reform. Nielsen is a professor of adolescent and educational psychology who has published extensively on father-daughter relationships and shared parenting.

“The experts who signed the report are amongst the best in the world in their fields,” says Barry Nurcombe, Emeritus Professor of Child & Adolescent Psychiatry at the University of Queensland, who is among the 110 academics who endorse the dissenting paper.

Nurcombe says the paper highlights the fact that current policies relating to overnight contact with these young children have been excessively affected by misplaced concern about the primary attachment to the mother.

“Since we didn’t know whether any shared overnight care was harmful we fell back on the default position assuming that primary attachment was all important,” he says, explaining that many experts, like him, have now been convinced that these children can form multiple attachments.

He notes that the consensus report was signed by world authorities on attachment such as Ross Thompson, Karin Grossmann and Avi Sagi-Schwartz and the editor of the leading journal in the area, Howard Steele.

The very notion of a “primary parent” or “primary attachment” has come in for a battering in the fierce public discussion that has taken place over this issue. Many academic and media articles point out this doesn’t make sense given that most children under two living with single mothers are at least occasionally and sometimes frequently stay overnight with other people – grandparents or other relatives, babysitters, nannies plus spending long hours in childcare. There are also many cultures where shared care is normal in extended families.

There have been some humorous published views on this issue. “My 22 month grandson loves spending two or three nights sleeping over at his grandparent’s house,” writes British advocate for fathers, Robert Whiston in a recent blog. He explains that as grandparents they have the time and patience – “as do divorced fathers” – to give one-to-one attention and allow the frazzled mother time to “de-frazzle.” His article highlights what many see as the absurdity of fathers being the only ones totally precluded from providing overnight care.

For the last few years thousands of Australian fathers have had their contact with their young children limited to a few hours often spent wandering in parks or fast food restaurants. They have been forced to spend huge sums on lawyers, fighting to be able to care for their children overnight.

The McIntosh study is one of the major reasons they have not been successful, says Justin Dowd, a leading family lawyer and past president of the Law Society of NSW. “It led to the belief, almost a presumption, that children under three should not spend overnight time with their non-resident parent. Faced with that research many fathers have been discouraged from even bringing applications for overnight time with very young children and the ones who have gone to court have often been disappointed to find that research being quoted against their application.”

While many fathers will celebrate if that research finally loses the hold it has had on our family law system, others will be angry that it cost them years of being active fathers closely involved in the lives of their children.

There are welcome signs that the expert consensus paper may prove a game changer for many fathers trying to negotiate overnight care of young children. Diana Bryant, the Chief Justice of the Family Court, whilst stressing cases before the Court are subject to individual assessment, says it is vitally important that “family consultants and experts giving evidence in family law proceedings, as well as judges, are familiar with the current research and differing views about it.” She also expects the Court’s Family Consultants to keep up to date with current debates: “They have been made aware of this particular issue in relation to overnights and young children.”

The Australian Association for Infant Mental Health is revising its policies as are some key organizations which run the FPA’s. “Given the new positions papers that have recently been published we will be reviewing the literature that we give to parents to help them make the best decisions they can for their children,” says Matt Stubbs, the Acting Clinical Services Director of Interrelate.

Relationships Australia which runs most of the FPA’s issued the following statement: “If there has been a trend towards limiting shared parenting and overnight contact with young children and fathers in recent years, it has not been a move advocated by Relationships Australia. We have noted an increase in shared parenting in recent years and consider this a positive outcome for both children and parents.”

But it is the fathers themselves who have the strongest motivation to ensure the family law system responds to these new events. Their support groups are determined this will

happen. Barry Guidera, CEO of Dads in Distress Support Services: "We will make sure fathers are informed about new consensus statement so that they choose lawyers and mediators who are up to date with the current expert opinion on this vital issue."

*Sadly, three years later not that much has changed. Some judges tell me that they believe Warshak's consensus paper had a significant influence on some of the decisions being made in the Family Court but I also hear from fathers across the country who tell me McIntosh's research is still being used to deny them overnight care. If you are a father facing a legal battle over care of young children, do look at Warshak's latest article which updates the research proving clear benefits to children of any age when fathers are involved in proper shared parenting, including overnight care.*