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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**IMPACT OF DIVORCE ON CHILDREN'S
WELFARE: A PILOT STUDY ON CHILDREN
LIVING WITH SINGLE MOTHERS IN SELECTED
RURAL AREAS IN SELANGOR**

BY

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**A dissertation submitted in partial fulfilment of the
requirement for the degree of
Master of Comparative Laws**

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International Islamic University Malaysia**

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ABSTRACT

This thesis focuses on the impact of divorce on children from the socio-legal perspective. The focus is on fathers who neglect to pay maintenance for their children. This has resulted on shifting the burden to their former wives who in turn, would depend on their support system i.e. “kampong” or rural area where their family members, especially their parents would assist them. Theoretically, maintenance of children is the duty of the father and is the basic right of the child. However, reality shows that when divorce takes place, it seems that the responsibility of the father to maintain his children’s welfare will eventually cease, especially if the mother is given the right of custody. Therefore, this study which is conducted based on library and empirical research highlights the impact of divorce on children’s welfare from the socio-legal perspective. This study shows that single mothers with children who live in urban areas prior to their divorce would normally return to their “kampongs” for economic support. Failure of non-custodial fathers to provide maintenance for their children becomes burdensome for these single mothers to provide the best for their children, especially in terms of educational needs due to the high school expenses especially those who have more than one schoolgoing child. This has forced single mothers to rely on other parties, especially their own family members and other welfare institutions, to assist them in raising their children, even though some of these single mothers have part- time jobs. It also shows that the main factor of non-custodial fathers’ failure to maintain their children is particularly due to being missing in action, jobless, and having a low income. However, there are a number of non-custodial fathers who willingly maintain their children without any force especially from the Shari’ah Court and their self-awareness is believed to be the key factor for them to continuously maintain their children. Structurally, this thesis is divided into six chapters; the first chapter discusses the background of this study. The second chapter discusses the socio-legal impact of divorce on children which covers a discussion on the marital conflict which has led to divorce, the short and long-term impact of divorce from the psychological, behavioral and economic perspectives on these children, negative outcomes among children who are adversely affected by the parental divorce, and children who can cope very well with their parents’ divorce. The third chapter discusses maintenance for children according to the Islamic perspective from the views of four Muslim schools of thought: the Mālikis, Hanbālīs, Shāfi’is and Hanāfis. The fourth chapter touches on the legal position of children’s maintenance in Malaysia and other selected Muslim countries. The fifth chapter which is the crux of the thesis, discusses the research findings and analysis, followed by the last chapter which is the conclusion where relevant recommendations are offered to solve some of the problems related to this particular issue.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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**A SOCIO LEGAL PERSPECTIVE ON THE IMPACT OF DIVORCE ON
CHILDREN'S WELFARE: A PILOT STUDY ON CHILDREN LIVING WITH
SINGLE MOTHERS IN SELECTED RURAL AREAS IN SELANGOR**

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TABLE OF CONTENTS

Abstract.....	ii
Abstract in Arabic.....	iii
Approval Page.....	iv
Declaration Page.....	v
Copyright Page.....	vi
Acknowledgements.....	vii
List of Tables.....	xii
List of Figures.....	xiv
List of Statutes.....	xvi
List of Cases.....	xvii
List of Abbreviations.....	xviii
Transliteration.....	xix

CHAPTER 1: INTRODUCTION

1.0 Introduction.....	1
1.1 Hypothesis.....	3
1.2 Literature Review.....	3
1.3 Scope and Limitations of the Study.....	10
1.4 Methodology.....	10
1.5 Content of the Chapters.....	11

CHAPTER 2: THE SOCIO-LEGAL IMPACT OF DIVORCE ON CHILDREN

2.0 Introduction.....	13
2.1 Marital Conflict and Divorce.....	14
2.2 The Impact of Divorce on Children.....	15
2.2.1 Short-term Impact of Divorce on Children.....	17
2.2.1.1 Age of Children.....	18
a. Infant and Toddler.....	18
b. Preschool.....	19
c. Six to Eight-Year Old.....	21
d. Preteens: Nine to Twelve-Year Olds.....	21
e. Adolescent Children.....	23
2.2.1.2 Gender of Children.....	23
2.2.2 Long-Term Impact of Divorce on Children.....	24
2.3 Economic Impact of Divorce on Children.....	27
2.4 Negative Outcomes among Children of Divorced Parent.....	31
2.4.1 Psychological (Emotional) Disturbance.....	31
2.4.2 Behavioral Problems.....	32
2.4.2.1 Running Away from Home.....	33
2.4.2.2 Loitering.....	33
2.4.2.3 Drug Abuse.....	34
2.4.2.4 Involvement with Crime.....	34
2.4.2.5 Sexual Activity outside Marriage and Teen Mothers.....	35
2.4.2.6 Disciplinary School Problems.....	37
2.4.2.7 Idleness (Out of School and out of Work).....	37
2.4.2.8 Loss of Community Resources.....	38

2.4.3 Educational Attainment.....	38
2.5 Coping Well with Parental Separation.....	41
2.6 Conclusion.....	41

CHAPTER 3: MAINTENANCE OF CHILDREN FROM THE ISLAMIC PERSPECTIVE

3.0 Introduction	43
3.1 General Principles of Maintenance in Islam	
3.1.1 Definition	43
3.1.2 Categories of Maintenance	45
3.1.2.1 Type of Kinship who has Right to Maintenance.....	46
3.2 Prerequisites for Children Right's to Maintenance	49
3.2.1 The Child must be Poor and Does Not Own any Property and Incapable to Work for Earning.....	50
3.2.2 The Child must be a Minor and Has Not Attain Puberty (Bāligh).....	51
3.2.3 The Child must be a Free Person.....	53
3.2.4 The Child must adhere to the Same Faith i.e. Islam.....	53
3.3 Duty to Maintain Children.....	55
3.3.1 Prerequisites of a Father to Maintain His Children.....	56
3.3.2 Person Liable under the Hukm Syara' to Replace the Father's Duty.....	57
a. Hanāfis	57
b. Mālikis	61
c. Shāfi'is	62
d. Hanbālis	63
3.4 Quantum of Children's Maintenance	65
3.5 Will Duty to Maintain Children Lapse from the Maintainer?	66
3.6 When Children Maintenance Becomes Debt on Father?	66
3.7 Conclusion	67

CHAPTER 4: THE LEGAL POSITION OF MUSLIM CHILDREN'S MAINTENANCE IN MALAYSIA AND SOME MUSLIM COUNTRIES

4.0 Introduction	69
4.1 The Legal Position of Muslim Children's Maintenance in Malaysia	69
4.1.1 Duty to Maintain Children	71
4.1.2 Power of Court to Order Maintenance for Children.....	74
4.1.3 Power of Court to Order Security for Maintenance of a Child....	75
4.1.4 Power of Court to Vary Orders for Custody or Maintenance of a Child	76
4.1.5 Power of Court to Vary Agreements for Custody or Maintenance of a Child.....	77
4.1.6 Recovery of Arrears of Maintenance of a Child.....	77
4.1.7 Duty to Maintain Child Accepted as Member of Family	79
4.1.8 Duration of Orders for Maintenance of a Child	79
4.1.9 Duty to Maintain Illegitimate Children	80
4.1.10 Power of Court to Make an Attachment of Earnings Order.....	82
4.1.11 Nature of Attachment of Earnings Order	82

4.1.12 Effect of Attachment of Earnings Order	83
4.1.13 Duty of Defendant and Employer to Comply with Attachment of Earnings Order	84
4.2 The Legal Position of Maintenance of Children in some Muslim Countries	85
4.2.1 Prerequisites of a Child to the Rights of Maintenance	85
4.2.2 Limitation of Children's Age to be maintained.....	87
4.2.3 Duty to Maintain Children	88
4.2.4 When Maintenance becomes Debt on Father	91
4.3 Conclusion	91

CHAPTER 5: A PILOT STUDY ON CHILDREN LIVING WITH SINGLE
MOTHERS IN SELECTED RURAL AREAS IN SELANGOR

5.0 Introduction	94
5.1 Justifications and Significance of the Study	95
5.2 Research Methodology	96
5.2.1 Survey Sample	96
5.2.2 Data Collection Instrument	100
5.2.3 Data Collection Procedure	101
5.3 Results of the Research Findings	101
5.3.1 Respondents' Place of Living: Before and after Divorce	102
i. Place of Living: Before and after Divorce	102
ii. Reason(s) for Staying or Moving	105
iii. Comparison of Living in the Previous Place and in the Current Place	107
5.3.2 Respondents Occupation: Before and After Divorce	107
5.3.3 Children's Expenses	111
i. Cost of Living excluding Schooling Expenses.....	111
ii. Cost of Schooling Expenses.....	113
iii. Estimate of Sufficient Expenses for Children's Need.....	114
5.3.4 Academic Achievement of Respondents' Children	115
i. Stop School / Studies	115
ii. Involvement in School Co-curricular Activities.....	116
5.3.5 Contact with Non-Custodial Father	119
5.3.6 Children's Maintenance: Before and after divorce	123
5.3.6.1 Reasons for Failing to Pay Children's Maintenance	129
5.3.7 Application for Children's Maintenance at Shari'ah Court.....	134
i. The Application	134
ii. Respondents' Former Husbands' Reaction on Shari'ah Court's Order regarding the Children's Maintenance.....	135
5.3.8 Financial Assistance and Welfare Aid	142
i. Family Members	142
ii. Former Husbands	143
iii. School	145
iv. Institutions.....	146
5.3.9 Standard of Living	149
5.4 Data Analysis.....	149
5.4.1 Demographic Characteristic	149
5.4.2 Duty to Maintain	151

5.4.3 Failure to Maintain	152
5.4.4 Financial Assistance	153
5.4.5 Standard of Living	154
 CHAPTER 6: RECOMMENDATIONS	
6.1 Legal Reform.....	155
6.2 Social Reform	159
6.3 Positive Roles Played by Relevant Authorities and individuals.....	161
6.3.1 State Government	161
6.3.2 Single Mother’s Network	164
6.3.3 School	165
6.3.4 Department of Social Welfare	168
6.3.5 Divorced Parents	168
6.3.6 Private Sector Companies	169
 BIBLIOGRAPHY.....	 171
 APPENDIX 1: Questionnaire for Single Mothers	 179

LIST OF TABLES

<u>Table No.</u>		<u>Page No.</u>
5.1 (a)	Age of the Respondents	97
5.1 (b)	Highest Academic Qualification	98
5.1 (c)	Number(s) of Respondents' Children	98
5.1 (d)	Categories of Respondents' Children	99
5.2	Place of Living: Before and After Divorce	104
5.3	Reasons for Living in the Same Place and Reasons for Moving to Other Places after the Divorce	106
5.9	Children's Cost of Living per Month	112
5.10	Children's Schooling Expenses per Month	113
5.11	Approximate Amount for Children's Basic Cost of Living	115
5.31(i)	Reasons for Failing to Pay Children's Maintenance by Non-Custodial Fathers according to their Incomes	129
5.31(ii)	Reasons for Failing to Pay Children's Maintenance by Non-Custodial Fathers according to Number of Children	130
5.31(iii)	Reasons for Failing to Pay Children's Maintenance by Non-Custodial Fathers according to Children's Education Level	131
5.31(iv)	Reasons for Failing to Pay Children's Maintenance by Non-Custodial Fathers according to Types of Divorce	131
5.31(v)	Reasons for Failing to Pay Children's Maintenance by Non-Custodial Fathers according to Duration of Marriage	132
5.31(vi)	The Bond between Non-Custodial Fathers with their Children before Divorce	133
5.31(vii)	Mode of Relationship between Divorced Parents after the Divorce	133
5.32	Application for Children's Maintenance at Shari'ah Court	137
5.33	Reaction by Respondents' Former Husbands on the	140

Table No.

Page No.

Shari'ah Courts' Order

6.1.1

Facilities and Services Recommended for Single Mothers
and their Children

162

LIST OF FIGURES

<u>Figure No.</u>		<u>Page No.</u>
5.4	Reason(s) for Living in Current Place	107
5.5	Employed and Unemployed Respondents before Divorce	108
5.6	Employed and Unemployed Respondents after Divorce	108
5.7	Groups of Respondents who Do Part-time Jobs and Do Not Do Part-time Job	109
5.8	Respondents by Monthly Income	110
5.12	Schoolgoing Children who Quit School after the Divorce	115
5.13	Reason(s) for Schoolgoing Children Did Not Quit School after the Divorce	116
5.14	Schoolgoing Children Involvement in the Co-curricular Activities before the Divorce	117
5.15	Children's Involvement in the Co-curricular Activities after Parental Divorce	117
5.16	Reason(s) for Schoolgoing Children's Non Involvement in the Co-curricular Activities after Divorce.	118
5.17	Children's Bonding with Both Parents before the Divorce	119
5.18	Types of Relationship between both Parents after the Divorce	120
5.19	Reason(s) for Hostile Relationship between Both Parents after the Divorce	121
5.20	Visits by Non-Custodial Fathers to their Children after the Divorce	121
5.21	Frequency of Visits by Non-Custodial Fathers	122
5.22	Other types of contact by Non-Custodial Fathers on their Children	123
5.23	Monthly Income of Non-Custodial Fathers before the Divorce	124
5.24	Maintainer for Children before the Divorce	124

<u>Figure No.</u>	<u>Page No.</u>
5.25 Living Expenses Provided by Former Husbands before the Divorce	125
5.26 Willingness to Pay Maintenance	126
5.27 Reasons for Non-Custodial Fathers Failure to Pay Children's Maintenance	126
5.28 Quantum of Children's Maintenance Paid Willingly by Non-Custodial Fathers	127
5.29 Non-Custodial Fathers who Willingly Pay Their children's Maintenance by Consistency of Payment	128
5.30 Reason(s) for Termination of Children's Maintenance	128
5.34 Financial Assistance	142
5.35 Former Husbands who Provide Contributions for Respondents and their Children instead of Cash	143
5.36 Types of Contribution Provided by Former Husbands for Respondents and their Children (Willingly or by Shari'ah Court's Order)	144
5.37 Adequacy of Children's Maintenance	145
5.38 School Aid for Children	145
5.39 Application for Financial Assistance	146
5.40 Reason(s) for Non Application from any Institutions	147
5. 41 Response from Institutions	148
5. 42 Types of Assistance Provided by the Institutions	148
5. 43 Standard of Living	149

LIST OF STATUTES

Islamic Family Enactment 2003 (Johor Enactment No. 17/2003)
Islamic Family Enactment 1984 (Kedah Enactment No. 1/1984)
Islamic Family Enactment 2002 (Kelantan Enactment No. 6/2002)
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Mohd Hanif Farikullah v. Bushra Chaudri [2001] 5 MLJ 533
Norazian Mohd Yusof v. Khairul Azmi Mohd. Rasid [2002] 15 JH 65
Rokiah v. Mohamed Idris [1986] 6 JH 272
Saedah v Arif [1983] 4 JH 136
Saniah v. Abdul Aziz [1984] 5 JH 210
Zainuddin v. Anita [1983] 4 JH 73

LIST OF ABBREVIATIONS

e.g	(exempligratia); for example
etc	(et cetera): and so forth
ibid	place (idem): the same below
IKIM	Institut Kefahaman Islam Malaysia
IFE	Islamic Family Enactment
IFO	Islamic Family Ordinance
JH	Jurnal Hukum
i.e	that is
n.d	no date
n. p	no name of publisher/no place of publisher
P.B.U.H	Peace Be Upon Him
S.W.T.	Subhanahu Wa Ta'ala (Praise to be Allāh and the Most High)
Sect./Sec.	section
Ins.	Inside
vol./vols.	Volume/volumes
vs.	versus: against

LIST OF TRANSLITERATION

a. Consonants

Initial	Romanization	Initial	Romanization
ا	omit	د	d
	b	ط	ṭ
	t	ز	z
	th	ع	‘
	j	جھ	gh
	h	ف	f
	kh	ق	q
	d	ل	l
	dh	م	m
	r	ن	n
	z	و	w
	s	ه	h
	sh	ي	y
	ṣ		

b. Vocalisation Signs (Representing Arabic Vowels)

i. Short Vowels

- a - i - u

ii. Long Vowels

+ - ā + - ī و + - ū

c. Special treatment for and : and are both Romanized *ibn*

CHAPTER 1

INTRODUCTION

1.0 INTRODUCTION

Children are our future. Therefore, their welfare should be our prime concern. The high percentage of divorces in Malaysia,¹ would definitely affect the welfare of children who are involved in their parents' divorce.

Research has shown that there are fathers who do not pay maintenance for their children after divorce.² This is contrary to what has been the guiding principle in Islam; where it is clearly states that a father shall bear the cost of their food and clothing (al-Baqarah: 2:233). Also, the Prophet Muhammad (s.a.w) advised Hind bint 'Utbah, the wife of Abi Sufyan, to take a portion of his wealth which sufficed for her and her children. This happened when Hind consulted the Prophet about Abi Sufyan who neglected to maintain her and the children.³

Muslim scholars are in unanimous agreement that when a father is well-off and capable of supporting his family, this responsibility cannot be shared with others. If the father refuses to maintain them, he can be penalised. However, if he is poor or unable to work due to sickness, or old age, then the responsibility will be transferred

¹ <http://www.islam.gov.my/informasi/statistikperceraianseluruhmalaysia.html>

² Irwin Garfinkel et al., "A patchwork portrait of nonresident fathers" in *Fathers under fire: The revolution in Child Support enforcement*, edited by Irwin Garfinkel et al., (New York: Russel Sage Foundation, n.d), 55; Kamariyah Mohd Nor, "Nafkah Anak : Konsep dan Amalannya di Jajahan Pasir Mas, Kelantan Darul Naim," (B.A. Academic exercise, University of Malaya, 1995); 72; Sahlawati Majid, "Pengabaian Nafkah: Satu Kajian di Mahkamah Rendah Syariah Kuantan," (B.A. Academic exercise, University of Malaya, 2002), 57.

³ Muhammad Mustafā Shalabī, *Ahkām al-usrah fi al-Islām*, (Beirut: Dar al-Nahdhah, 2nd edn, 1977), 822.

to other family members especially the mother and grandfather of the children.⁴ This principle is reflected in all family law enactments of the states of Malaysia.

There has never been a study as yet in relation to the impact of divorce on children living in rural areas. In most divorce cases, these women would return to their support system, i.e. their parents when they are divorced; and most frequently, to their parents who are still living in the “*kampongs*”. Their livelihoods mostly depend on their parents; having small children to take care of, and without any support from their former husbands, with low levels of education, would certainly contribute to low levels of income when they manage to secure jobs. This is because most of them marry at an early age; therefore, the opportunity for further studies is reduced. Then, when a divorce occurs, it is very hard for them to get a very good job to maintain their lives and their children.

It is in this light that this study is undertaken; specifically, the objectives of this research are;

- i. To study the extent of the problem in relation to the welfare of children living with their mothers focusing on maintenance;
- ii. If mothers are the custodial parents, what is the percentage of non-custodial fathers who continue to provide maintenance for their children?;
- iii. If the father neglects his duty to provide maintenance, do the custodial mothers apply to the court? If not, why?
- iv. In cases where the fathers neglect their responsibility, who will take over the responsibility of doing so?

⁴ Wahbah al-Zuhayly, *Al-Fiqh al-Islāmi wa 'adillatuh*, (Beirut:,Dar al-Fikr, 3th edn., 1997), 7: 826.

1.1 HYPOTHESIS

This research attempts to prove the hypothesis that the reason for children being uprooted from urban to their “*kampongs*” with their mothers is basically due to their fathers’ disregard for maintaining them after divorce.

1.2 LITERATURE REVIEW

Most of the Western researchers who are psychologists and sociologists, conduct their researches on the impact of divorce on children for the purpose of policy making, thus their respondents are comparatively larger in number, and the research duration is longer.

Studies conducted by Alan Booth and Paul Amato in relation to the impact of divorce on children reveal that the impact can be determined long before a marriage ends and it can be either negative or positive impact depending on the level of conflict between both parents. Children of high-conflict marriages are likely to see their parents’ divorce as a welcomed escape from an aversive and dysfunctional home life. On the other hand, children from low-conflict marriages have a tendency to see their parents’ divorce as a personal tragedy and experience excessively hard times, both psychologically and socially, including their own inability to form quality intimate relationships.⁵

Another interesting study conducted by Dan Ashborn and supported by H. Minden, however, concentrates on the impact of divorce and separation on the age of children. Minden’s study points to the fact that divorce also had an effect according to children’s gender. In early life, it seems to be more difficult for boys because they do

⁵ See further on “Effect of Divorce on Children Depends on Parents’ Marriage”, PsycPORT News Story, <<http://www.psycport.com/news/2001/02/18>>

not talk or share much. In adolescence, however, girls of divorced parents have difficulty relating to the opposite sex and end up pregnant earlier than girls from intact families.⁶ Cox and Cox (1985) found that boys of divorced parents showed high levels of behavioural problems soon after the divorce, and that when the parents' remarried (to a new spouse), this introduced new behavioural and emotional problems for girls.⁷

Kimberley Fishler in her study noted that the socialisation of children is also vital during the formative school years. Children who are affected adversely during this time by parental conflict will not only show complications in school performance and behaviour, but may also become more socially inhibited. This may lead to poor social skills and shyness. The overall effect may be to 'force' children into complications that may have a lasting harm on their overall views of others, affecting their trust and formulation of healthy relationships.⁸ McLanahan and Sandefur in their study found that children of divorced parents are 18 percentage points more likely to drop out of high school than children from intact families. But in comparing between children from divorced families and children from cohabitation families, the children from divorced families are less likely to drop out of school than children from cohabitation families.⁹

Some of the researchers divided the impact of divorce on children into short-term and long-term experiences. For the short-term experiences, children will experience unhappiness, low confidence, behavioural, and friendship problems, as

⁶ see in Molly Duignan, "The Impact of divorce on kids", UWO Gazette, vol.94, no. 40 (9 Nov 2000), <http://www.gazette.uwo.ca/2000/November/9/Campus_and_Culture2.htm?

⁷ See in Richard Niolon's review, "Consequences of Parental Divorce", <http://www.psychpage.com/family/divorce/amato_booth.html>

⁸ Kimberly Fislar, "The Impact of Divorce on Children", <<http://users.ipfw.edu/hollandd>>

⁹ Sara McLanahan & Gary Sandefur, *Growing up with a single parent: What hurts, what helps*, (England: Harvard University Press, 1994), 66 & 67.

well as loss contact with some members of their extended family. Furthermore, they also found out that most children wish their divorced parents to reunite.¹⁰ Judith Stacey supported the findings of Maggie Gallagher's study that those children of divorced parents are on average poorer, sicker, unhappier, and do not perform very well in school, at work, and in relationships.¹¹

For the long-term experiences, one of its consequences is children from divorced families will put off marriage. In Canada, a study on the Revenue Canada tax data¹² from 1982 to 1995 of 122,500 teenagers showed that about 40% of men and 54% of women whose parents had divorced reported not having married by their late 20s and early 30s. In contrast, 50% of men and over 60% of women of those whose parents stayed together did so. When they got married, their chances of experiencing a break-up were higher. Of the men who married, almost 17% experienced separation and about 8% experienced divorce. Among those whose parents did not divorce, 12% of men experienced separation, and 5% divorce. There is also a similar trend for women whose parents had divorced. Of the women who married, 20% experienced separation and 10% divorce. In contrast, for the women from intact families, only 14% experienced separation and 7% divorce.¹³

David Popeneo quoted a report of the National Fatherhood Initiative which reveals problems in the absence of the father in that 72% of teenage murderers, 60%

¹⁰ Major JRF study reviews experiences of children whose parents divorce, <<http://www.jrf.org.uk/pressroom/>>

¹¹ Judith Stacey, "Dada-ism in the 1990s: Getting past baby talk about fatherlessness" in *Lost fathers: The politics of fatherlessness in America*, edited by Cynthia R. Daniels, (New York: St. Martin's Press, 1998), 66 & 67.

¹² The report is based on a research paper, entitled "Death and divorce: The long-term consequences of parental loss on adolescents". It estimates the impact of parental divorce on the adult incomes and labour market behaviour of adolescents, as well as on their use of social programmes and their marital and fertility behaviour.

¹³ See further on <http://www.statcan.ca/Daily/English/990609/d990609b.htm>.