POLICY PAPER ON FATHER INVOLVEMENT, CHILD CUSTODY AND ACCESS

CHILD CUSTODY, ACCESS AND PARENTAL RESPONSIBILITY: THE SEARCH FOR A JUST AND EQUITABLE STANDARD

Edward Kruk, M.S.W., Ph.D.,
The University of British Columbia

"At certain moments in our lives, we are faced with a choice--either transform violence into suffering, or suffering into violence."
-Simone Weil

"Pain that is not transformed will be transmitted."
-Richard Rohr

"It is not about nonviolence; it is not about civil disobedience. It is about transforming one of the greatest pains a person can carry—being separated from your kids—into a loving self-sacrifice to transform the observers around us."
-Divorced father

Preface

Writing, as a way of codifying human experience, sets obstacles to "reading" the inner experience of people, and this includes divorced fathers, who themselves lack the language of expressing their deeper experiences and feelings when their children are removed from their lives or are threatened to be removed, during and after divorce, defined here as the point of physical parental separation. These are experiences, akin to physical and sexual abuse, that strike at the heart of human beings, and have profound physical, psychological and social repercussions, yet are largely misunderstood by those who have not had the experience. Child custody and access-related problems represent not only legal challenges, but also a "bio-psycho-social-spiritual" affliction for those who suffer the consequences, and raising public awareness in this regard is a major task.

This paper is based on the following three assumptions: (1) children need their mothers and fathers; (2) women and men (mothers and fathers) are equally capable of abuse; and (3) only the equal treatment of unequals leads to equality (the interrelationship of means and ends is critical for social justice).

The paper is future-focused; although current research and legislation are discussed in the paper, the main focus are implications of the research for socio-legal policy development and reform, in a provincial, national and international context.

The paper also focuses on the expressed wishes of Canadian fathers in relation to child custody, access and divorce socio-legal policy reform. My intention is to honour, but not necessarily agree with, separated and divorced fathers themselves on the issues pertinent to paternal involvement and legal "custody and access" after separation and divorce. The

paper will apply a social analytical perspective to the issues, and a focus on children's needs and paternal / parental responsibilities to these needs.

Introduction

The primary recommendation of this report is the establishment of a (rebuttable) legal presumption in favour of the natural, which includes the protection of children maintaining attachments with both of their natural parents, irrespective of parental status (cohabiting or maintaining separate residences), absent a finding that the child is in need of protection from a parent. The same standard that is currently applied to children in non-separated families should be applied to children of separated parents.

But what exactly is "natural" in family residential arrangements, especially in the context of diversity and conflict, particularly those involving child custody disputes? As Howard Irving (2005), professor emeritus in the University of Toronto's faculties of social work and law, has written, amid all the talk of rights for children, one basic need must be asserted: that children need both parents, their biological parents in particular, and that social institutions must support parents in this regard, not undermine them as at present. The most significant undermining has been the federal government's redefinition of "parent" in the law, from "natural parent" to "legal parent." A judge is higher than a parent in matters of definition. And yet children need their mothers and fathers equally; one should not have superiority over the other.

A current legal dispute over child custody in Saskatchewan, in which a biological father is attempting to be recognized as his child's legal father after the biological mother had arranged a hasty adoption without the father's knowledge and consent, clearly illustrates the judiciary's tactics: delay dealing with the matter; establish a "status quo" with respect to the child's time with parent figures (the potential adoptive parents in this instance); and then refuse to upset the status quo as this is not in the child's "best interests." Yet natural or biological parents are the most protective of their offspring, in the human and other natural species. The strength of these ties are reflected in the campaign of children of "sperm donors" to know their biological fathers, and changes in legislation allowing children to locate their "sperm donor" fathers.

In May, 1997, when the federal Divorce Act came into effect, the then Minister of Justice (Allan Rock) proposed that a joint committee of the House of Commons and Senate make recommendations regarding child custody and access. After 55 hearings, and more than a year of study and research, the committee made 48 recommendations to Parliament, all with an underlying theme: The adversary system as it pertained to the majority of custody and access disputes put families, especially children, at risk. Despite this disturbing conclusion, Bill C-22, created to amend the Divorce Act, still sits on a shelf. Prime Minister Stephen Harper's 2006 election platform promised what many jurisdictions around the world are considering: a presumption of shared parental responsibility, unless determined to be not in the best interests of the child; and the promotion of mediation as an alternative method of conflict resolution. These are the cornerstones of the Joint

Committee Report, yet child custody and access in Canada and its provinces and territories remain mired in an adversary "winner-take-all" system.

Most family law matters are resolved without court orders, and a judge determines post-separation custody in only about 5% of cases. Yet the influence of these 5% of decisions goes well beyond the decisions themselves. Most parents still manage, however, to agree on joint physical custody most of the time (Statistics Canada, 2005). When judges become involved and hear allegations of abuse, however, things drastically change and joint custody is judged to be "inappropriate," and "not in children's best interests." Why is it that judges discriminate against the "right" – and more importantly *need* – of children of divorce for both their parents in their lives, possible with joint custody, which avoids alienating one parent and those tragic situations of "parentectomy" (Kruk, 2006)?

In the 5% of cases that go to trial and set legal precedents for unlitigated cases, including those in which there is disagreement over parenting arrangements, the legal system manifests protracted litigation, and it is these cases that are the main focus of this paper. Most of these involve perceived abuse, on the part of both parents; a minority involve physical abuse. Lawyers, trained to zealously advocate for the rights and benefits of their adult clients, rarely have expertise in family dynamics (including violence) or child development; these are the concern of social science and not of formal law education. Yet such family disputes have profound long-term consequences for children. It is not necessarily the fault of individual lawyers, writes Irving; the adversary system in family law places them into a polarized process, before a judge, in which it is difficult to bring about mutually acceptable resolutions, such as promoting parental co-operation and good will, and encouraging parents to accept mutual responsibility for their children by helping them formulate clear and specific parenting plans in the children's best interests.

Although lawyers and judges are not professionally trained in child development and family dynamics, they dominate the child custody field, and make determinations often without the benefit of credible social science evidence. According to Judge Mary Southin of the BC Court of Appeal, the "flip-flopping" of social science research in the arena of family dynamics (including violence) and child development renders social science research useless in judicial decision-making. Southin is mistaken, however, as meta-analyses of studies of social issues such as family violence, shared versus joint custody outcomes, and fatherhood involvement reveal emerging trends.

Many voices are calling for change, and there is a reported trend, in some jurisdictions, toward "joint custody" and equality in mothering and fathering. The Joint Committee Report on Child Custody and Access, with its focus on "shared parenting," was tabled in 1998. In May, 2005, the B.C. Justice Review Task Force proposed, "a family-justice system where mediation and other consensual processes are not considered 'alternative dispute resolution' but are the norm," echoing the Joint Committee report. In the Task Force's proposed scheme, families would bear the primary responsibility for making their own post-divorce parenting (custody and access) arrangements, with the benefit of resources such as parent education, family mediation, collaborative family law and legal aid services.

The issue of family violence is at the centre of debates and reservations about shred parenting. Some battered women advocates claim that joint custody endangers women and children; egalitarian viewpoints differ, claiming that joint custody reduces conflict and prevents first-time violence, which occurs under the present sole custody system. Fully half of first-time violence happens after parental separation, when there was no prior history of violence. When the stakes are high and the threat of losing one's children heightens fear and fuels anger, this is not surprising. Joint custody is the one way to lessen adversarial divorce, as neither parents' parenting functions are threatened—they are equals as parents. Parents are jointly and equally responsible for their children, and when that is honoured by legal and government systems, violence is reduced.

The "divorce industry," however, may stand to lose with non-adversarial divorce. Child custody policy reformists such as Janet Walker of Newcastle University believes the key to law reform is finding a productive role for lawyers and other professionals in the system. The research is clear that joint custody is salutary (Bausermna, 2003), and this is reinforced by public support for this arrangement. Yet ideologies seem to prevail in judicial decision-making--such as those that claim that mothers are naturally better caregivers, fathers are more likely to abuse, or that children are better off in the care of one parent only (with perhaps "access" to the other parent). Such thinking dominates and seem to guide judicial decision-making, as well as the policymaking of political parties (Kruk, 2006). Even the Conservative government, despite its pre-election pledge of shared parenting as a legal presumption, is avoiding this seemingly contentious "minefield."

According to Irving (2005), correcting the current Divorce Act is long overdue. In essence, the legal system manifests protracted litigation, alienating both parents and children, in those cases where parents cannot agree on the living arrangements for their children, and it is these cases that are the main focus of this paper. Lawyers, trained to zealously advocate for the rights and benefits of their adult clients, rarely have expertise in family dynamics or child development; these are not problems in law. Yet such family disputes have profound long-term consequences for children. Parental alienation is a huge problem, with child suicide at an alarming level.

Statement of the Problem

Meaningful child custody law and policy reform is hampered by the mistaken belief among judges and policymakers that joint custody exposes women can children to violence. According to recent metaanalyses (Bauserman; Dutton), however, the rate of violence with sole custody significantly surpasses that of joint custody. In addition, metaanalyses of family violence studies (Fiebert; Dutton) reveal that women's violence toward men is as least as prevalent as that of men's violence toward women, and no less destructive.

Child custody and access law and policy remains one of the most contentious areas of family law and family practice, and this feeds both misandry and misogyny, and family

violence in general. A gender- and rights-based discourse dominates the field, and this heightens conflict; as Mason (1994) has argued, the "best interests of the child" standard historically has been a struggle between mothers' and fathers' rights, with children's needs considered to be commensurate with either position, with children viewed at different times as fathers' property, as requiring the "tender care" of mothers, and as rightfully "belonging" to one parent only, via "sole custody" judgments. This view continues to be reflected in Canada judicial practice. Although more enlightened thinking (equality between the genders, using equal means to attain equal ends) is beginning to emerge, particularly in regard to a shared parental responsibility approach to child custody and access, Canadian jurisdictions are generally regarded as mired in an antiquated sole custody system that does not adequately meet the needs of children and families.

In sum, "winner-take-all" contested child custody cases fall prey to the following disadvantages: they are adversarial in nature; a focus on the competing rights of parents overshadow the responsibilities of parents and needs of children; one parent is a clear "winner" and the other a clear "loser" in parental status, with the designation of a "primary" parent and a "secondary" one; and child custody and post-divorce parenting matters are seen as a one-time dispute to be resolved rather than a long term process that will change and evolve over time (Dodds, 2005).

In recent years, with increasing scrutiny of the indeterminacy of the current "best interests of the child" standard in Canada and judicial lack of skill in this regard (Bala, 2000), a new ethic has emerged, one that recognizes the fact that children's needs and interests are separate from those of their parents, and that these needs, physical and psychological, social and spiritual, should be used as the foundation to determine their "best interests." Thus a new parental "responsibility-to-needs" discourse is being introduced into legal statutes and socio-legal policy at an international and domestic level. And if it is recognized that children need both parents, any analysis of Canadian child custody and access policy must take into account both the limitations of the dominant "parental rights" discourse and the emergence of the new "parental responsibility-to-needs" framework.

The disengagement and alienation of non-custodial fathers and mothers from their children's lives are not uncommon incidences in Canada (Kruk, 2006). Many of these parents are also at risk of poverty and violence, yet "rights-based" women's and fathers' groups have tended to proceed from either the perspective of mothers or fathers in isolation from each other. Both mothers and fathers are affected by child absence, poverty and violence (Fiebert, 2004; Archer, 2002; McNeely et al, 2001; Strauss, 1993), and women and men have more in common with each other than special interest groups assume. Unfortunately, policy analyses have tended to proceed from biased perspectives, such as those of ideological feminism. A child custody and family violence policy overview from a "parental responsibility" framework has yet to be undertaken, which considers first and foremost the importance of clearly defining children's "best interests" in terms of their essential needs in the separation and divorce transition, enumerating parental responsibilities vis-à-vis these needs, and outlining the

responsibilities of social institutions such as the courts and legislatures to support parents in the fulfillment of their parental obligations. It is with such a lens that this policy paper will proceed.

Sole custody legislation, policy, and practice seem to be at the root of the social problems of adversary-based child custody determination, parental disengagement, and parental alienation. Three core questions emerge in regard to the question of legal determination of child custody and access in Canada:

1. How do we address the social problems of child custody and family violence in a way that incorporates the core needs of children of divorce and encourages fathers and mothers to fulfill their parental responsibilities in a way that addresses those needs and lessens conflict between parents?

2. How so we encourage the responsible and effective use of family mediation and post-separation support services in cases where parents cannot agree on the post-divorce parenting arrangements for their children, including "high conflict" cases?

3. How do we garner public and political attention and support to effectively deal with the social problems of sole custody, parental removal and parental alienation, and promoting equal and responsible co-parenting after parental separation?

It will be argued and demonstrated that a rebuttable legal equal shared parenting presumption provides the best answer to questions 1 and 2; this policy paper is intended to begin to address question 3.

Context: Changing Social Constructions and Paternal Diversity

Hearn (2002) states that the changing social constructions of men, fathers and citizens is best understood through the study of the welfare state. Divorced fathers in particular are caught between changing patterns of child care responsibility, where they are expected to assume an active role in child care, in light of mothers' increased labour force participation and decreased amount of time available to child care tasks, and are at the same time regarded, as reflected in child support judgments, as primarily responsible for the financial support of their children.

It is now generally recognized that Canadian socio-legal policies fail to take into account the significant contributions that fathers make in the lives of their children. In general, there has been little direct government support for parenting in Canada, as reflected not only by child custody law, policy and practice, in which one parent is effectively removed from a child's life via sole custody judgments made in court, but also in child care policy and practice, which has focused more on payments to daycare providers than parents themselves for child care, and in child protection policy and practice, with increasing emphasis on child removal and placement in government care at a time when other jurisdictions are focusing more directly on supporting parents in the fulfillment of their parental responsibilities. In the past decade, the number of Canadian children in

care has increased from 40,000 to 65,000; whereas from 1991 to 2005 in New York, the number has dropped from 49,000 to 18,000, as a family preservation policy has been implemented, and the overall number of child abuse complaints has declined by 52%. Policies that support, not remove, parental responsibility for children's needs are largely lacking in Canada in the realm of child custody, child care, and child protection.

Policy Analysis: An Overview of the Paper

This paper will begin by examining (1) current research on children's physical, psychological, and social needs and parental and societal responsibilities in this regard. A child welfare-based orientation will guide our analysis of the research. Central to such a perspective is the recognition that the emotional abuse of children, including witnessing the abuse of a parent, has had least as serious consequences as physical and sexual abuse, as detailed in the Canadian Incidence Study of Reported Child Abuse and Neglect (Trocme, 2005).

The paper will then (2) examine the central core issue in the child custody debate: family violence, and the implications of family violence research on child custody determination.

Next, (3) research on child custody and access trends and outcomes will be discussed, including an overview of Statistics Canada data, court file analysis records, and other relevant data.

Next will be (4) a review of relevant child custody and access-related legislation and policy in each province and territory and federally, as well as the UN Convention on the Rights of the Child. An overview of proposed national and provincial/territorial legislation will follow.

Next, we will (5) examine recent federal and provincial reports on child custody and access, and assess the degree to which current research perspectives are integrated in these reports. The paper will then look abroad to (6) analyze new child custody and access policy developments in selected international jurisdictions.

The paper will (7) summarize current child custody and access policy debates respecting the best interests of the child standard, the primary caregiver presumption, the joint custody presumption, the parenting plan approach, and the approximation standard, each of which has been implemented in different jurisdictions. This will set the stage for (8) a proposal for child custody and access socio-legal policy reform, in the form of a "Four Pillar Approach to Child Custody and Access Determination," focused on harm reduction (shared parental responsibility), treatment (family mediation and support for high-conflict divorces), prevention (shared parenting education), and enforcement (the role of the legal system). Our final section (9) summarizes the key recommendations of this report.

1. Research on the Needs of Children During and After Parental Separation, and

Parental and Social Institutional Responsibilities

The two most influential "benchmark" studies on children's needs in the separation and divorce transition in the past quarter century have been those of Hetherington et al. (1978), a sophisticated study in the single-parent research tradition, and Wallerstein and Kelly (1980), which utilized the perspectives and methods of clinical research with a sample of "normal" children and parents of divorce. The two studies, whose major findings tend to be corroborative, are still our major source of empirical information on the effects of divorce on children and families. Both studies found that particularly during the first year after separation, the parenting capacities of both mothers and fathers deteriorated significantly. They felt incompetent, lonely, alienated and depressed; on almost every measure of parental behaviour, divorced parents were coping far less well than non-divorced parents (making fewer maturity demands of their children, communicating poorly, being less affectionate and showing inconsistency in discipline and lack of control over their children). They found that during separation and after, parents tend to ascribe their own feelings to their children and are often unaware of and relatively insensitive to their children's needs. In the midst of their own feelings of anger, rejection and bitterness, parents may not have the emotional capacity to cope with their children's feelings as well; the emotional strain engendered by the process of divorce is strongly associated with parental unresponsiveness to children's emotional needs. At the same time children often deliberately hide their distress from their parents.

The multiple transitions that accompany divorce for parents acutely affect children. The form and severity of children's reactions depend on many factors such as age, gender, and particular circumstances, and although some disagreement exists as to which age group tends to show which symptoms, studies continue to show that children of divorced families frequently exhibit behavioural difficulties, poor self-esteem, depression, poor school performance. Unfortunately, many of the findings to date are equivocal insofar as studies have not always been able to isolate divorce as the sole variable in children's difficulties. Is it divorce per se, or is it factors associated with divorce (such as child poverty, parental conflict, absence of a parent) that contribute to children's difficulties? It is often unclear whether children remaining in conflict-ridden two-parent families would experience fewer, similar, or more pronounced difficulties than those in divorced families.

The clinical literature has identified the particular emotional pain that a child feels after divorce as related to feelings of loss, rejection, insecurity and deep confusion. Great adaptations are required from the child in terms of mourning the loss of the parental unit while establishing new individual relationships with the parents. There is a tendency for parents to turn to their children after divorce to bolster their self-esteem, for practical help and as a buffer against loneliness and despair.

Children of different ages and developmental stages react differentially to separation and divorce; the stage of children's emotional development is an important factor in how they'll perceive the divorce. Children under the age of five are the most adversely affected by the divorce transition. They manifest vulnerability to depression (the

opposite is true for intact families), confusion about the nature of families and interpersonal relationships, a tendency to blame themselves for the divorce--which is highly resistive to therapeutic intervention, regression in behaviour and general development, a fear of being sent away or replaced, joyless play, a preoccupation with trying to fit objects together, and a yearning for the absent parent--and they are the group most at risk of losing contact with noncustodial fathers. Early latency-age children exhibit a pervasive sadness and sense of loss, feelings of fear and insecurity, acute longing for the absent parent/ intense desire for the reconciliation of their parents--believing the intact family is absolutely necessary for their continued safety and growth. Late latency-age children evidence feelings of shame and embarrassment, active attempts to reconcile their parents while trying to break up any new social relationships, divided loyalties and taking sides between the parents, conflicting feelings of grief and intense anger--usually directed toward the custodial parent (especially by boys), and a two-level functioning--hiding their painful feelings in order to present a courageous front to the world. Adolescents show continuing anger, sadness, a sense of loss and betrayal, shame and embarrassment, and a concern about their own future marriages and relationships.

The pain and sense of loss accompanying divorce can be severe for all children. Wallerstein and Kelly found that no children under the age of thirteen in their sample wanted the divorce to happen; Ann Mitchell (1985) obtained similar results: less than half of the children in her sample were even aware of any parental conflict within the marriage--however, even those who had been aware of conflict thought their family life to have been happy and didn't view their parents' conflict as a sufficient reason to divorce. For those children who were unhappy in a conflictual marriage, this was more likely due to the implied threat of divorce. Wallerstein and Kelly also found that the degree of conflict within the marriage prior to the divorce was not related to children's post-divorce adjustment: marriages that were unhappy for the adults were generally perceived as comforting and gratifying for the children. Not only did children not concur with their parents' decision or express any relief at the time of divorce, but five years after, while adults were generally satisfied with having made the right decision, children still wished for the reconciliation of their parents and wanted to return to the pre-divorce state.

To say that divorce per se affects children negatively ignores the variety of intervening variables that impinge on the post-divorce adjustment of all family members; more recent investigations have examined what it is about divorce that troubles children. Both Wallerstein and Kelly and Hetherington et al concluded that the absence of the noncustodial parent is a very significant factor--they describe the intense longing of children for their non-custodial fathers: All of the 131 children in the Wallerstein and Kelly sample intensely longed for their father's return. It was found that two factors--the nature of post-divorce relationships between parents and the nature of post-divorce relationships between each parent and child--play a major role in determining the consequences of divorce for children. Family process variables are better predictors of post-divorce child outcomes than is family structure. Also associated with the prolonged distress of children after divorce are: children being the focus of parental conflicts; children experiencing loyalty conflicts; the poor emotional health of either parent; lack

of social supports available to parents; poor quality of parenting; lack of or inappropriate communication to children about the divorce; and child poverty.

While it is generally agreed that the two most important factors associated with children's positive post-divorce functioning are a consistent and meaningful ongoing relationship with both parents and the parents' ability to co-operate in their continuing parenting roles, there has been considerable debate about the relative importance of the two; that is, do children fare better in "stable" and non-conflictual single-parent families with minimal or no contact with the non-custodial parent, or in situations where they maintain regular contact with both parents but are exposed to ongoing inter-parental conflict? In cases where conflict between parents persists after divorce, is it in children's best interests to maintain regular contact with both parents, or to limit or cease contact with one? A British study (Lund, 1987) isolated the variables of parental harmony / conflict and father involvement / absence to assess their relative impact on children's post-divorce functioning. The study used multiple measures, a large sample size, and a longitudinal design. Interviewing both sets of parents (and also children's classroom teachers and others to gain an independent rating of children's post-divorce functioning), Lund divided post-divorce families into 3 groups: "harmonious (or neutral) co-parents," "conflicted co-parents," and "single parent" (or father-absent) families. Her results indicate that children fare best in harmonious co-parental families and least in single parent families. The benefits of non-custodial father involvement for children were evident in both the harmonious and conflicted co-parenting groups. Conflict between the parents was not as strong a predictor of poor outcome for children as was the absence of the father after divorce.

More recent studies (Gunnoe & Braver, 2002; Amato & Gilbreath, 1999; Lamb, 1999; Lamb et al, 1997; Pleck, 1997; Warshak, 1992; Bisnaire et al, 1990) have demonstrated the salutary effects of physical joint custody on children's divorce-specific and general adjustment. Kelly (2000), in reviewing a decade of research on child outcomes, concluded that "joint custody led to better child outcomes overall." Amato (2000) found that "divorce has significant impacts on children, according to the research. Many of these impacts tend to be negative…however, moderating factors include children's coping skills, and the presence of joint custody."

The most recent studies on children's needs in the divorce transition have uncovered important new data directly relevant to policymakers and legislators in the field of child custody. In particular, four important new findings call into question present child custody socio-legal policies and practices.

1.Children of divorce want equal time with their parents, and consider shared parenting to be in their best interests. Seventy percent of children of divorce believe that equal amounts of time with each parent is the best living arrangement for children; and children who had equal time arrangements have the best relations with each of their parents after divorce. The few studies that have attempted to examine the issue of child custody from the standpoint of children themselves have tended to rely on clinical samples (Wallerstein, Lewis, & Blakeslee, 2000), or simply have neglected to ask

children about their desires or needs respecting living arrangements (Smart, 2002). A new large-scale (n=829) U.S. study of children who have lived through their parents' divorces concludes that children want equal time with each of their parents, and consider shared parenting to be in their best interests, as well as in the best interests of children generally. Fabricius (2003) and Fabricius and Hall (2000) shed light on the child custody debate with their focus on the perspective of children in divorce. The authors found that equal time with each of their parents is precisely what the majority of children desire and consider as being in their best interests. The authors sought young college students' perspectives on their post-divorce living arrangements, and also gathered data from students from non-divorced families, between 1996 and 1999. Their findings are consistent with earlier research focused directly on children of divorce (Lund, 1987; Derevensky & Deschamps, 1997). Fabricius (2003) compared children's actual post-divorce living arrangements with the living arrangement they wanted, the living arrangement their mothers wanted, the living arrangement their fathers wanted, the living arrangement they believed is best for children of divorce, the living arrangement they believed is best for children of divorce if both parents are good parents and live relatively close to each other, the relative number of days in a typical week with each parent they believe is best for children of divorce for children at different ages, how close they now felt toward their mothers and fathers, the degree of anger they now felt toward their mothers and fathers, the degree to which each of their parents wanted the other parent to be involved as a parent, and the degree to which each of their parents undermined the other parent as a parent. Equal time with each of their parents is what the majority of divorced respondents wanted as children and considered to be in their best interests, regardless of their actual living arrangement. The authors noted the fact that although children of divorce perceive a large gender gap in their parents' generation on the issue of child custody, there was no evidence of this gap in their generation. As young adults who have lived through the divorce of their parents, it may argued that they are, in a sense, the real "experts" on the "best interests" of children of divorce. They certainly felt a injustice in not being allowed to have an equal voice in the proceedings. Finally, Fabricius (2003) found that children in sole custody arrangements experiencing a history of unavailability of the non-custodial parent articulate feelings of insecurity in their relationship with that parent, perception of rejection by that parent, and anger toward both their parents. Consistent with this finding, Amato & Gilbreth (1999), in their meta-analysis of the father-child post-divorce relationship, found that children who were less close to their fathers after divorce had worse behavioral and emotional adjustment, and lower school achievement.

2. Not only do children of divorce want equal time but it works. A review of 33 major North American studies comparing sole with joint physical custody arrangements has shown that children in joint custody arrangements fare significantly better on all adjustment measures than children who live in sole custody arrangements. This meta-analysis of the major North American studies over the past decade comparing outcomes in joint versus sole custody homes found that joint custody is associated with more salutary outcomes for children. Bauserman (2002) compared child adjustment in joint physical and joint legal custody settings with sole (maternal and paternal) custody settings, and also intact family settings, examined children's general adjustment, family

relationships, self-esteem, emotional and behavioral adjustment, divorce-specific adjustment, as well as the degree and nature of ongoing conflict between parents. On every measure of adjustment, children in joint physical custody arrangements were faring significantly better than children in sole custody arrangements: "Children in joint custody arrangements had less behavior and emotional problems, had higher self-esteem, better family relations and school performance than children in sole custody arrangements."

Although many of the studies reviewed by Bauserman compared "self-selected" joint custody families with sole custody families, some examined families with legally mandated joint physical custodial arrangements, where joint custody was ordered over the objections of the parents. These families fared as well as the self-selected samples, reinforcing the findings of earlier studies that joint custody works equally well for conflictual families in which parents are vying for custody (Benjamin & Irving, 1989; Brotsky, Steinman, & Zemmelman, 1988).

3. Shared custody works for parents too. Interparental conflict decreases over time in shared custody arrangements, and increases in sole custody arrangements. Interparental cooperation increases over time in shared custody arrangements, and decreases in sole custody arrangements. One of the key findings of the Bauserman meta-analysis was the unexpected pattern of decreasing parental conflict in joint custody families, and increase of conflict over time in sole custody families. The less a parent feels threatened by the loss of her or his child and the parental role, the less the likelihood of subsequent violence. It may be argued that the current "best interests" framework and sole physical custody determinations have done little to prevent the 46% of first-time battering cases that emerge after parental separation (Corcoran & Melamed, 1990), as these occur within the traditional adversarial forum, a "winner-loser" arena where the emotional stakes--the relationship with one's own children--could not be higher.

4. Both U.S. and Canadian research indicates that mothers and fathers working outside the home now spend about the same amount of time caring for their children. According to research by Health Canada, on average, each week mothers devote 11.1 hours to child care; fathers devote 10.5 hours--a 51-49% split of child care tasks. Over the past decade, mothers' child care involvement has dropped by 33%, while fathers' participation has decreased by 15%. Although research on child-to-parent attachment has revealed that children form primary attachment bonds with each of their parents (Rutter, 1995), until recently there has been very little evidence that fathers contribute to child care to the same degree as mothers, and popular beliefs about the division of child care activities assume primary maternal responsibility. The attachment theory-based research is now reinforced by a Health Canada study utilizing a representative sample of 31,571 Canadian workers, which found that working fathers and mothers are now equal partners with respect to the amount of time they devote to child care, as measured by the number of hours spent in the previous week in child care-related activities. Although this finding runs counter to popular beliefs about gender differences in the division of family labor, these data are consistent with time use data from the United States (Bianchi, 2000). In her U.S.-based research, Bianchi (2000) attributes the decline in maternal child care to six factors: (1) the reallocation of mothers' time to market work outside the home (child

care time declines as time in work has increased); (2) over-estimations of maternal time with children in previous research (it was assumed that time at home was all invested in child care when in reality a large amount was given to household chores not involving children); (3) smaller families have reduced total time with young children; (4) more pre-school children spend time in daycare and play group settings, regardless of the mother's employment status; (5) women's reallocation of their time has facilitated a relative increase in fathers' involvement in child care; and (6) technology such as cell phones has allowed parents to be "on call" without being physically present with children. Thus as the gender difference in time spent in child care has diminished, shared parenting is now the norm in U.S. and Canadian two-parent families, and men and women are becoming equal partners with respect to the amount of time they spend in child care, regardless of perceptions of who is primarily responsible for child care. Shared child care is also emerging as the norm in the majority of divorced families where child custody has not gone to trial. Shared parenting is now the choice of most divorced parents in Canada (Statistics Canada, 2004) who are not involved in a legal contest over the custody of their children.

Thus the research tells us that children need both parents in their lives, inasmuch as their needs are best addressed by both their mothers and fathers in their lives, and from their perspective (Fabricius, 2003) that neither is favoured as a parent over the other. From children's perspective, both good maternal and paternal involvement is necessary for the healthy growth and development of children.

Similarly, divorce and child custody laws, the child development-focused social science research (Bauserman, 2002; Kelly, 2005; Emery, 2004) suggests, should reflect the primacy of the attachment of both mothers and fathers in children's lives, and furthering a cooperative relationship between them. Only in legally established cases of child abuse, while maintaining a firm child protection approach, should this principle be violated. The principle that children need both parents and that shared parenting addresses this core need is supported by child development experts Penelope Leach, Robert Coles, and Erik Erikson, as well as by attachments theorists such as Michael Rutter.

Finally, father absence research reveals the following: 85% of youth in prison are fatherless; 71% of high school dropouts are fatherless; 90% of runaway children are fatherless; and fatherless youth exhibit higher levels of depression and suicide, delinquency, promiscuity and teen pregnancy, behavioural problems and substance abuse (Statistics Canada, 2005; Crowder & Teachman, 2004; Ellis et al, 2003; Ringback Weitoft et al, 2003; Jeynes, 2001; Leonard et al, 2005; McCue Horwitz et al, 2003; McMunn, 2001; Margolin & Craft, 1989; Blankenhorn, 1995; Popenoe, 1996; Vitz, 2000). These studies also found that fatherless youth are also more likely to be victims of exploitation and abuse, and the *Journal of Ethnology and Sociobiology* recently reported that preschoolers not living with both of their biological parents are 40 times more likely to be sexually abused. Finally, "father loss through divorce is associated with diminished self-concepts in children" (Parish, 1987). The Canadian Children Rights Council has declared fatherlessness to be the most significant social problem in Canada.

2. Family Violence, Abuse and False Allegations of Abuse

Family violence is an issue that is closely connected to the child custody and access debate. Unfortunately, much of the debate is infused with assumptions and practices that are not based in scientific evidence but stereotypes and dominant ideology, and much research is based on non-representative samples, which has discredited all social science research in the eyes of much of the judiciary, and instilled a cynical attitude toward such research among family lawyers (Southin, 2006; Farquar, 2006). It seems that the training of Canadian judges on matters respecting child custody and family violence has been ill-informed at best.

A key source of data on child abuse is the Canadian Incidence Study of Reported Child Abuse and Neglect 2003 (Trocme et al, 2005), which is far from complete in regard to the full range of abuse statistics. Nevertheless, the study clearly indicates that there are different forms of child abuse, and certain forms, such as sexual abuse and children witnessing the abuse of a parent, have extremely negative consequences for children's well-being. Examples of such abuse include severe physical abuse of a parent in the child's eyes, and legal abuse such as "supervised access" or no access for parents with no record of child abuse.

False allegations of abuse are also a form of family violence, and these are commonplace in child custody disputes; according to the Canadian Incidence Study of Reported Child Abuse and Neglect 2003 (Trocme et al, 2005), there are many more cases of unsubstantiated (false) allegations of sexual abuse relative to substantiated allegations in the context of child custody disputes: of child sexual abuse reports in Canada, only 24% are substantiated (ibid.).

Family Violence Research

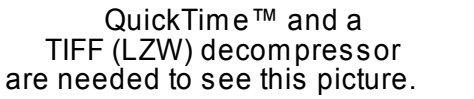
Recent evidence from the best designed studies indicates that intimate partner violence is committed by both genders at the same frequency and with equal consequences . According to Dutton (2005), corroborated by the Canadian Incidence Study of Reported Child Abuse and Neglect 2003 (Trocme et al, 2005), the most likely abusers of young children are mothers; in particular, women are a greater risk for physical abuse to children than are men.

A different perspective is offered by Jaffe et al (2003), a key figure in the training of Canadian judges in family law matters, including child custody and access, however. According to Jaffe, the act of fathers petitioning the courts for joint custody is an attempt of males to continue their dominance over females: "Many batterers pursue visitation as a way of getting access to their ex-partners. They may seek custody to engage in prolonged litigation, during which their legal counsel and the court process mirrors the dynamics of the abusive relationship." Child abuse incidence data, however, reveal that relatively few contested child custody cases involve substantiated cases of child abuse,

including the child witnessing abuse of a parent (Trocme et al, 2005). The risk of abuse after separation is lower for previously abused women than for previously non-abused women (Spiwak & Brownridge, 2005), and 40-46% of first-time battering (based on hospital admissions) occurs after separation, within the "winner take all"sole custody system (Statistics Canada, 2001; Corcoran & Melamed, 1990). Of greater concern is Jaffe's assertion that "an essential principle in the high-conflict divorce arena is that joint custody and shared parenting are not viable options," given that sole custody is associated with higher inter-parental conflict levels the shared parenting, even in court-determined joint physical custody (Bauserman, 2002). The sole custody regime does in fact elevate the risk of abuse of mothers and fathers.

A recent meta-analytic review of family violence research (Fiebert, 2004) examined 155 scholarly investigations, 126 empirical studies and 29 reviews or analyses, concluding that women and men are equally capable of abuse. According to Archer's (2002) meta-analytic review, women are more likely than men to use aggression toward their heterosexual partners, although women are more likely to be injured, as men are more likely to strangle, choke or beat their partners. Burke et al (1988) found that 14% of men and 18% of women report inflicting physical abuse, but 10% of men and 14% of women report sustaining physical abuse. Stets and Henderson (1991) found that women are 6 times more likely than men to use severe violence in dating relationships, and inflict more severe violence in cohabiting and married relationships; and Stets and Straus (1990) and Straus (1995) found that violence by women is not primarily defensive, and yet is less disapproved than male to female violence. Hampton et al (1989) report steady rates of male to female violence, but an increase of 33% in female to male violence over a ten year period. McNeely et al (2001) concluded that domestic violence is a human, not gender, issue, as women are as violent as men in domestic relationships, and they comment specifically on men's "legal and social defenselessness."

The Stets and Henderson (1991) data is summarized here:



As far as Canadian data is concerned, according to Statistics Canada (2001. 2006) and the Canadian Centre for Justice Statistics(2000), in a national sample, 8% of women and 7%

of men reported abuse by their intimate partners. The nature, severity and consequences of violence are severe for both, although of those who did report it, 33% of the men and 66% of the women reported being injured. Other Canadian data, however, indicate that there is twice as much wife-to-husband as husband-to-wife severe violence (Brinkerhoff & Lupri, 1988; Sommer, 1994). In regard to spousal homicides, however, in 2004, there were 74 spousal homicides in Canada, and 62 of these were female victims. From 1974 to 2004, the rate for female victims of spousal homicide dropped 57% from 16.5 per million women in spousal relationships to 7.1, while the rate for male victims dropped 68% from 4.4 to 1.4.

Suicide rates are of 'epidemic" proportions among separated and divorced fathers (Ksopowa, 2002), and men are more likely to be criminally charged than women, even when they report that their partners have abused them, and thus men are less likely to report abuse than women (Brown, 2004).

Finally, Johnson (2006) cautions against conflating different levels of abuse as "family violence." Accordingly, a small percentage of contested child custody cases involving abuse involve "intimate terrorism," as defined by Johnson. When such abuse is identified, and a child has witnessed such abuse, here is no question that a severe form of child abuse has been perpetrated. It is not uncommon to find situations of situational couple violence, and no violence, however, resulting in sole custody verdicts and removal of access which increase the potential for first-time or severe violence. And much severe abuse is kept hidden, including all cases of legal abuse against a parent-child relationship with no child abuse finding.

How to end violence against children, women and men

The following have been identified by a range of scholars as key to conflict resolution (Tools for Change, 2006; Kruk, 2006):

-Work for full equality between men and women in society and in personal relationships. A key aspect of this is full equality in status, rights and privileges as parents.

-Know that fathers who are active in their children's lives are good dads.

-Examine the ways in which we legitimize both male and female violence. A key aspect of this is the stated recognition by key professional associations such as Teachers Federations and Associations of Professional Social Workers of the abuse of men as fathers.

-Recognize that individual violence is supported by social systems based on power, control and inequality, and work toward eradicating these systems of oppression. A key aspect of this is the naming of feminist ideology based on essentialist formulations and inaccurate statistics as a system of oppression of men as fathers.

-Recognize that verbal, emotional and legal abuse is also violence.

-Advocate for anti-violence laws and enforcement. A key aspect of this is education focused on conflict resolution, to provide individuals and groups with the necessary social justice tools they require to resolve parenting-related conflicts.

-With children, start on the playground: teach kids to communicate clearly in relationships, and that "no" really does mean "no;" encourage activities that involve cooperation, fun, physical health and camaraderie; teach children how to settle conflicts peacefully; teach effective respectful ways to express anger and frustration.

3. Research on Child Custody

The legal/judicial mode of child custody resolution may be seen as comprised of three interrelated yet distinct elements: the adversary nature of the legal model itself, the actual practices of legal practitioners and the courts in regard to issues of custody and access, and the experience of the participants themselves in the process. It has been suggested that while the legal model in itself may be adversarial, developments in divorce law have resulted in procedural changes to the extent that the law as practiced is not adversarial at all but administrative, or mediating. Others argue, however, that while certain developments in divorce law, such as simplified procedures, changes in the pattern of grounds for divorce, and "no-fault" divorce have represented a movement away from an adversary model, an adversarial approach still forms the basis of procedure in matters of custody and access. With the introduction of no-fault divorce, it is argued that child custody is left as the only sphere in which "fault" is still relevant, where contested cases involve a prolonged litigation process of filing suits and countersuits and represent "some of the most volatile, hostile, and destructive transactions in court" (Coogler, 1978). In uncontested cases, where judges may simply "rubber-stamp" decisions made prior to the court hearing (an administrative function), the process of negotiation leading to such decisions may be highly adversarial: the use of threats and counter-threats filed by both parties in the form of affidavits, and the behaviour of legal practitioners have been associated with escalation of conflict. Finally, there is little question that the participants in these processes experience legal resolution of custody and access disputes as highly adversarial.

Statistics Canada Data

In Canada in recent years, the majority of custody awards have been made solely to mothers, but it has been noted that in well over 90% of cases, it is the family and not the court that determines who will have custody of the children: the great majority of child custody decisions are made out of court; a relatively small percentage of parents fail to reach an agreement and are brought to trial. In the vast majority of cases, the court appears to simply ratify the existing arrangements made by the parties; thus Polikoff (1982) argues that in fact most children remain with their mothers by the mutual consent of the parents: "The final court award, rubber stamping the arrangement of the parties themselves, does not reflect a bias on the part of the court system toward mothers because

the court system plays an entirely passive role."

The most recent divorce registry statistics and census data (Statistics Canada, 2004), however, indicate that joint physical custody (or "shared parenting") is not only on the rise, but has now surpassed sole maternal custody as the most common outcome in non-litigated cases.

Court file analysis data

Outcomes in contested child custody cases are instructive inasmuch as they inform how lawyers advise their clients in potential child custody cases. Although reasons for judgment in contested cases reflect a wide range of views among judges as to what constitutes "the best interests of the child," a scrutiny of contested cases of child custody provides an explanation for the relatively low levels of legally disputed custody cases. Canadian courts, according to the latest data, from 1988, appear to continue to grant maternal custody in the majority of contested cases. The *Evaluation of the Divorce Act* (Department of Justice, 1990) found, in an analysis of 1988 court file data, where there was a trial, custody was awarded to mothers in 77% of cases and to fathers in only 8.6%. The evaluation report concluded, "where fathers were granted sole custody, this was almost invariably because the mother did not want or could not cope with the custody of the children rather than the outcome of contested custody;" and, "there has been no appreciable or consistent change in the basic patterns of awarding sole custody since at least the early 1970's...(although) what does seem to have changed since the 1970's is that in the late 1980's, men are less likely to receive sole custody when they request it or it is disputed than was previously the case." Finally, the evaluation found that the reason that sole custody is the norm in Canadian court-determined arrangements is that joint physical custody is seen to be unworkable among parents who disagree on parenting arrangements by the judiciary.

The impact of judicial decisions in contested cases go well beyond these cases themselves. They define legal norms, and form the basis of a body of law upon which others are advised, including the bulk of "uncontested"cases where fathers want at least joint custody but settle for access.

The fact that from 1988 until the present there has been little national family court or family justice data available, according to former Liberal Justice Minister Irving Cotler, does not reflect well on the former Liberal government. The lack of research is at least in part due to resistance to non-court sanctioned research by academic scholars in the form of denied access to court records. However, recent unpublished research of Ontario Court of Appeal judgments (Jenkins, 2006), provides evidence indicating that whereas when children are living with their mothers at the time of the child custody hearings it is extremely rare for the courts to upset the status quo, when they are living with their fathers the status quo is not such a potent force. According to Jenkins, the "mother-factor" generally outweighs the "status quo" consideration: courts are more likely to disturb the status quo when children are living with their father.

Studies in the United States (Fox & Kelly, 1995; Maccoby & Mnookin, 1988) consistently point to "gender stratification within the custody award process," with sole maternal custody being awarded in jurisdictions with a similarly indeterminate "best interests of the child" standard as in Canada.

4. Child Custody and Access-related Legislation and Social Policy

This section will provide an overview of provincial, federal, and international statutes respecting child custody and access, with a focus on implications for post-divorce paternal involvement.

International Frameworks

The 1989 U.N. Convention on the Rights of the Child, according to legal scholar Barbara Woodhouse (1999), is the most rapidly and universally accepted human rights document of the past century. Within a decade after its promulgation, it had been ratified by every nation but two. Canada is a signatory. The Convention's philosophy is embodied in Article 3: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration." Despite its indeterminacy, Woodhouse argues that the future of child custody and access law and policy lies in perfecting the best interests standard, not abandoning it for alternatives that lack a child-centred focus.

In addition, the UN Convention emphasizes the primacy of parents in their children's lives in Article 5 ("States Parties shall respect the responsibilities, rights and duties of parents…") and in Article 9 ("States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child"). Two key principles underlying the Convention are that parents have the primary responsibility for nurturing children, and the role of governments and communities is to support children and their families; these are both seen to be in "the best interests of children."

Article 19 of the Convention refers to needed measures to protect children from all forms of violence, injury or abuse, neglect, maltreatment or exploitation—and it refers to actual violence and maltreatment, not risks of violence and maltreatment. To remove child custody from a parent because of "risk" rather than proof of harm is thus not in keeping with the Convention. Article 12 states that the views of the child be given due weight in accordance with the age and maturity of the child, on all matters affecting the child. (Canadian courts tend to assess a child's interests according to their preconceptions of what is best, rather then look at children's needs from the child's viewpoint, which is what the Convention requires. Finally, Article 8 stipulates the child's right to preserve his or her identity, and all children are entitled to have their human rights respected, including children of separation and divorce.

Federal Legislation

The *Divorce Act* uses the terms *custody* and *access*. *Custody* includes "care, upbringing and any other incident of custody." *Access* is not specifically defined. Either or both spouses, or any other person, may apply for custody of, or access to, a child. The Divorce Act permits the court to make interim and final (sole or joint) custody and access orders and enables it to impose terms, conditions and restrictions in connection with those orders.

Section 16 (8) of the Divorce Act states, "the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child." Section 16 (10) reads, "the child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact" (the so-called "friendly parent" rule).

Although the Divorce Act identifies "the best interests of the child" as the sole criterion in child custody determination, and reflects the primacy of parents in the child's life, it does not identify the specific "needs and other circumstances of the child" that must be considered in determining custodial arrangements, and thus the standard remains indeterminate and subject to judicial discretion. In addition, no mention is made of the primacy of both parents in the child's life.

Although the Supreme Court of Canada ruled (unanimously) in favour of the father in the *Trociuk* paternity decision, which allowed the children to have their father (as well as their mother) listed on their birth certificate, British Columbia scholars and policymakers are resisting the decision. According to Susan Boyd, UBC Chair of Feminist Legal Studies and University of Victoria Law Professor Hester Lessard, "*Trociuk* is a disheartening, flawed endorsement of biological concepts of parenthood (and) legitimizes a heterosexual view of the family."

Provincial/Territorial Legislation

Provincial and Territorial Child and Family Legislation relevant to child custody and access includes the British Columbia Family Relations Act; Alberta Family Law Act; Saskatchewan Children's Law Act; Manitoba Child and Family Services Act and Family Maintenance Act; Ontario Children's Law Reform Act; the Quebec Civil Code; New Brunswick Family Services Act; Nova Scotia Children and Family Services Act; Prince Edward Island Family Law Act; Newfoundland Children's Law Act and Family Law Act; Yukon Territory Children's Act; Northwest Territories Family Law Act; and Nunavut Children's Law Act and Family Law Act.

The British Columbia Family Relations Act uses the terms "custody" and "access," but neither is defined, and the Old English statute of "guardianship,' which confers powers

and rights over a child. It parallels the federal Divorce Act's emphasis on the child's best interests in Section 24 (1), which reads, "a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances: the health and emotional well being of the child including any special needs for care and treatment; the love, affection, and similar ties that exist between the child and other persons; education and training for the child; the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately." Again, the "best interests of the child" remains a largely indeterminate standard, and judicial discretion prevails in child custody and access determination. Further, although Section 27 (1) of the Act states that, "whether or not married to each other and for so long as they live together, the mother and father of a child are joint guardians unless a tribunal of competent jurisdiction otherwise orders," meaning that when parents live together they share parental duties, upon separation, according to Section 27 (2), "the one of them who usually has care and control of the child is sole guardian of the person of the child." Where the parents have never lived together or shared joint guardianship, the mother is the sole guardian of the child. The same statutory regime also applies to custody. The Family Relations Act thus removes joint parenting rights and responsibilities upon parental separation, and essentially imposes sole custody. The legal assumption is that only one parent "usually has care and control of the child," and that sole custody is in fact in "the best interests of the child." Finally, in British Columbia, lower court discretion is not open to appeal, therefore judicial errors regarding the state of current child development and family dynamics research cannot be corrected by the Court of Appeal, and are carried into the future as legal precedents. According to some, the powers of a single judge to exercise his or her biased or mistaken prejudice should logically be open to appeal, and this may need to be a focus of socio-legal policy reform in British Columbia. In British Columbia courts typically award custody to one parent and joint guardianship. In BC Provincial Court, for unmarried parents, courts make custody orders under the federal *Divorce Act*. In BC Supreme Court hearings, for married parents, a custody order made under the *Family Relations Act* gives the custodial parent guardianship of the child as well, unless the court decides otherwise. However, frequently a *Family Relations Act* claim for guardianship is joined with the *Divorce Act* proceeding so that the court can make a guardianship order at the same time as it makes a custody order.

The Ontario Children's Law Reform Act similarly establishes "the best interests of the child" as the determining criterion in child custody in Section 27 (1), but unlike British Columbia, it does state that a father and mother are equally entitled to custody. Also, unlike British Columbia, in assessing a person's ability to act as a parent, the court also considers whether the person has at any time committed violence or abuse toward another family member. Again, the legal assumption is that after parental separation only one parent usually has care and control of the child, although, unlike in British Columbia, custody is more often granted to more than one person, and physical joint custody between the parents is possible in law.

The Alberta Family Law Act (Section 17.1), Saskatchewan Children's Law Act (Sections

8 and 9), Manitoba Family Maintenance Act (Section 2.1), Quebec Civil Code (Section 33), New Brunswick Family Services Act (Section 129); Nova Scotia Children and Family Services Act (Section 2) and Maintenance and Custody Act; Prince Edward Island Family Law Act (Section 25) and Custody Jurisdiction and Enforcement Act; Newfoundland Children's Law Act (Section 31); Yukon Children's Act (Sections 29 and 30); Northwest Territories Children's Law Act (Section 18); and Nunavut Family Law Act (Section 8) all cite "the best interests of the child" as the sole criterion in child custody and access determination, yet provide minimal indicators of these best interests, and neither are custody and access clearly defined.. In other respects, provincial legislation spans the range between the positions of British Columbia and Ontario on the issue of the degree to which sole and joint physical custody are legally available, but parent groups and outcome studies report a sole custody bias in practice across the country.

Whereas only a few jurisdictions, most notably British Columbia and Yukon, provide a presumption that a court must order the physical care of a child to one parent over the other in contested custody cases, thus removing the status of one parent despite the absence of any child protection concerns, even in jurisdictions that provide for custody to more than one parent, de facto sole custody arrangements prevail across Canada. In Alberta, which defines neither custody nor access, unless a court expressly removes powers of guardianship, the non-custodial parent, whether or not that parent is an access parent, retains all of the powers of guardianship, except those that are required by the custodial parent for purposes of day-to-day living. Manitoba defines "custody" as "the care and control of a child by a parent of that child," and "access" is not specifically defined, and adopts Alberta's view on guardianship. In New Brunswick, "parent" is defined to mean a mother or father and includes a guardian and a person with whom the child ordinarily resides who has demonstrated a settled intention to treat the child as a child of his or her family; and on application the court may order that either or both parents, or any person, either alone or jointly with another, shall have custody of a child, on the basis of "the best interests of the child" (not defined). In Newfoundland the father and the mother are equally entitled to custody of the child, and a parent of a child or other party, with grandparents specifically mentioned, may apply to a court for an order respecting custody of or access to the child (neither is defined). In Nova Scotia, the legislation states that the father and mother of a child are joint guardians and are equally entitled to the care and custody of the child unless otherwise provided by the *Guardianship Act* or ordered by a court, yet legislation also defines guardian as a head of a family and any other person who has in law or in fact the custody or care of a child and parent, in the case of a child of unmarried parents, as a person who has been ordered by a court of any law district to pay maintenance for the child. In the Northwest Territories, legislation provides that a father and mother of a child are equally entitled to custody, but also states that the right of a parent to exercise the entitlement and incidents of custody are suspended until an agreement or order provides otherwise when the parents are living separate and apart and the child lives with the other parent or the parent has consented (expressly or by implication) or acquiesced in the other parent having sole custody of the child. In Nunavut, the father and the mother of a child are equally entitled to custody, with the right of a parent to exercise the entitlement to custody of a child being suspended

until a parental or separation agreement or a court order otherwise provides where: “(a) the parents of the child live apart and the child lives with the other parent; and (b) the parent has consented, either expressly or by implication, or acquiesced to the other parent having sole custody of the child. In PEI, legislation provides that except "as otherwise ordered by a court, the father and the mother of a child are joint guardians of a child and are equally entitled to custody of the child,” but the but again, the custodial rights of “the parent with whom the child does not reside” are suspended until an agreement or court order provides otherwise. In Quebec, custody may be awarded to either parent or a third party, but the custodial parent has the right to determine the residence of the child and make the day-to-day decisions, and the non-custodial parent "retains the right to participate in major decisions about the child's upbringing as a consequence of the exercise of parental authority." The Civil Code uses the terms parental authority and custody, and although neither is specifically defined, parental authority is a much broader concept and includes the full range of parental rights and duties. In Saskatchewan custody is defined to mean personal guardianship of a child and includes care, upbringing and any other incident of custody having regard to the child's age and maturity, but access is not defined by the act. The authority to make major decisions regarding health, education and religion rests with the custodial parent. When making, varying or rescinding an order for custody or access of a child the court shall have regard only for the best interests of the child; unlike other provinces, Saskatchewan includes a lists of considerations in determining “the best interests,” and joint custody is one option available to the court. Yukon is unique because it has a rebuttable presumption of sole custody—that the court “award the care of the child to one parent or the other and that all other parental rights associated with custody of that child ought to be shared by the mother and the father jointly.” Although "the father and the mother of a child are equally entitled to custody of the child," joint custody is not an option. “Custody” and “care’ are defined in the legislation, but “access” is not.

Courts in all provinces continue to award custody to one parent only in the great majority of cases, despite the legal recognition that when both parents reside together, child custody is equally held by both of them. Sole custody to one parent and access to the other is the normal court practice across all provinces. Seven out of 10 provinces have implemented a unified family court system to deal with matters of child custody and access after parental separation and divorce.

Proposed Federal Legislation

Bill C-22, Reform of the Divorce Act Respecting Child Custody and Access, was introduced by the former Liberal government as a proposal to amend the Divorce Act, but has been shelved by the Conservative Government. Essentially, Bill C-22 endorsed a “parental responsibility model,” in which the terms “custody” and ”access” would be eliminated, and the term, “parental responsibility” introduced to allow the court to allocate those responsibilities between the parents. The law would encourage regular interaction between children and both parents, but would not require that parenting responsibilities be divided on a shared or equal basis between parents. The “best interests of the child” would still be subject to judicial discretion.

The promotion of responsible fathering post-parental separation and divorce is one of the stated aims of the Conservative Party's policies on child custody and access. The Conservatives' position in the during the 2006 federal election, was to implement the Special Joint Committee's recommendation that the rights and responsibilities of child rearing be shared between the parents, unless demonstrated not to be in the best interests of the child. The terms "custody" and "access" would be removed from the law and replaced with the term, "shared parenting." This option would utilize a "parenting plan" approach to allocate parental responsibilities, and would legislate a shared parenting presumption in disputed cases, unless not in the best interests of the child.

Again, a flaw in the Conservative position is the indeterminacy of the "best interests" standard. And even if children's needs and interests are explicitly identified, judges expertise is not in child development, and yet they would be called upon to exercise discretion in determining children's "best interests." However, if an allegation of abuse is substantiated via child welfare investigation, the court would need, as in all child protection findings, to exercise its judgment in contested custody cases.

The Federal-Provincial-Territorial (2002), *Putting Children First*, set out a list of guiding principles for any new child custody and access law. This report, inasmuch as it focused on the essential needs of children in the divorce transition, provides a model for the development of a new child custody determination approach. These principles are: (1) ensure that the needs and well-being of children are primary; (2) promote parenting arrangements that foster and encourage continued parenting responsibilities by both parents, when it is safe to do so; (3) provide clarity in the law with respect to specific factors of what is in "the best interests of the child;" (4) promote alternative dispute resolution mechanisms to allow conflicts to be resolved in a non-adversary forum and cooperative fashion; (5) ensure that conflicts are resolved in an accessible, fair and timely manner; and (6) encourage the participation of extended family and grandparents in the child's life, when it is safe to do so.

5. Federal and Provincial Reports on Child Custody and Access

The majority of Canadian federal government, as well as some provincial government, custody and access policy research papers and reports have neither sought to clarify the "best interests of the child" standard nor have addressed the issue of children' need for both parents after divorce. Most have focused to a much greater degree on the issue of child support. Above all, federal and provincial/territorial reports (listed under Canadian Government Reports in the Bibliography), expressly endorse the need for judicial discretion in custody and access determination. The Federal-Provincial-Territorial Report on Child Custody and Access, for example, recommends that "legislation not establish any presumptive model of parenting after separation, nor contain any language that suggests a presumptive model." Despite empirical support for shared parenting as meeting children's needs, as opposed to *de facto* sole custody, federal and provincial reports on child custody and access have fallen short of recommending a rebuttable legal

presumption of shared parenting, or physical joint custody, and encouraging equality between parents in this regard.

Much of the focus of government reports on child custody and access has been on the need for additional training for judges in family law matters, and the expansion of support services for parents, while recommending leaving judicial discretion regarding "the best interests of the child" and the present sole custody framework intact. Additional training for judges is sometimes recommended, but the source and nature of the training is never addressed. Few if any reports have offered discussion about refining or clarifying what is meant by a child's "best interests," despite the views of legal commentators such as Bala (2000) who have found that the indeterminacy of the "best interests of the child criterion" renders it "almost useless" in child custody proceedings. No reports have asked, "what are the core needs of children during and after the divorce transition, the responsibilities of parents (particularly fathers) in addressing these needs, and the responsibilities of social institutions to support parents (particularly fathers) in the fulfillment of their parental responsibilities?" It seems legitimate to question why a matter as important as the best interests of children remains subject to judicial discretion, as judges are not trained in child development, family dynamics, or child and family policy.

Federal

Rather than examining the plethora of federal government reports on child custody and access over the years, which occupy several shelves in the National Library, it may be more instructive to examine the most comprehensive research-based report done to date. The Special House of Commons Senate Joint Committee on Child Custody and Access (1998) report, *For the Sake of the Children*, more than any previous examination of child custody and access in Canada, sought to assess current research and its implications for child custody- and access-related socio-legal policy. This report, unlike others before and since, focused on shared parenting, parent education and mediation, and defining children's needs and paternal responsibilities in the divorce transition based on the UN Convention of the Rights of the Child) and thus remains a "benchmark" report in regard to examining the core issues related to child custody and access, going well beyond the cosmetic changes recommended by the other reports.

Many briefs to the Joint Committee, from legal practitioners, mental health specialists, parents' groups, and children's representatives stressed that a new divorce act affirm that both parents are responsible for the care of their children after separation and divorce, and this was reflected in the Committee's recommendation that "parents' relationships with their children do not end upon separation or divorce…divorced parents and their children are entitled to a close and continuous relationship with one another," and that a "shared parenting" approach replace sole custody and access determinations. A call for parenting plans, developed according to the best interests of the children, was made by many, and the committee recommended legislating the use of a "parenting plan setting out details about each parent's responsibilities for residence, care, decision making and financial security for the children…All parenting orders should be in the form of

parenting plans." Finally, the problem of family violence was highlighted and the need for non-adversarial fora of dispute resolution identified, including "parent education programs" and the requirement that parents "attend at least one mediation session to help them develop a parenting plan for their children."

In sum, the Joint Committee found that the federal Divorce Act is replete with the language of "custody" and "access," reflecting a bygone era where women and children were the legal chattel of the paternal head of the household. Any new act, according to the Joint Committee, should assume the existence of two-parenting households and reflect shared responsibility. A new divorce act should also take into account the importance of grandparents, siblings and other extended family members. Family mediation is intended to exist alongside rather that replace the legal system. Attending at least one confidential mediation session should be mandatory; indeed, the law should affirm that mediation and other methods of dispute resolution be the first choice in cases of marital breakdown.

It was noted that for the recommendations of the Joint Committee, arguably the most comprehensive Canadian review of child custody and access, to be realized, the federal and provincial governments must commit adequate resources -- to run parenting education programs, offer family mediation and clarify the "best interests of the child," particularly in regard to the involvement of both parents in children's lives.

Lawyers, judges and mediators, it was generally agreed among participants in the Committee hearings, should see themselves as parts of a single team, all co-operating to help divorcing parents formulate sensible, workable and effective parenting plans.

Today, at least 50 per cent of Canadian marriages or common-law unions end in divorce, affecting at least 60,000 children. The questions family members, including fathers and their allies, are asking, are: "Haven't enough recommendations been made?" "Isn't it time now for government to act -- for the sake of the children?"

Provincial

As on the federal level, there have been a plethora of provincial government committees and reports produced on child custody and access over the past two decades. There has been much more attention, however, to the issue of child support in these studies. The most recent provincial government report is the British Columbia Justice Review Task Force, which produced its report, *A New Justice System for Families and Children*, in 2005.

After reviewing 16 earlier custody and access-related reports produced in British Columbia alone, as well as "reports and academic papers on family law reform and dispute resolution issues," the working group made a number of recommendations intended to "replace the family justice system's adversarial framework with a comprehensive dispute resolution system for families" (p. 13). The main focus of this current report is reform that will "enhance accessibility, effectiveness and integration of services" (p. 16). This group, comprised entirely of members of the legal profession, and one non-professional, articulated the "contributions and reforms that have already been implemented in British Columbia." Although many reforms have been advanced in B.C., however, most have been considered "band aid solutions" imposed onto "a system that needs a comprehensive overhaul in order to meet the needs of individuals and families." Innovations such as mediation, collaborative law, settlement conferences and parent education programs "have been "add-ons" to what is still, essentially, an adversarial format," according to the report (p. 13). The report states that the B.C. family justice system's adversarial framework needs to be replaced (p. 13).

Thirty seven recommendations are advanced. At the heart of the recommendations is the development and maintenance of a "Family Justice Information Hub" which will function as a 'one-stop shop' for families requiring help or information about a family law issue. Mediation is supported by the report and one mandatory mediation session is recommended for all parents disputing child custody, except those in which there is a "power imbalance between the parties" (which may be argued exists in all relationships on different levels), the "high conflict" cases that "for good reason, need a resolution by a judge." Other recommendations focus on alternative measures to court action, accessibility services for minority groups and people with physical and mental challenges, standardized preliminary screening and assessment processes, singular rules and processes across jurisdictions as well as a unified family law jurisdiction. Little is said about how to identify family violence perpetrators, and the report states that, "punitive measures do not resolve these disputes and may actually encourage them." Discussion about the enforcement end of the legislation is completely lacking in the report. The recommendation that "high conflict" cases be "administratively earmarked and assigned to a judge who will hear all subsequent applications in the case" works only if the judge has made an accurate assessment in the first place; otherwise, the judge may be an unwitting accomplice to partner and child abuse, particularly if sole custody has been granted to the abusive partner.

The recommendation for a unified family law jurisdiction proposes realignment and

expansion in court structures and systems, and additional monies for more specialized judiciary and allied professionals.

The report is somewhat naïve in its faith in "skilled assessors" who "can recognize adults and children who are at risk," and "tested and accepted protocols to screen for violence." The fact is that abused spouses have not been served well by the present system, who are, as the report acknowledges, at greatest risk in the period following separation, under the adversarial and sole custody system. Denied legal access to children is not considered a form of abuse by the report, and no mention is made about effective measures to distinguish between genuine and false allegations of abuse. The report also recommends that lawyers encourage their clients to use mediation services, which they are already legally required to do under the *Divorce Act*.

Few legislative recommendations are advanced in the report, apart from supporting dispute resolution in high conflict cases. No mention is made of shared parental responsibility anywhere in the report, despite evidence that such a law would advance and provide the necessary climate for uptake of mediation services. The fact that the status quo is causing harm, according to the report, is nevertheless essentially left intact, despite the Task Force's 37 recommendations.

There is no question that the reforms advocated in this report, as in other provincial and territorial reports, once established, would improve the long-term effectiveness of custody determination processes. But these reforms, while encouraging and promoting mediation and non-adversarial dispute resolution, do not advance proposals like equal or shared parental responsibility, which would provide an incentive for divorcing parents to engage in the mediation process. A shared parental responsibility approach, as advanced in jurisdictions outside Canada, would remove "child custody and access" out of the adversarial arena, which is what is proposed by the BC Task Force and other provincial family law committees.

Finally, provincial government child and youth advocates tend not to get involved in the arena of child custody and access, and rarely if ever mention the growing problem of fatherlessness among children of divorce. This is the case with the BC Child and Youth Officer, who endorses a "resilience-based approach to child and youth development" in British Columbia (Child and Youth Officer for British Columbia, 2006): "Expect this approach to be applied in policy development at different levels in all ministries of government that provide or fund services for children, youth and their families. Expect this approach to be applied in practice on the front line where government funded services are delivered. Develop and apply a strengths-based lens when reviewing, revising and developing all policy, programs and services relating to or affecting children and youth…How does it provide opportunities for youth to develop skills and competencies that build on their existing strengths?" "Parents" are not even mentioned in the report.

6. Child Custody and Access Policy in Selected International Jurisdictions

A number of jurisdictions are, like Canada, presently considering the revision of their family law statutes, with a particular emphasis on the reform of custody and access legislation. Those chosen for review here are the United States, United Kingdom, France and Australia.

United States:

Some U.S. states are well advanced in the reform of their child custody and access laws and policies, as child custody is under state, not federal, jurisdiction. More socially progressive states have advanced new child custody and access laws. At least six states have now enacted some form of legal joint physical custody presumption (substantially equal shared custody or similar language); these include Iowa ("If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child"), Kansas ("joint physical custody is the first order of preference"), Oklahoma ("the court shall provide substantially equal access to both parents…unless the court finds that such shared parenting would be detrimental to the child. The burden of proof that such shared parenting would be detrimental to the child shall be upon the parent requesting sole custody"), Texas (where the Family Code containing a presumption of "joint conservatorship," which provides a minimum of 42% time with the non-custodial parent, and by exercising other parts of Texas statutes, the time allocation may be extended to 50%), Wisconsin ("the court shall presume that joint legal custody is in the best interest of the child"), and Arkansas ("when in the best interests of the child, custody shall be awarded….to ensure the frequent and continuing contact of the child with both parents"). The U.S., however, is a study in contrasts in the area of custody and access legislation: 20 other states include "frequent and continuing contact with both parents, or similar language; 2 utilize case law; 3 have only a preference for joint legal custody; 7 presume joint custody when both parents agree; and 13 have no statutes that promote shared parenting.

Washington State. In this state's legislation, the primary tool used to structure post-separation parenting is the "parenting plan." When parents are unable to agree on a parenting plan and court proceedings are necessary, the court order (called a "parenting order") is made in the form of a parenting plan. The parenting plan is the vehicle by which "parenting functions" are allocated between the parents, and include maintaining a stable, consistent and nurturing relationship with the child, attending to the daily needs of the child, attending to the child's education, and providing financial support for the child. Since the passage of the *Washington State Parenting Act* in 1987, research studies indicate that, while there appears to be strong policy support for the goals of the act, it does not appear that the act has had a significant impact on the reality of post-separation parenting. For the most part, children continue to live with one parent following divorce and it is that parent who exercises control over significant decisions concerning the child.

Litigation rates have not declined. Thus it appears that parenting plans, by themselves, without a shared parenting presumption, are going to have little effect on post-separation family structure or parental conflict levels.

New York State. At present, New York State has no statutory language promoting shared parenting and sole custody is the norm. It is, however, at the vanguard of child welfare law reform; with a population as large as that of Canada, it has half the rate of children in government care and half the rate of substantiated child abuse. Currently under consideration is Bill A330, which would "require the court to award custody to both parents in the absence of allegations that shared parenting would be detrimental to the child"; it also establishes an order of preference in awarding custody (with the first preference being joint custody), and “shared parenting” and “parenting plan” are clearly defined. New York is seen as a “battleground state” for family law reform as what happens there is anticipated to have a strong impact on the family law of other states. The bill would establish a clear physical joint custody presumption, with a statement that this is in “the best interests of the child,” and a burden of proof that shared parenting would be detrimental is placed upon a parent requesting sole custody. Most important, say proponents, the bill recognizes that the alleged primacy of maternal influence in the lives of children is an unbalanced perspective and not in children’s best interests, and it communicates to the child that both parents are of equal status in the eyes of the law. Bill A330 is opposed by the New York Chapter of the National Organization for Women, which advocates *de facto* automatic sole custody privileges for mothers, and by fathers rights groups that seek paternal sole custody outcomes in more cases.

Michigan. The Bill to Amend the Child Custody Act simply amends the Child Custody Act of 1970 to create a presumption that parents who divorce maintain joint custody of their minor children. Both parents would retain the legal right to authorize medical treatment, have access to school records and so forth, and both would have physical custody of their children for alternating and substantially equal periods of time. The legislation makes provision for rebutting the presumption of joint custody -- if a parent is "unfit, unwilling or unable” to exercise joint physical custody.

California. On the other end of the spectrum, although “frequent and continuing contact” for both parents is encouraged in California legislation, this has not reversed the pattern of sole custody awards being made by courts. At this time, California is considering new legislation to extend the relocation rights of custodial parents: “Normal incidences of moving, including, but not limited to, increased distance from the noncustodial parent, change of schools or neighborhoods, or alteration of the custody or visitation schedule, are insufficient in and of themselves to establish detriment or prejudice, and shall not be the basis for an evidentiary hearing regarding the relocation.”

Wisconsin. AB 400, which recently passed the Wisconsin Assembly, will help safeguard children by preventing relocations. Under this bill, the moving parent will have the burden of proving that prohibiting the move would be harmful to the children’s best interests. AB 400 creates a rebuttable presumption that it is in children’s best interests to remain in the community in which they have become adjusted.

North Dakota. A ballot initiative on shared parenting was approved recently by the Secretary of State to ensure that parents are not denied joint physical custody of their children unless they are termed unfit to raise children. The proposed new law would provide for a presumption of shared parenting in the case of separation or divorce.

Massachusetts. In the Massachusetts state ballot in the 2004 U.S. federal election, 85% of voters favoured a non-binding shared parenting statute. Specifically, the question was whether voters would ask their state representative "to vote for legislation to create a strong presumption in child custody cases in favor of joint physical and legal custody, so that the court will order that children have equal access to both parents as much as possible, except where there is clear and convincing evidence that one parent is unfit, or that joint custody is not possible due to the fault of one of the parents."

United Kingdom:

The Children's Act (1989), which came into effect in 1991, replaced the terms "custody" and "access" with the terms "parental responsibility," "residence" and "contact." The central feature of the United Kingdom model of post-separation parenting is the notion of "parental responsibility." The act replaces the old custody and access order with four types of orders: residence orders, contact orders, specific issues orders, and prohibited steps orders. Essentially, the Children's Act seeks to change the legal language of divorce.

The Act declares, "the welfare of the child is paramount" in family law, and this is "best served by maintaining as good a relationship with both parents as possible," and toward this end, "shared residence should be the common form of order." Yet there is no presumption of shared parenting or joint physical custody made in the act, and court outcomes, despite the Act's encouragement of the child maintaining a relationship with both parents, reflect in practice a maternal preference presumption. Although the Act has provided for the *option* of shared parenting, this is not being applied consistently and judicial discretion still leans toward the "tender years" doctrine and sole custody as in children's best interests.

The Children's Act stresses the importance of services geared toward parent education in the divorce process, as a critical tool in reducing conflict between parents and thereby ensuring better outcomes for children, referred to by some as, "divorce gospel style" (Freeman, 1997). Research indicates that the act has not succeeded in reducing litigation concerning custody and access. Clearly, parent education and language changes in themselves will have limited positive effects.

France:

With respect to children, the principle of gender equality is enshrined in virtually all statutes in France, a country with a civil law tradition. In recent years, France has undertaken a significant reform of its family law. While seeking to consider more

effectively the diversity of family situations, the notions of "parental responsibility" and "parental authority" are central in its recent family law reforms which seek to "humanize and pacify divorce proceedings, in order to provide parents with better support and to create conditions for an organization responsible for the consequences of the parents' separation for the children."

Law No. 2002-305, of March, 2002, concerning parental authority, has been adopted by the French National Assembly, and the new legislation clearly seeks to promote the active participation of fathers in the lives of their children, especially after parental separation. The law states, "Parents have more than just responsibilities; they also have a 'duty of requirement' in regard to their children, to enable the children to become socialized. Devaluing this duty would be to weaken the meaning of the parental relationship." In other words, parents' rights are needed to enable them to successfully carry out their responsibilities. And French law confirms that parents, whatever their marital status, jointly exercise the parental authority that is an effect of parentage. The French Civil Code encourages parents to agree on an "alternating residence" solution and grants the power for the court to impose such a solution. French law does not contain any legal presumption, yet the new law formally recognizes shared parenting as alternating residence for the child after separation or divorce. The new law favours this mode of post-separation family organization: parental authority is exercised jointly, and that the child may reside with both parents, on an alternating basis. In the words of the Dekeuwer-Défossez Commission, which states that the new legislation thus tends to avoid having the rights of one parent be opposed to those of the other, "Taking the child rather than the parents as the starting point, the text establishes the child's right to be raised by both parents and to preserve personal relations with each of them." The new law also applies the principle of joint parenthood in cases of parental relocation of residence. In sum, parental authority and the responsibility of state institutions to respect that authority are key ingredients of this unique and reportedly successful approach to shared parental responsibility after separation and divorce.

France was also the site of the Langeac Declaration of family rights and equal parenting, signed in July 1999 by parents' group representatives from around the world. The Declaration emphasizes that equal parenting laws should not be lengthy, intricate or inaccessible to parents and children.

Australia:

In Australia, discussions about joint custody and shared parental responsibility have been at the forefront of proposed family law changes for the past decade. Despite new family law legislation in 1995, modelled largely on the U.K. *Children Act 1989*, it has been recognized that merely cosmetic changes, such as residence and parental responsibility taking the place of custody, and contact replacing access, are insufficient. The act did not meet its objective of decreasing litigation and conflict in family matters.

Despite flawed Canadian government perspectives of the Australian experience, which cite Australia as a failed example of a shared parenting or joint physical custody

presumption, Australia has opted to move toward true shared parenting. The Report of the House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells a Story*, was tabled in 2003, and contained the following recommendations: amendment of the Family Law Act to create a clear (rebuttable) presumption of equal shared parental responsibility (except where there is "entrenched" conflict, family violence, substance abuse, or established child abuse); require mediators, counselors and legal advisers to assist parents to develop a parenting plan; require courts an d tribunals to first consider substantially shared parenting time when making orders in cases where each parent wishes to be the primary carer; replacement of the language of "residence" and "contact" with "parenting time;" a network of Family Relationship Centres across Australia to provide alternative dispute resolution services. In response to the report's recommendations, last year, the Family Law Amendment (Shared Parental Responsibility) Bill 2005 was introduced and is currently undergoing final revisions before implementation.

The Family Law Amendment (Shared Parental Responsibility) Bill 2005 was enacted in March, 2006. The law provides a presumption of equal shared parental responsibility for parents, and requires courts to consider equal time in the first instance in parenting disputes after separation and divorce. The bill was designed, along with a proposed national network of Family Relationships Centres, to avoid litigation as the means of arriving at arrangements for the parenting of children after separation. Its principal revision to the former family law act is not only the establishment of shared parental responsibility as a rebuttable presumption, but also a stated recognition that this is in the best interests of children after parental separation and divorce. The main provisions of the new act are: (1) in implementing shared parental responsibility, the court will first consider "equal parenting time," and if that is not feasible, then "substantial and significant parenting time with both parents" (considerations in this regard include geographical proximity of the parents, parenting capacity for equal time, parental communication capacity, and impact in the child); (2) the "best interests of the child" are comprised of the following "primary" and "additional considerations:" primary--the child having a meaningful relationship with both parents, and the need to protect the child from physical and psychological harm, abuse or family violence; additional—the child's expressed views, and the relationship of the child with other persons, including grandparents and other relatives; (3) the obligation to attend family dispute resolution before a parenting order is applied for; (4) exempt are cases where there are reasonable grounds to believe that there has been abuse of the child or family violence.

The new law also requires monitoring of Australian family courts in making shared parenting orders.

7. Summary of Current Child Custody and Access Policy Debates

"It is ironic," writes Joan Kelly (1991), "and of some interest, that we have subjected joint custody to a level and intensity of scrutiny that was never directed toward the traditional post-divorce arrangement (sole legal and physical custody to the mother and

two weekends each month of visiting to the father). Developmental and relationship theory should have alerted the mental health field to the potential immediate and long range consequences for the child of only seeing a parent four days each month. And yet until recently, there was no particular challenge to this traditional post-divorce parenting arrangement, despite growing evidence that such post-divorce relationships were not sufficiently nurturing or stabilizing for many children and parents…There is evidence that in our well-meaning efforts to save children in the immediate post-separation period from anxiety, confusion, and the normative divorce-engendered conflict, we have set the stage in the longer run for the more ominous symptoms of anger, depression, and a deep sense of loss by depriving the child of the opportunity to maintain a full relationship with each parent."

Herein lies the crux of current child custody and access policy debates; it has somehow come to be regarded as developmentally 'correct" to award sole custody to one parent with twice-monthly weekend access "visits" with the other parent, usually the father. Yet there is no evidence that such an arrangement benefits children or meets their physical, psychological and social needs. The central question is: in cases of parental disagreement and conflict over child custody, where there is no substantiated child protection finding (including children witnessing parental abuse), is it is in the best interests of children to award custody solely to one parent or to both parents jointly?

It is in the contested cases where courts impose a sole custody criterion that are the focus of current child custody debates. The rights-based claims of some mothers' and fathers' groups in this realm has led to an impasse and a state of confusion as to what exactly is "in the best interests of children" in divorce (Mason, 1994). Judges have consistently awarded sole custody in contested cases, but their reasons for judgment--their interpretations of "the best interests of the child" standard--vary tremendously. The high potential of judicial bias in child custody disputes results from the fact that judges are not trained in the finer points of child development and family dynamics.

In Canada, as in most U.S. jurisdictions (Mason, 1994), judges have asserted that shared parenting is unworkable in situations where parents cannot cooperate (Department of justice Canada, 1990). Thus, to the degree that a "winner-take-all" approach is established, the adversarial system polarizes and disconnects parties in dispute, and the problem of judicial bias in the direction of sole custody or "primary residence" determinations remains unaddressed.

Debates currently focus on whether to leave the present sole custody and adversary system essentially intact and institute a range of reforms within that structure; or to completely restructure the way child custody and access is determined and examine alternatives to sole custody and adversarial resolution. With respect to the former, three approaches have been tried both domestically and internationally: introduce (mandatory) parent education programs; change the legal language to make it appear less adversarial; and add more programs and professional services, such as family law judges and family courts, mediation, and collaborative law.

The purpose of parent education, or "divorce gospel style" (Freeman, 1997), is to outline what support services are available to divorcing parents, emphasize the importance of children's well-being during the divorce transition, and to explain the divorce process. The weakness of such programs, as U.S. studies have shown, is that they make little difference to couples in conflict over the post-separation parenting of their children. Changing the legal language to make it appear less adversarial has similarly had little effect in jurisdictions like Australia and the U.K., as well as in Washington State (with its "parenting plan" approach to child custody), where it has been shown that changing language alone will not change people's behaviour. And more programs and professional services are also not the answer, as evidenced by the burgeoning "divorce industry" in our midst. None of these reforms have lessened the adversarial climate surrounding child custody, nor have they addressed the problem of judicial discretion in an area where judges lack the necessary knowledge of child development and family systems theory to begin to address complex child and family matters.

It is clear that an alternative approach is needed that goes beyond "cosmetic" family law reforms toward fundamental changes in divorce law, policy and practice. Clear rules and guidelines are needed to limit judicial discretion, and to lessen the adversarial climate that exacerbates parental conflict in divorce. Four distinct options have been advanced in this regard. First, the primary caregiver presumption, which is essentially a sole custody presumption as it assumes the presence of a primary caregiver, which does not reflect the reality of most North American families with children (Warshak, 1992). Second, the "approximation standard," essentially one whereby the caregiving status quo prior to separation would prevail in contested cases, sets out a legal expectation that post-separation parenting arrangements would reflect pre-separation parenting arrangements (an arrangement endorsed by the American Legal Institute). Critics have pointed to the difficulty of establishing the degree of child care involvement by parents prior to separation, as judges would tend to focus on child care arrangements in the immediate past, which may result from one parent withholding the child from the other parent to establish a new "status quo," and the fact that litigation rates would likely not decrease with such a formula. Third, a joint legal custody presumption has been advanced, whereby parents would share decision-making responsibility but not necessarily physical care. Feminist scholars (Polikoff, 1982) have pointed to the inequity and power imbalance that would result by giving a parent decision-making authority without any corresponding obligation for child care on their part. Finally, a joint physical custody (shared parenting) would grant both parents equal or shared decision-making authority *and* child care responsibility.

It is clear that an effective model of child custody law should ensure that children's basic needs and best interests be met. This requires an understanding of children's fundamental needs in the divorce transition, and the development of a corresponding set of parental and societal responsibilities to meet those needs. A new standard of the "best interests of the child" *from the perspective of the child* is needed, particularly with respect to what children, as those most affected by parental divorce and thus the real "experts" on the matter (Fabricius, 2003), have identified their core needs. By their own account, three essential elements stand out for children of divorce, as identified by Fabricius

(2003) and others: equality in their relationships with each of their parents; autonomy, to identify one's own best interests in the divorce transition; and shielding children from conflict and violence between their parents.

Listening to the voices of children themselves, we now have clear evidence of a fundamentally different perception of children of divorce (as now-young adults) to that of most policymakers and legislators. Most children want to be in the shared physical care of their parents after divorce (Fabricius, 2003; Fabricius & Hall, 2000). And children in shared parenting arrangements adjust significantly better than those in sole custody arrangements on all general and divorce-specific adjustment measures (Bauserman, 2002). At the same time, western societies are moving toward a more egalitarian distribution of child care tasks between the genders (Higgins & Duxbury, 2002; Bianchi, 2000).

Fundamental to the many current proposals for divorce law reform is the need to address the problem of family violence and high conflict between parents in the divorce transition. Any new framework for child custody determination should be carefully examined in regard to the degree to which conflict and violence are reduced between parents.

And then there is the question of fatherhood involvement. Fathers face ordeals of truly Orwellian proportions after parental separation: From their perspective (Kruk, 1993) their children have been taken away without any sign of wrongdoing, and they are suddenly told they can be arrested for trying to see their own children without government authorization. Many have been forcibly removed from their own homes, which are then confiscated and sold, again without any legal infraction. They face a panoply of other expropriations, including the attachment of their earnings for years to come with child support burdens that reduce some to penury.

It may thus be asked, why are parents with no civil or criminal wrongdoing forced to surrender their rights and obligations to raise their children? Why do courts discriminate against children and families of separated parents, by using the indeterminate "best interests of the child" standard to remove parents from children's lives, as opposed to the "child in need of protection standard for non-separated parents? On what basis do courts justify treating parents unequally, as "custodial" and "non-custodial" parents? Why are children forced to surrender their need for both their parents, who are both responsible to meet their needs? Why are social institutions such as the courts undermining, rather than supporting, parents in the fulfillment of their parental responsibilities?

In debates and discussions about child custody and access, the following points have been highlighted:

1. When divorces occur, a father's role often becomes extremely marginalized. Because of the bias and prejudices that evolved out of the primary caretaker approach, children's need for a paternal influence in life has been overlooked. Fathers are now as "primary" as mothers in the realm of child care, and it is

therefore important that post-divorce living arrangements reflect the centrality of both parents in children's lives, in some form of shared parenting arrangement, a viable alternative to sole custody.

2. The way the court system is structured at present, conflict is encouraged. The more aggressive in a custody fight often "wins." The language used in custody law has created expectations about ownership and rights, and who wins and loses. Most important, the "winner-take-all" approach heightens conflict between former spouses, and sometimes leads to tragic outcomes. Therefore it is important that post-divorce living arrangements reduce conflict between parents, and that support services are available at the time of separation to shield children from any destructive parental conflict that may occur.
3. High-conflict divorces can be made worse if there is a presumption of shared custody, but they are made much worse with a presumption, codified or otherwise, of sole custody. Therefore it is important that any presumption be rebuttable. In cases where there has been a criminal conviction or, at the very least, an investigated finding that a child is in need of protection from a parent (although such cases are not the norm in child custody disputes), a judge should have the authority to make a child custody determination, including sole custody. The majority of "high conflict" cases may benefit from shared parenting, but it is crucial that not only parent education and mediation are made available, but also more intensive ongoing post-divorce supports for high conflict parents.
4. It is now recognized that withholding a child a fit and loving parent is itself a form of child abuse. Such parental alienation is common in sole custody arrangements, but it is not clear whether shared parenting would reduce such incidents. Therefore it is important that there be some form of enforcement mechanism available to deal with violations to parenting orders.

8. A "Four Pillar" Approach to Child Custody and Access Determination in Canada

This section will consider the implications of current research on child and family preferences, child and family outcomes, parenting patterns, and family violence, including child abuse, on post-separation and -divorce child custody and access.

In this regard, the key question regarding the present system in Canada is: "Is the removal of a (fit and loving) parent from the life of a child, in the absence of an investigated child protection order , in itself a form of (systemic) child neglect or abuse, if indeed children need both their mothers and fathers?"

Research suggests that a significant number of fathers, and increasingly mothers, become disengaged from their children's lives after divorce, not reflecting their true (stated) desires.

The following four pillar framework is offered as a socio-legal policy solution to the social problems of adversary-based child custody determination, parental disengagement,

and parental alienation.

TABLE 1

A FOUR-PILLAR APPROACH TO CHILD CUSTODY AND ACCESS

1. HARM REDUCTION: Legal Presumption of Shared Parenting Responsibility (Rebuttable Presumption of Joint Physical Custody in Family Law)

2. TREATMENT: Parenting Plans, Mediation, and Support/Intervention in High Conflict Cases

3. PREVENTION: Shared Parenting Education

4. ENFORCEMENT: Judicial Determination in Established Cases of Abuse; Judicial Determination in Established Cases of Shared Parenting Responsibility Breaches

PILLAR 1 HARM REDUCTION: Legal Presumption of Shared Parenting Responsibility (Rebuttable Presumption of Joint Physical Custody in Family Law)

The first pillar establishes a legal expectation that existing parent-child relationships would continue after separation; that is, the post-divorce parenting arrangements will simply reflect pre-divorce parenting arrangements in regard to the relative amount of time each parent spends with their children. In cases of dispute, however, shared parenting, defined as children spending equal time with each of their parents, would be the legal presumption in the absence of a child abuse finding, and there would be no judicial discretion in this regard.

The pillar is mainly intended to prevent and reduce the present violence and abuse surrounding divorce, whether physical, emotional, or legal. It would set up an expectation that the former partners are equal before the law in regard to their parental rights and responsibilities, and would convey to the children that their parents are of equal value as parents. At the same time, in the interests of security, stability and continuity in children's relationships with their parents, preexisting parent-child relationships would be expected to continue after separation, at least in the transition period. This would ensure that there is no sharp discontinuity of parent-child relationships, as exists at present with sole custody awards. To the extent that "history of care" and "cultural, linguistic, religious and spiritual upbringing and heritage" are cited as important vis-a-vis children's needs for roots and security in maintaining existing relationships, the idea of the immutability of parent-child relationships is important to convey to divorcing parents. The courts need not become directly involved as the legal expectation would be that the post-separation parenting arrangements would be equal in

proportionate time to the pre-separation parenting arrangements (an arrangement referred to as the "approximation standard" by the American Legal Institute, which recommends its adoption). If the courts were to become involved, they would apply the shared parenting presumption, and not get drawn into investigations regarding the proportionate amount of time each parent spent with the child prior to separation.

Although it is a blunt instrument, and "children spending equal time with each of their parents" may not reflect *de facto* the existing arrangements in the pre-separation household, a shared parenting / equal time rebuttable presumption would result in a destructive court battle over children being averted. It is also in keeping with current caregiving patterns, as mothers and fathers are spending about the same amount of time, on average, in child care tasks, in two-parent families, in Canada.

Shared parenting is the only method of ensuring that children are protected from the *exclusive* parenting of violent or abusive parents. Judges, not trained in the finer points of child development and family dynamics, relying at times on third party assessments based largely on personality testing, a superficial measure of psychopathology and parental capacity, are susceptible to making mistakes in "reading" abuse, given the lax rules applied to fact-finding and perjury in family disputes (Bala, 2000), in relation to determining whether or not violence, a criminal matter, has been perpetrated, and by whom. An allegation of abuse is not equivalent to a criminal conviction of abuse, or the result of an investigation by trained child protection authorities. In the absence of a criminal conviction or child protection finding, an equal parenting presumption ensures that children will have equal time with each parent, including the non-abusive parent, and thereby enjoy a positive parental influence, as opposed to being in the exclusive care and control of an abusive parent who has mounted the stronger case in a contested custody proceeding. In the family realm, where many parties see themselves (and their children) to have been "abused" by the other, "victim politics" are commonplace, and absent criminal conviction or a finding of "child in need of protection," this may be the least harmful and most protective option for children.

Given that detection of abuse is a difficult matter, as at one extreme a significant proportion of family violence situations are hidden to state authorities, while at the other extreme false allegations are made, it behooves Canadian legislators and policymakers to make efforts to protect children who may be the object of judicial errors, which happen as the result of the fact that judges are not trained in child development and family dynamics. Further, at present judicial discretion errors are not subject to appeal. A rebuttable shared parenting presumption lessens the impact of judicial errors: a child in a situation where (undetected) abuse exists, and who has equal time with each of his or her parents, is less likely to suffer adverse consequences than a child in a situation where (undetected) abuse exists and who spends most or all of his or her time with the abusive parent.

PILLAR 2: TREATMENT: Parenting Plans, Mediation, and Support/Intervention in High Conflict Cases

The second pillar requires that parents develop a parenting plan before any court hearing is held on matters related to child custody. The court's role would then be to legally ratify the negotiated plan. The legal expectation is that parents jointly, through direct negotiation, parent education programs, court-based or independent mediation, or lawyer negotiation, develop a parenting plan that outlines the parental obligations that will meet the needs of their children before any court hearing is held on the matters related to divorce. This does not necessarily require parents to negotiate face-to-face, but it is aimed at helping them negotiate in the future, as any post-divorce living arrangement, whether shared equally or unequally, requires communication.

Children's needs for protection from parental conflict are addressed by this legal expectation, as children's needs become a means of connecting the parents in a positive direction at a time when conflict has divided them. Shielding children from parental conflict is a critical obligation during the divorce transition. In the interests of parental autonomy, parents are deemed to have the capacity to resolve their own dispute, rather than surrendering decision-making regarding parenting arrangements to the court system.

When a parental conflict or dispute is focused on the development of a parenting plan, according to the BC Justice Review Task Force, parents should be steered toward an "introduction to mediation" session. Clearly, cases of established violence, via criminal conviction, or an investigated finding that a child is in need of protection from a parent, would be exempt from mediation. All other cases, including "high conflict" cases, would be encouraged to participate in an introductory mediation session, with certified university-trained family mediators.

Mediation, as an alternative method of dispute resolution, has considerable (and as yet largely untapped) potential in establishing shared parenting as the norm, rather than the exception, for divorced families. In the majority of even "high conflict" cases, both parents are capable and loving caregivers and have at least the potential to minimize their conflict and cooperate with respect to their parenting responsibilities—within a shared parenting framework.

With shared parenting as the cornerstone, mediation would become the instrument whereby parents could be assisted in the development of a child-focused parenting plan. Given the lack of information available to divorcing families about what to do, what to expect, and the services which might be available to them (Walker, 1993), it may be argued that there is an implicit ethical responsibility for mediators to ensure that such information is made available to parents prior to instituting any dispute resolution process via some form of parent education program. Parents who are oriented to the divorce process and the impact of divorce on family members are better prepared for mediation, and better able to keep the needs of their children at the forefront of their negotiations. Divorce education programs also offer a means to expose divorcing populations to mediation as an alternative mechanism of dispute resolution (Braver et al, 1995).

Further, an educative approach should be an integral part of the mediation process, with a primary focus on children's needs during and after the divorce process, and parental responsibilities in this regard. Family mediators with expertise in the expected effects of divorce on children and parents can be instrumental in helping parents to recognize the potential psychological, social and economic consequences of divorce and, on that foundation, promote arrangements conducive to children maintaining meaningful, positive post-divorce relationships with both parents within a non-conflictual atmosphere.

Parent education regarding children's needs and interests during and after the divorce transition, followed by a therapeutic approach to divorce mediation, offers a highly effective and efficient means of facilitating the development of cooperative shared parenting plans. Within such an approach, parent education is used to introduce the option of shared parenting as a viable structural alternative, and reducing parents' anxiety about a living arrangement deviating from traditional custody and access arrangements. Mediation then is used to help parents work through the development of the parenting plan, and implementing the plan in as cooperative a manner as possible. The process consists of four essential elements of the parent education program, and four distinct yet overlapping phases of mediation.

TABLE 2

A SHARED PARENTING FRAMEWORK FOR PARENT EDUCATION AND MEDIATION

Premediation: Parent Education

1. *Orientation to the divorce process and available services*: stages of divorce/grieving; alternate dispute resolution processes (including mediation); post-divorce counselling services and other community resources;

2. *Children's needs and interests in divorce*;

3. *Post-divorce shared parenting alternatives*;

4. *Communication, negotiation and problem-solving skills*.

Therapeutic Family Mediation

1. *Assessment* to determine whether the parents are both ready to enter into therapeutic mediation, and whether shared parenting is indicated;

2. *Exploration of shared parenting options* and actively promoting a parenting arrangement that meets the children's needs first and the parents' second;

3. *Facilitation of negotiations* toward the development of an individualized cooperative

shared parenting plan, which outlines specific living arrangements, schedules, roles, and responsibilities;

4. *Continuing support/troubleshooting* during the implementation of the shared parenting plan.

In the future, parents may need the services of a mediator to assist in their ongoing parenting negotiations; they should be urged to return for mediation beyond the trial period, as future issues develop or past difficulties re-emerge.

Social institutional support for both parents in the implementation of a shared parenting plan will be critical, particularly for "high-conflict" cases. A remedial program designed to enable parents to resolve issues of ongoing conflict about parenting is critical for those cases where abuse is not a factor, yet where children may be caught in the middle of ongoing disputes between parents. There are a number of existing therapeutic models designed for post-divorce support for such high conflict families, including Ramsey's Wingspread Conference Report (2001), Garber's Direct Co-parenting Intervention Model (2004), and Lebow's Integrative Family Therapy Model (2003).

Of all the strategies that can be used by divorcing parents to reduce the harmful effects of divorce, the most effective must include the development and maintenance of a cooperative and positive co-parenting relationship (Kruk, 1993; Garber, 2004; Lebow, 2003; Ramsey, 2001). Research in this area has consistently revealed that the following objectives, which all contribute to children's adjustment post-divorce, must be present in any long-term shared parenting model: (1) A high level of contact with each parent; (2) An absence of hostile comments about the other parent (Lebow, 2003); (3) Consistent, safe, structured, and predictable caregiving environments without parenting disruptions (Garber, 2004); (4) Healthy, caring, low-conflict relationships between the child and both parents (Lebow 2003; Garber, 2004); and (5) Parents' emotional health and well being (Lebow, 2003). Any model of long-term support for high conflict divorced families should focus on satisfying these five factors to produce long-term outcomes that meet the children's needs and the parents' needs.

It is important that hostility between parents be minimized following divorce. Currently, in cases when there is ongoing litigation between parents, children are likely at greater risk of emotional damage than in less contentious circumstances. In many such cases, divorce does not end marital conflict, but exacerbates it. Specifically, high conflict custody cases are "marked by a lack of trust between the parents, a high level of anger, and a willingness to engage in repetitive litigation" (Ramsey, 2001). It is important that the children see the good qualities in both of their parents and that the parents themselves work toward the development of positive relationships with the other parent. Ramsey (2001) argues that the overall system should give parents the necessary skills and tools to deal with the struggles of divorce and custody issues immediately. "The central tenets of this system should be to reduce conflict, assure physical security, provide adequate support services to reduce harm to children, and to enable the family to manage its own

affairs." In order for a system like this to be successful, all professionals (lawyers, mental health professionals, mediators, and judges) need to be supportive of a model that helps resolve family disputes and focuses on the welfare of the children (Ramsey, 2001).

Six key components of a longer-term support model for high-conflict parents have been identified:

1. Whereas education on the impact of divorce on children both in the short term and in the long term should be provided to parents prior to divorce and prior to the development of a parenting plan (Kruk, 1993; Lebow, 2003), reinforcement and enhancement of pre-divorce education should take place in a structured format post-divorce.
2. In addition to negotiating a workable parenting plan that meets the needs of children and delineates the responsibilities of parents, monitoring of the consistency of the caregiving environments to the parenting plan post divorce is critical (Garber, 2004). The monitoring of the caregiving environment should be placed in the hands of the family support worker. In addition, the family support worker should be given some ability to ensure that the parenting plan is acted upon effectively by parents, or modified by mutual consent.
3. Although Garber (2004) argues that an ongoing relationship between the parents may be unnecessary, as parents can shares parenting responsibilities within a "parallel parenting" arrangement, it seems clear that some form of intervention to mend the relationship between parents would be best for the long term success of any parenting arrangement (Lebow, 2003). This intervention would focus on maintaining positive interactions between family members, enhancing communication skills, developing a range of problem solving skills, and enhancing non-aggressive negotiation skills.
4. Given the need for both parents to work on the maintenance and development of their relationships with their children, in order to support high conflict families post-divorce, long term counselling should be made available to children alone and to each parent and each child together.
5. The long term success of the model is achieved through emotional healing post-divorce (Lebow, 2003). Measures should be taken to maximize the likelihood that positive emotional healing is taking place and that each member of the family is gaining an increased understanding and acceptance of the separation as time goes by. One of the functions of the family support worker should be to periodically monitor the levels of emotional healing and to recommend increased intervention (counselling) should such healing fail to be evident.
6. Finally, regular reviews of the parenting plan should be mandatory at pre-specified periods (Kruk, 1993). This review should take into consideration developmental changes in the children as well as structural changes in the family (a new step-parent, for example). The review should be conducted by a family support worker who should have the ability to re-open the parenting plan for revision or modification as needed. In addition, each family member should be given the opportunity to request a review of the parenting plan in writing to the family support worker.

PILLAR 3: PREVENTION: Shared Parenting Education

Shared parenting education, at levels such as within the high school system, marriage preparation courses, and upon divorce, are essential parts of a much-needed preventive program of parent education and support. Such programs are being established throughout the country, with an emphasis on include fathers, who have not traditionally been engaged by parenting support programs and services.

PILLAR 4*: *ENFORCEMENT: Judicial Determination in Established Cases of Abuse; Judicial Determination in Established Cases of Shared Parenting Responsibility Breaches

The final pillar of our proposed model directly addresses the question of violence and abuse in family relationships, and enables sanctions to be imposed where there is non-compliance or repeated breaches of orders. Proven cases of domestic violence would be exempt from the preceding stages, as those cases involving either a criminal conviction, such as assault, in a matter directly related to the parenting of the children, or a finding that a child is in need of protection from a parent by a statutory child welfare authority, could be followed by judicial determination of child custody. Cases that would benefit from diversion to counselling or mediation could be referred to that arena, or a judge could determine child custody, as in current practice. All other situations, including allegations made against either parent without a criminal conviction such as assault or a finding of a child in need of protection, would not be sufficient grounds for a court to make a child custody determination.

For the minority of child custody situations where assault is alleged, a thorough, informed and expeditious assessment is required. The criminal prosecution of those family members who are alleged to direct violence toward any other member of the family would hold accountable both the perpetrators of violence and those who falsely allege abuse. The court could retain its traditional role in the determination of custody, or referral to counselling where the goal of "relationship equality" would be focused on the elimination of force in the former marital relationship, and the transition from a marital to a co-parental relationship could be expedited. In this context, equality could be defined as, "neither to control, nor to submit to the other parent" in the realm of parenting, and to seek mutual interest-based solutions to their dispute. Parents could be assisted in jointly negotiating a shared parenting plan, with the assistance of a neutral third party.

The use of family courts as "quasi-criminal courts" that do not have the resources to apply due process when abuse allegations are made leaves judges susceptible to making wrong decisions, leading to greater harm to children. Women's advocates have long argued that the adversarial system does not adequately protect abused women, and men's advocates are beginning to identify the ineffective and harmful practice of courts when abuse of men is a factor. Detection of genuine abuse cases is a critical yet extremely

difficult matter, and strengthening current child protection and/or criminal prosecution responses to these cases will require refining our ability to discern abuse where it exists, as well as dealing effectively with unproven allegations.

In regard to child protection, child abuse is particularly serious when children witness the abuse of either or both parents, whether that be physical abuse, or "legal abuse" in the form of withholding one parent from the child's life. According to child development experts such as Erickson, Leach, and Cole, children believe themselves to be comprised of half the (genetic material) of the mother and half the father, and if one part is denigrated, so is the child. It is thus no surprise that father loss through divorce is associated with diminished self-concepts in children.

The child of the family is the innocent victim of the "custody wars" between parents, and the social institutions and policies that exacerbate the fighting. In the words of writer Jonathan Kozol (1995), "there is nothing predatory in these children; they know that the world does not much like them and they try hard to be good…" In particular, the sole custody and adversarial system, inasmuch as it prevents parents from directly negotiating, focusing on their children's needs, and arranging equitable parental responsibility arrangements, is clearly not child-focused.

When physical joint custody (child spends at least 40% of his or her time with each parent) arrangements are in place, and a parent is refusing to abide by a legal shared parental responsibility order, interfering with the other parent's time with the children, enforcement measures are required. Similarly, when sole custody with non-custodial parent access (child spends more than 60% of his or her time with one parent) arrangements are in place, the result of a child protection order, access enforcement may again be required. Enforcement solutions may involve reduction or loss of parenting time, or the following sanctions:

- a requirement that a parent comply with 'make-up' contact if contact has been missed through a breach of an order.
- the power to award compensation for reasonable expenses incurred due to a breach of an order
- legal costs against the party that has breached the order,
- a discretion to impose a bond for all breaches of orders.

Child Support

Although child support is not the focus of this paper, it is a need and a responsibility; and child custody and access policies and laws are related to child support and family maintenance law and policy.

The economic independence of the parents is a goal that proponents of equal pay for work of equal value, as well as shared parenting proponents and those challenging

occupational segregation and wage differentials, have advanced. Shared parental responsibility for child support, in the context of both parents working outside the home (usually full-time) and also actively parenting (also usually full-time), is an important principle to uphold. Both parenting and paid work should be recognized as "work" of equal value.

Specific Challenges

A large hurdle for fathers and proponents of child custody socio-legal policy reform is how to garner public and political attention and support to effectively deal with the social problems of fatherlessness, parental alienation and father involvement after parental separation and divorce. The problem needs to be made more visible, and constructive solutions need to be advanced.

Engaging the legal system and professional service providers is another challenge. A constructive role for these professionals needs to be advanced if family law is to remove parents from the adversarial arena.

Finally, engaging fathers themselves remains a challenge, as existing clinical and research literature on men as fathers has described the lack of "fit" between fathers and therapeutic agents as emanating from two sources: the characteristics of men and fathers themselves (their resistance to counselling and therapy) and aspects of the therapeutic process (which have failed to successfully engage fathers) (Forster, 1987). Patterns of traditional gender-role socialization, directing men toward self-sufficiency and control, independent problem-solving and emotional restraint, have largely worked against fathers being able to acknowledge personal difficulties and request help. A fear of self-disclosure and a feeling of disloyalty to one's family in exposing family problems are not uncommon; a fear of losing control over one's life and the need to present an image of control or a "facade of coping" in the form of exterior calm, strength, and rationality, despite considerable inner turmoil, characterize many fathers. Professional service providers do not always consider such psychological obstacles to therapy and are rarely geared to meeting fathers' unique needs. The research on separated and divorced fathers, however, is clear: the most pressing need for fathers is their continued meaningful involvement with their children, as *parents*.

9. Policy Recommendations

1. That there be explicit recognition that "children need both parents," and that this message is a core element of a broader campaign to promote active and responsible father involvement.

2. That there be explicit recognition that there exist equal rights, privileges and opportunities for mothers and fathers as parents in legislation and social policy throughout the country.

3. That a rebuttable legal presumption of equal shared parenting be immediately established. At the same time, when abuse allegations are made, that there be an immediate and thorough investigation of the allegations by a competent child welfare authority, and in the case of substantiated allegations, that a legal determination is made that a child is in need of protection from a parent or parents.

4. That family mediation focused on the development of parenting plans and post-separation support for co-parenting be available and accessible to all parents, but that these not be made mandatory.

5. That enforcement measures be used to ensure compliance with shared parenting orders, only after mediation efforts have not been successful or support services refused, and when one parent withholds the child from the other parent in the absence of a finding that the child is in need of protection from the alienated parent. In the presence of a finding that the child is in need of protection from a parent or parents, that enforcement measures be used to ensure compliance with child protection orders.

References

Amato, P. (2000). "The consequences of divorce for adults and children," *Journal of Marriage and the Family, 62.*

Amato, P.R., & Gilbreth, J.G. (1999). Non-resident fathers and children's well-being: A meta-analysis. *Journal of Marriage and the Family*, *61*, 557-573.

Amato, P.R., & Keith, B. (1991). Parental divorce and the well-being of children: A meta-analysis. *Psychological Bulletin*, 110, 26-46.

Archer, J. (2002). "Sex differences in physically aggressive acts between heterosexual partners: A meta-analytic review." *Aggression and Violent Behavior, 7*, 213-351.

Bala, N. (2000). *The Best Interests of the Child in the Post-modern Era: A Central but Paradoxical Concept*. Paper presentation at the Law Society of Canada Special Lectures 2000, Osgoode Hall, Toronto.

Bauserman, R. (2002). "Child Adjustment in Joint Custody versus Sole Custody Arrangements: A Meta-analytic Review," *Journal of Family Psychology, 16*, 91-102.

Benjamin, M. & Irving, H.H. (1989). Shared Parenting: A Critical Review of the Research Literature. *Family and Conciliation Courts Review 27*: 21-35.

Bianchi, S. (2000). "Maternal employment and time with children" *Demography 37*.

Bisnaire, L., Firestone, P. & Rynard, D. (1990). Factors Associated with Academic

Achievement in Children Following Parental Separation, *Am. J. of Orthopsychiatry 75*.

Booth, A. (1999). "Causes and consequences of divorce: Reflections on recent research," in *The Postdivorce Family*, Ed. By R.A. Thompson and P.R. Amato, Thousand Oaks, CA: Sage.

Boyd, S. (2003). *Child Custody, Law, and Women's Work*. Toronto: Oxford University Press.

Braver, S.L. & O'Connell, E. (1998). Divorced dads: Shattering the myths. New York: Tarcher/Putnam.

Brinkerhoff, M. & Lupri, E. (1988). Interspousal violence. *Canadian Journal of Sociology*, 13, 407-434.

Brotsky, M., Steinman, S and Zemmelman, S (1988) Joint Custody Through Mediation Reviewed, *Conciliation Courts Review 26*, 53-58.

Burke, P.J., Stets, J.E. & Pirog-Good, M.A. (1988). Gender identity, self-esteem, and physical and sexual abuse in dating relationships. *Social Psychology Quarterly, 51*, 272-285.

Cheriton, G. (1998). *Child Support, Divorce, Custody and Access, and Government Policies*. Ottawa: Commoners Publishing.

Coogler, O.J. (1978) *Structured Mediation in Divorce Settlement*, Lexington, Mass : Lexington Books.

Corcoran, K. & Melamed, J.C. (1990) From coercion to empowerment: Spousal abuse and mediation, *Mediation Quarterly, 7* (4).

Crowder, K. and J. Teachman, (2004). "Do Residential Conditions Explain the Relationship Between Living Arrangements and Adolescent Behavior?" *Journal of Marriage and Family*, *66*, 721-738.

Derevensky, J.L. & Deschamps, L. (1997). Young adults from divorced and intact families: Perceptions about preferred custodial arrangements. *Journal of Divorce and Remarriage*, 27, 105-122.

Dodds, C. (2005). *Life goes on: A model of long-term family intervention for high conflict post-divorce relationships*. Unpublished MSW Major Essay, The University of British Columbia, School of Social Work and Family Studies.

Dutton, D. G. (2006). *Rethinking Domestic Violence*. Vancouver: UBC Press.

Dutton, D. G. (2005). Domestic Abuse Assessment in Child Custody Disputes: Beware

the Domestic Violence Research Paradigm, *Journal of Child Custody 2* (4), 23 – 42.

Ehrensaft, M. K., Moffitt, T. E., & Caspi, A. (2004). Clinically Abusive Relationships in an Unselected Birth Cohort : Men's and Women's Participation and Developmental Antecedents. *Journal of Abnormal Psychology, 113*(2), 258-270.

Ellis, B.J. et al. (2003), "Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?" *Child Development 74*, 801-821.

Emery, R.E. (1999). "Postdivorce family life for children: An overview of research and some implications for policy," in *The Postdivorce Family*, Ed. By R.A. Thompson and P.R. Amato, Thousand Oaks, CA: Sage.

Fabricius, W.V. & Hall, J.A. (2000). Young adults' perspectives on divorce: Living arrangements. *Family and Conciliation Courts Review*, 38, 446 - 461.

Fabricius, W. V. (2003). Listening to children of divorce: New findings that diverge from Wallerstein, Lewis, and Blakeslee. *Family Relations 52*(4), 385-396.

Fiebert, M. (2004). References examining assaults by women on their spouses or male partners: An annotated bibliography," *Sexuality and Culture, 8* (3/4), 140-177.

Fox, G.L. & Kelly, R.F. (1995). Determinants of child custody arrangements at divorce. *Journal of Marriage and the Family, 57* (3).

Freeman, M. (1997). Divorce Gospel Style. *Family Law 27*.

Garber, B. (2004). Directed co-parenting intervention: Conducting child-centered interventions in parallel with highly conflicted co-parents. *Professional Psychology: Research and Practice 35* (1), 55-64.

Gunnoe, M. L., & Braver, S. L. (2002). *The effects of joint legal custody on family functioning*. Washington, DC: National Institute of Mental Health.

Hampton, R.L., Gelles, R.J., & Harrop, J.W. (1989). Is violence in families increasing? A comparison of 1975 and 1985 National Survey rates. *Journal of Marriage and the Family, 51*, 969-980.

Hearn, J. (2002). Men, fathers, and the state: National and global relations. In B. Hobson (Ed.) *Making men into fathers: Men, masculinities and the social politics of fatherhood*, pp. 245-272. Cambridge: Cambridge University Press.

Hetherington, E.M., Cox, M. and Cox, R. (1978) The Aftermath of Divorce, in J.H. Stevens Jr. and M. Mathews (Eds.) (eds.), *Mother-Child, Father-Child Relations*, Washington: National Association for the Education of Young Children.

Higgins, C. & Duxbury, L. (2002). *The 2001 National Work-Life Conflict Study*. Ottawa: Health Canada.

Hilton, J.M. and E. L. Devall, (1998). "Comparison of Parenting and Children's Behavior in Single-Mother, Single-Father, and Intact Families," *Journal of Divorce & Remarriage, 29* (3/4), 23-50.

House of Representatives Standing Committee on Family and Community Affairs (FCAC), Australia (2003). *Every picture tells a story: Report of the inquiry into child custody arrangements in the event of family separation*.

Irving , H.H. & Benjamin, B. (1995). *Family Mediation: Contemporary Issues*. Thousand Oaks, CA: Sage.

Jaffe, P., Lemon, N., & Poisson, S.E. (2003). *Child custody & domestic violence: A call for safety and accountability*. Thousand Oaks: Sage.

Jenkins, B. (2006). *Review of the Attorney General of Canada's Recent Supreme Court Appointees*. Unpublished Paper.

Jeynes, W.H. (2001). "The Effects of Recent Parental Divorce on Their Children's Consumption of Marijuana and Cocaine," *Journal of Divorce and Remarriage*, 35 (3/4), 43-64.

Jeynes, W.H. (2000). "A Longitudinal Analysis on the Effects of Remarriage Following Divorce on the Academic Achievement of Adolescents," *Journal of Divorce & Remarriage 33*, 131-148.

Kelly, J. (2000). Children's adjustment in conflicted marriage and divorce: A decade review of research. *Journal of the American Academy of Child and Adolescent Psychiatry, 39*, 963-973.

Kelly, J. (1991). "Examining Resistance to joint Custody," In Folberg, J. & Taylor, A. (Eds.), Joint Custody and Shared Parenting (2nd ed.), New York: Guilford Press.

Kelly, R.F., & S.L. Ward (2002). "Allocating custodial responsibilities at divorce: Social science research and the American Law Institute's *Approximation Rule*" *Family Court Review 40*.

Kruk, E. (1993). "Promoting Cooperative Parenting After Separation: A Therapeutic / Interventionist Model of Family Mediation," *Journal of Family Therapy* 15 (3), 235-261.

Kruk, E. (1993). *Divorce and Disengagement*. Halifax: Fernwood.

Kruk, E. (1992). "Psychological and Structural Factors Contributing to the

Disengagement of Noncustodial Fathers After Divorce," *Family and Conciliation Courts Review 29* (2)

Kozol, J. (1995). *Amazing Grace: The Lives of Children and the Conscience of a Nation*. New York: Harper Perennial.

Kposowa, A. (2000). "Marital status and suicide in the national longitudinal mortality study," *Journal of Epidemiology and Community Health*.

L'Heureux-Dube, C. (1998). A Response to Remarks by Dr. Judith Wallerstein on the Long-term Impact of Divorce on Children, *Family and Conciliation Courts Review, 36*, 384-391.

Lamb, M.E., Sternberg, K., & Thompson, R.A. (1997). The Effects of Divorce and Custody Arrangements on Children' s Behavior, Development, and Adjustment, *Family and Conciliation Courts.Review 35.*

Lamb, M.E. (1999). Non-custodial Fathers and their Impact on Children of Divorce, In Ross A. Thompson and Paul R. Amato, Eds., *The Post-Divorce Family: Research and Policy Issues*.

Lamb, M.E. and Kelly, J. (2001). Using the Empirical Literature to Guide the Development of Parenting Plans for Young Children, *Family Court Review, 39* (4), 365-371.

Laroche, D. (2005). Aspects of the context and consequences of domestic violence-Situational couple violence and intimate terrorism in Canada in 1999. Quebec City: Government of Quebec.

Laumann-Billings, L. & Emery, R.E. (2000). Distress among young adults from divorced families, *Journal of Family Psychology 14* (4), 671-687.

Lebow, J. (2003). Integrative family therapy for disputes involving child custody and visitation. *Journal of Family Psychology. 17*(2).

Leonard, H. et al. (2005). "Association of Sociodemographic Characteristics of Children with Intellectual Disability in Western Australia," *Social Science & Medicine*, 60, 1499-1513.

Lund, M. (1987). The Non-Custodial Father : Common Challenges in Parenting After Divorce, in C Lewis and M O'Brien (eds), *Reassessing Fatherhood*, London : Sage Publications

Maccoby, E., & Mnookin, R. (1988). Custody of children following divorce. In E.M. Hetherington & J. D. Aresteh (eds.), *Impact of divorce, single parenting, and step parenting on children*. Hillside, NJ: Erlbaum.

Mason, M. A. (1996). "Read my lips: Trends in judiciary decision-making in custody disputes", *Family Law Quarterly, 31* (2).

Mason, M.A. (1994). *From Father's Property to Children's Rights*. New York: Columbia University Press.

McCue Horwitz, S. et al. (2003). "Language Delay in a Community Cohort of Young Children," *Journal of the American Academy of Child and Adolescent Psychiatry 42*, 932-940.

McMunn, A.N. et al., "Children's emotional and behavioural well-being and the family environment: Findings from the Health Survey for England," *Social Science & Medicine 53*, 423-440.

McNeely, R., Cook, P., & Torres, J. (2001). "Is domestic violence a gender issue or a human issue?" *Journal of Human Behavior in the Social Environment, 4* (4), 227-251.

McNeely, R.L., Cook, P.W., & Torres, J.B. (2001). Is domestic violence a gender issue or a human issue? Journal of Human Behavior in the Social Environment, 4, No. 4, 227-251.

McWhinney, R. (1995). "The 'winner-loser syndrome': Changing fashions in the determination of child 'custody,'" *Family and Conciliation Courts Review*, *33*, 298-307.

Millar, P. & Goldenberg, S. (1998). Explaining Child Custody Determination in Canada. *Canadian Journal of Law and Society* 209-225.

Mitchell, A. (1985) *Children in the Middle*, London : Tavistock.

Moffitt, T. E., Caspi, A., Rutter, M., & Silva, P. A. (2001). *Sex differences in antisocial behavior*. Cambridge: Cambridge University Press.

Parish, T.S. (1987). "Children's Self Concepts: Are They Affected by Parental Divorce and Remarriage?" *Journal of Social Behavior and Personality* 2 (4), 559-562.

Parliament of Australia (2005). *Family Law Amendment (Shared Parental Responsibility) Bill 2005*.

Pimlott-Kubiak, S., & Cortina, L. M. (2003). Gender, Victimization, and Outcomes: Reconceptualizing Risk. *Journal of Consulting and Clinical Psychology, 71*(3), 528-539.

Polikoff, N. D. (1982). Gender and child custody determinations: Exploding the myths. In I. Diamond (Ed.), *Families, politics, and public policies: A feminist dialogue on women and the state*. New York: Longman.

Ramsey, S. (2000). *High conflict custody cases: Reforming the system for children*. Conference Report and Action Plan. Wingspread Conference Center; Racine, Wisconsin

Ringbäck Weitoft, G., et al. (2003) "Mortality, severe morbidity, and injury in children living with single parents in Sweden: A population-based study," *The Lancet*, 361, 289-295.

Rutter, M (1995). "Clinical implication of attachment concepts," *Journal of Child Psychology and Psychiatry, 36*, 549-571.

Serbin, L., Stack, D., De Genna, N., Grunzeweig, N., Temcheff, C. E., Schwartzmann, A. E., et al. (2004). When aggressive girls become mothers. In M. a. B. Putallaz, K.L. (Ed.), *Aggression, antisocial behavior and violence among girls*. New York: The Guilford Press.

Se'Ver, A. (1993). *Women and Divorce in Canada*. Toronto: Canadian Scholars' Press.

Smart, C. (2002). "From children's shoes to children's voices" *40 Family Court Review*.

Sommer, R. (1994). *Male and female partner abuse: Testing a diathesis-stress model*. Unpublished doctoral dissertation. University of Manitoba

Statistics Canada (2004). *Divorce in Canada: A Statistical Profile*.

Straus, M.A. (1995). Trends in cultural norms and rates of partner violence: An update to 1992. In S. M. Stich & M. A. Straus (Eds.) *Understanding partner violence: Prevalence, causes, consequences, and solutions* (pp. 30-33). Minneapolis, MN: National Council on Family Relations.

Straus, M.A. (1993). "Physical assaults by wives: A major social problem." In R.J. Gelles & D.R. Loseke (Eds.), *Current controversies on family violence*, pp. 67-87. Newbury Park, CA: Sage.

Stets, J.E. & Henderson, D.A. (1991). Contextual factors surrounding conflict resolution while dating: results from a national study. *Family Relations, 40*, 29-40.

Stets, J.E. & Straus, M.A. (1990). Gender differences in reporting marital violence and its medical and psychological consequences. In M. A. Straus & R. J. Gelles (Eds.), *Physical violence in American families: Risk factors and adaptations to violence in 8,145 families* (pp. 151-166). New Brunswick, NJ: Transaction.

Tompkins, R. (1995). "Parenting plans: A concept whose time has come," *Family and Conciliation Courts Review*, *33*, 286-297.

Trocme, N. et al (2005). Canadian Incidence Study of Reported Child Abuse and

Neglect 2003: Major Findings. Ottawa: Minister of Public Works and Government Services Canada.

Wallerstein, J.S. and Kelly, J. (1980). *Surviving the Breakup : How Children and Parents Cope with Divorce*, New York: Basic Books.

Wallerstein, J.S., J. Lewis, & S. Blakeslee (2000), *The unexpected legacy of divorce: A 25 year landmark study*. New York: Hyperion.

Warshak, R.A. (1992). *The Custody Revolution*.

Weil, S. (1952). *The Need for Roots*. New York: Harper Colophon Books.

Woodhouse, B.B. (1999). "Child custody in the age of children's rights: The search for a just and equitable standard" 33 *Family Law Quarterly*.

Federal and Provincial Family Justice Reports

British Columbia Justice Review Task Force (2005). *A New Justice System for Children and Families.*

Child and Youth Officer for British Columbia (2006). *Towards a Strengths-Based Approach to Government Policy and Services for Children and Youth in British Columbia*.

Department of Justice Canada (1990). *Evaluation of the Divorce Act, Phase II: Monitoring and Evaluation* (Canada: Bureau of Review, 1990).

Family Justice Review Working Group (1992). *Breaking Up is Hard To Do: Rethinking the Family Justice System in British Columbia*.

Federal-Provincial-Territorial Report on Custody and Access and Child Support (2002). *Putting Children First.*

Special House of Commons-Senate Committee on Child Custody and Access (1998). *For the Sake of the Children*.

Other:

Bailey, Martha
2001 *Overview and Assessment of Approaches to Access Enforcement.* Ottawa: Department of Justice Canada, Family, Children and Youth Section (2001-FCY-8E). http://canada.justice.gc.ca/en/ps/pad/reports/2001-FCY-8E.pdf

Bala, Nicholas M. C. et al.
2001 *Allegations of Child Abuse in the Context of Separation: A Discussion Paper.*

Ottawa, Department of Justice Canada, Family, Children and Youth Section (2001-FCY-4E). http://canada.justice.gc.ca/en/ps/pad/reports/2001fcy4.pdf

Bernardini, Silvia C., and Jennifer M. Jenkins
2002 *An Overview of Risks and Protectors for Children of Separation and Divorce*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2002-FCY-2E).

Bessner, Ronda
2002 *The Voice of the Child in Divorce, Custody and Access Proceedings*. Ottawa: Department of Justice Canada, Family Children and Youth Section (2002-FCY-1E).

Birnbaum, Rachel, and Willson McTavish
2001 *Post-Separation Visitation Disputes: Differential Interventions.* Ottawa: Department of Justice Canada, Family, Children and Youth Section (2001-FCY-6E). http://canada.justice.gc.ca/en/ps/pad/reports/2001fcy4.pdf

Canadian Facts
2001 *Survey on Arrangements Dealing with Custody and Access*. Unpublished Background Paper. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2001-UBR-1E).

Cossman, Brenda
2001 *An Analysis of Options for Changes in the Legal Regulation of Child Custody and Access.* Ottawa: Department of Justice Canada, Family, Children and Youth Section (2001-FCY-2E). http://canada.justice.gc.ca/en/ps/pad/reports/2001-FCY-2E.pdf

Family, Children and Youth Section
1998a *Canadian Custody and Access Provisions: A Legislative Comparison*. Ottawa: Department of Justice Canada.
http://canada.justice.gc.ca/en/ps/pad/reports/chart/ccac-chart1e.html

Family, Children and Youth Section
1998b *Child Custody and Access in Foreign Jurisdictions: A Legislative Comparison*. Ottawa: Department of Justice Canada.
http://canada.justice.gc.ca/en/ps/reports/chart/ccafje.html

Federal-Provincial-Territorial Family Law Committee
2000 *An Inventory of Government-Based Services That Support the Making and Enforcement of Custody and Access Decisions*. Ottawa: Department of Justice Canada.
http://canada.justice.gc.ca/en/ps/pad/reports/invent/main.htm

Gallagher-Mackay, Kelly
2002 *Report on Family Law Research in Nunavut*. Ottawa, Department of Justice Canada, Family, Children and Youth Section (2002-FCY-3E) Forthcoming.

Gilmour, Glenn
2002 *High Conflict Separation and Divorce: Options for Consideration*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2002-FCY-4E).

Goubau, Dominique
2000 *Divorce Reform and the Joint Exercise of Parental Authority: The Quebec Civil Law Perspective*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2000-FCY-3E).
http://canada.justice.gc.ca/en/ps/pad/reports/2000fcy3e.pdf

IER Planning, Research and Management Services
2001 *Custody, Access and Child Support in Canada: Report on Federal-Provincial-Territorial Consultations*. Ottawa: Department of Justice Canada, Family, Children and Youth Section. http://canada.justice.gc.ca/en/cons/fpt_cons/full_report.pdf

Le Bourdais, Céline, Heather Juby and Nicole Marcil-Gratton
2001 *Keeping Contact with Children: Assessing the Father/Child Post-Separation Relationship from the Male Perspective*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (CSR-2000-3E).
http://canada.justice.gc.ca/en/ps/sup/pub/CSR-2000-3.pdf

Marcil-Gratton, Nicole, and Céline Le Bourdais
1999 *Custody, Access and Child Support: Findings from The National Longitudinal Survey of Children and Youth.* Ottawa: Department of Justice Canada, Child Support Team (CSR-1999-3E/3F). http://canada.justice.gc.ca/en/ps/sup/pub/anlsc.pdf

Moyer, Sharon
2002 *Child Custody Arrangements: Their Characteristics and Outcomes*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2002-FCY-5E) Forthcoming.

O'Connor, Pauline
2002a *Child Access in Canada: Legal Approaches and Program Supports*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2002-FCY-6E)

O'Connor, Pauline
2002b *Voice and Support: Programs for Children Experiencing Separation and Divorce*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2002-FCY-7E) Forthcoming.

Paetsch, Joanne J., Lorne D. Bertrand and Joseph P. Hornick
2001a *Federation of Law Societies of Canada Consultation on Child Support Guidelines and Custody and Access*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2001-FCY-10E).
http://canada.justice.gc.ca/en/ps/sup/pub/2001-FCY-10E.pdf

Paetsch, Joanne J., Lorne D. Bertrand and Joseph P. Hornick
2001b *Family Mediation Canada Consultation on Custody, Access and Child Support.* Ottawa: Department of Justice Canada, Family, Children and Youth Section (2001-FCY-11E). http://canada.justice.gc.ca/en/ps/pad/reports/2001-FCY-11E.pdf

S.A.G.E. Research Group
2000 *Focus Groups on Family Law Issues Related to Custody and Access*. Ottawa: Department of Justice Canada, Family, Children and youth Section (2000-FCY-5E). http://canada.justice.gc.ca/en/ps/pad/reports/2000fcy5e.pdf

Stewart, Ron
2001 *The Early Identification and Streaming of Cases of High Conflict Separation and Divorce: A Review*. Ottawa: Department of Justice Canada, Family, Children and Youth Section (2001-FCY-7E). http://canada.justice.gc.ca/en/ps/pad/reports/EarlyIdentification.pdf