



Fathers Are Capable Too: Parenting Association

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The father emperor penguin forgoes all food for up to 4 months sheltering the egg and nurturing the chick.

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On May 4, 2004 in the *Daily*, Statistics Canada announced the release of the 2001 and 2002 divorce statistics (see <http://www.statcan.ca/Daily/English/040504/d040504a.htm>).

In this article, StatsCan reported that, for the first time, less than 50% of custody awards were made to the mother due to a growth in awarding “joint custody”. In doing so, they have reinforced the misinformation concerning the custody of children as ordered by the courts.

Statistics Canada gathers their information from the federal Department of Justice form called the “Registration of Divorce Proceeding”. These are completed by someone in the court at the time a divorce is granted. This form provides for only four types of custody

- sole paternal custody,
- sole maternal custody,
- joint maternal/paternal custody, and
- custody to someone other than the child’s mother and father.

The courts, reacting to valid criticism from Canadians, in removing a parent from children’s lives in divorce have taken to using the “joint custody” designation to really mean “sole custody.” This has been done by inventing a new form of custody called “joint custody with primary residency”. The 2002 Federal-Provincial-Territorial Report described the difference between “joint legal custody” and “joint custody with primary residency” as:

... “joint custody with primary residency” refers to joint decision making on the major issues but not on the day-to-day decisions. It clarifies the child’s primary residence. Joint custody refers to joint physical custody with the child having no one primary residence and provides for joint decision making. Custody refers to residence and all decision making including major decisions and day-to-day decision.

(<http://www.justice.gc.ca/en/ps/pad/reports/flc2002e.pdf> , page 100-101)

To date, our Courts have defined day-to-day decisions to include denial of access by the non-residential parent, the right to move children of thousands of miles away. In fact, there is no indication yet about what constitutes a “major” decision. *There is no discernable difference between “joint custody with primary residency” and “sole custody” in Canada.*

This new form of custody is most often what the courts call “joint custody”. Its use is widespread.

The Department of Justice funded a study called *Custody, Access and Child Support: Findings from The National Longitudinal Survey of Children and Youth* (available at <http://www.justice.gc.ca/en/ps/pad/reports/anlsc/anlsc.pdf>, page 20-21), based on 1994-1995 data. That study indicates that 91% of so-called “joint custody” awards are really “joint custody with primary residency.” It also indicates that in 80% of joint custody awards the child *never* stays with the non-residential parent. The study indicates that “...the overwhelming majority of children live only with their mothers...”

If we accept and use the proportions outlined by the Department of Justice as to the real residency and reassign the custody to the real form, we end up seeing that in the last 12 years (see attached graph). There really has been no change at all in the assignment of custody. The vast majority of children – over 80% – end up in what in the effective sole custody of their mothers, often with fathers shut out. The only things that have changed is that the judiciary has introduced new language to hide their continuing decisions to rob children of the right to both of their parents.

F.A.C.T.’s experience [7,000 parents counselled in the last 5 years, and many more reached through the web] is that the incidence of “joint custody” with exclusive or primary residency to a father is significantly less than the federal Department of Justice reports. Our estimate is that at least 90% of children end up in the effective sole custody of their mothers.

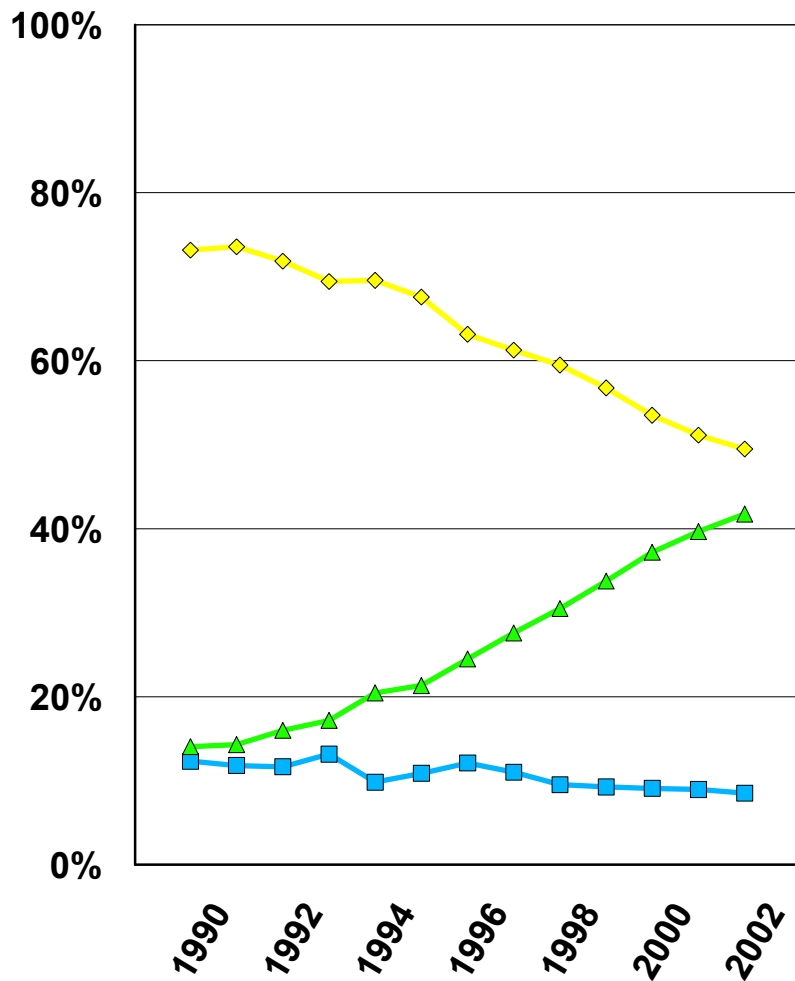
It is clear that the courts have changed nothing in handling divorce except to use words to deceive the participants and the public as to what is happening.

Canadians need to know the truth. The key concept originally embedded into the definition of the “best interests of the child” of maximum contact with both parents, continues not to be respected in custody decisions. The long known, and scientifically demonstrated, fact that children do better after a separation with maximum contact with both parents is being ignored. It is time that rights of children be respected by the courts.

For further information, call Brian Jenkins, at (416) 315-5298.

Custody Awards & Reality

What the Courts Say



What the Courts Do

