



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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Kaplanis v. Kaplanis:

Ontario Court of Appeal limits Joint Custody

On January 31, 2005 the Court of Appeal for Ontario released a decisions in the Kaplanis case that is bewildering to parents in the province of Ontario. F.A.C.T. had no involvement in this case. This decision is based on the inappropriate assumption that parents cannot jointly share the responsibility of raising their children if they cannot get along personally.

This decision flies in the face of social research over the last decades. Empirical study after empirical study show that children are significantly better off when both parents are actively involved in their lives,¹ and that children suffer when either parent is excluded. Decisions limiting the active involvement of both parents are damaging to children. Empirical studies show joint custody has been seen as beneficial at all levels of conflict, except at true, mutual, high conflict situations where sole and joint custody arrangements are equally irrelevant in looking after the interests of children.² It should be noted that the Ontario Court of Appeal's description of the case would not have classed this situation as a high conflict dispute under the conditions in the studies.

Furthermore empirical studies identify that joint custody as the default judicial position actually mitigates against dysfunctional behaviour, lowers the levels of conflict and angst between parents, and lowers the divorce rates.³ Clearly a shared parenting result is not only good for the children, but it is useful for defusing stressful circumstances.

Decisions such as this from a court system that demands "winners" and "losers" simply creates a reward for one parent to behave dysfunctionally by the awarding custody irrespective of the best

¹ for example: Bauserman, R. Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review, *Journal of Family Psychology* v. 16, n. 1, 91-102 .Clarke-Stewart, KA, Hayward, C. Advantages of Father Custody and Contact for the Psychological Well-Being of School-Age Children, *Journal of Applied Developmental Psychology*, v. 17. 239-270 (1996)

² Johnston, JR. Research Update: Children's Adjustment in Sole Custody Compared to Joint Custody Families and Principles for Custody Decision Making, *Family and Conciliation Courts Review*, v. 33, n. 4, 415-425(1995)

³ Kuhn, R, Guidubaldi,, J. *Child Custody Policies and Divorce Rates in the US*, presented at 11th Annual Conference of the Children's Rights Council October 23-26, 1997. Washington, D.C.

interests of the children. The fact that the courts positively reinforce dysfunctional behaviour has tainted the entire system of family law.

Canadians recognise these court positions and reject them. The Compas poll for Southam News published November 23, 1998 during the same time as the Special Joint Committee's Report, found that:

- 89% of Canadians believe the stress of divorce is more severe now than a generation ago; and that 70% of men and women say that courts do not pay enough attention to the needs of children;
- 62% of men and women feel the courts pay too little attention to the needs of fathers; and that 80% of Canadians believe that the children of divorce must maintain on-going relationships with both their parents;
- 65% of Canadians feel it is a priority that the Government should protect rights of the children to relationships with their parents.

Angus-Reid Group opinion poll May 25, 1998 for the Globe and Mail said:

- 71% of Ontarians believe a women's child support should be withheld if access is denied; and also that Ontarians are equally split as to whether, or not, jail terms are appropriate for access denial.

The federal Minister of Justice's report, by Earncliffe Research & Communications dated September 2001, on the need for change in the divorce law regime found that

- 65% of responding Canadians believed that significant change is required in the legal system governing child custody and access when parents are divorced and
- 62% of all Canadians felt that "mandatory shared equally" parenting was desired.

It is time that the Court of Canada wake up to their responsibility to Canadian children and families. They should not simply play a political-based, activist game with families justified with junk social science at the expense of another generation of neglected children.

Canadian families know that, if you want maximum expense and damage during a divorce, you go to the courts. Families have attempted to find alternate methods of resolving matrimonial issues. The Court and the governments have responded by attempting to force more and more families into the courts to create similar destructively bad decisions as precedents. Irrespective of Justice Weiler's statement that in family law "it is unnecessary to address this court's prior jurisprudence" the principle of *stare decisis* turns these bad decisions into an expanding, creeping rot in the family law system.

It is time for Parliament to curb the Court and to protect our children from these brutal, incorrect and inappropriate decisions.

For further information, call the F.A.C.T. line at (416)410-3228 or Paul Mineiro at (905)858-9050.