



“Shared” Parenting by Kelli Potter

On June 16, 2009 a private member’s Bill was presented to Parliament with the intention of changing custody law in Canada. Even though Bill C-422 was not passed and is no longer before Parliament, it raised some interesting questions. Essentially, if that Bill had become law, the Divorce Act would have been changed to require that courts make equal, shared parenting the starting point for custody orders, except in proven cases of abuse or neglect.

There has been a great deal of research and debate over the past two decades about the impact of separation and divorce on children. Some experts have concluded that children benefit most from spending the maximum amount of time possible with each of their parents and this has led Canadian families and courts to start implementing “shared parenting” orders. Under these orders, children are spending as much as 40-50 per cent of their time with each parent. Manitoba in particular is a province that has been very

supportive of shared parenting and many parents voluntarily enter into shared parenting arrangements without the need for litigation.

Canada is not the only country that is moving in this direction. Many countries, such as Belgium, Denmark, Norway, Australia, and various U.S. states, have implemented equal parenting, joint custody or shared parenting legislation. The intention has been that by making shared parenting the starting point for custody, parents who separate and divorce will have lower court costs, less conflict and the children themselves will fare better than those who grow up in the “old model” custody arrangements in which children live primarily with one parent and spend limited amounts of mostly weekend time with the other.

Father’s rights groups have strongly supported the proposed change to the Divorce Act, saying that custody laws have traditionally been slanted in favour of women and have

undermined the importance of active, involved fathers.

Whether or not there is an actual need to change the law has yet to be determined. On one hand, a change in the Divorce Act would set a clear standard and possibly limit the number of custody battles that enter the courtroom. On the other, the way the current law works is that judges can consider matters on a case-by-case basis and make orders that strive to take into account the needs of the particular family standing before them.

Additionally, just as some groups have whole-heartedly supported a change to the law, some groups have expressed concern. For example, the National Association of Women and the Law suggested that while the expressed purpose of the Bill was commendable, forcing families into default shared parenting might be inappropriate in certain circumstances, such as cases where there is a history of family violence. To be clear, the National Association of

Women and the Law did state that the organization supports changes to custody laws which would provide equal or almost equal parenting time in families where both parents have been actively involved with their children pre-separation and where both parents are committed to making the best interests of the children a priority.

There are no clear-cut answers at this time and it seems that the concept of shared parenting and any proposed changes to custody laws will continue to generate a lot of discussion.