

THE CHILDREN'S VOICE  
SUBMISSION  
TO THE  
SPECIAL  
HOUSE OF COMMONS/SENATE  
JOINT COMMITTEE  
ON  
CHILD CUSTODY AND ACCESS  
(PARENTING RESPONSIBILITIES)

MARCH 1998

## INTRODUCTION

The Children's Voice is an organisation trying to represent children's rights, specially their right to have equal access to both parents after separation and divorce and to promote the preservation and enhancement of their family unit and environment in accordance with the international Convention on the Rights of the Child.

We've been in existence since 1993. Initially under the name Kids Need Both Parents we operated from Etobicoke, Ontario, until the middle of 1997. We have been representing children's rights at the United Nations and participated or entered submissions on issues affecting children, both, at the provincial and federal level.

In addition to lobbying for children rights and the enhancement of family life for them, we provide referral services for their parents since we believe that the mental, physical, financial and legal standing of them affects them enormously. This view arising from the strong emotional attachments and financial dependency usually associated with this unique child-parent relationship.

Just like most organisations involved in these issues which do not want to echo to the anti-father and anti-family hate line being peddle by the publicly funded women's representatives in power, we operate from small donations from our members. Being our supporters all volunteers, we are extremely limited in human resources, time and money.

Should you wish any further information regarding our work or the contents of these submissions, please do not hesitate to get in touch with us.

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## PREAMBLE

This submission seeks to offer an overview of the present system and provides for a **global solution** to all problems affecting children of separated or divorce parents. It does not intend to seek solutions related only to Access and Custody. This position arises from our belief that other related areas need to be addressed concurrently for arriving at **changes that will be practical, realistic and effective**. Finding solutions that will work is critical because our society is at a crucial point where it needs to be put at peace with itself in all areas related to family life. In our opinion, failure to implement an overall approach will only worsen rather than stop the harm being done to our children.

It's also our opinion that the present situation has been well known to the government and that it has been only for political reasons that practical solutions related to child custody and access have not been implemented since they were addressed back in 1993. Then, submissions on child custody and access were presented by hundreds of concerned citizens and groups who rendered *viva-vochi* and written testimony, something that was widely reported in the press. The committee conducting the consultation showed a great deal of bias by circulating a questioner with 24 pages related to child support issues and only one page, with only two questions, concerning access and custody of children.

As it is, we consider that the results of this consultation are already bias in favour of the custodial parents. This assumption arises from the inclusion of **professional lobbyists** who are representing women's organisations and interests. The funding of millions of dollars to these agencies to conduct, research, organise and represent women's groups can not be discounted not to influence, negatively, the outcome of this or any other proceedings involving them.

Given the undemocratic nature of these proceedings, it is implied that changes to be implemented are more of the moral rather than legal nature. In other words, only the political willingness to effect change is needed rather than conducting an exercise to gaining consciousness and studying these issues.

The paramount principle that our submission sustains is: **Divorcing parents and their children need help at this critical time rather than being pillaged, pitted against each other, put into stressful situations and harassed**. It is all too obvious that the present adversarial system and the single parenting arrangement provide the opposite at a great psychological harm to our children.

Further to the trauma caused to our children, the chaotic state and moral corruption that has developed all through the different agencies involved in separation and divorce is eroding the confidence of the population about having a justice system that is fair, efficient and that truly sustains the principle of the best interest of the child; thus, indirectly undermining the overall moral fibre of our society and the family unit.

## THE PRESENT SYSTEM AND OPTIONS

Our family justice system has completely collapsed and it is not within the scope of this submission to provide an analysis as to how this occurred. However, we'd like to express our perception that the granting of special legal privileges to women, over and above the rights of men, contrary to s. 28 of the Charter of Rights and Freedoms, has been one of the main factors contributing to its demise. While valid issues of discrimination or disadvantage affecting women could have been solved through human rights claims, acceptance of reversed discrimination has destroyed the moral fibre of the justice system. This dysfunction has been compounded by the failure of the law to recognise and adapt to social changes that have seen men and women taking different rolls away from what used to be their traditional activities in and outside their homes and as care givers to children.

Presently, we have a justice system implementing draconian laws based on political correctness rather than concern for delivering fairness. As a result, **different standards of justice have developed: one for the rich and one for the poor, one for women and one for men.** Members of the judiciary and others who make their living out of the divorce industry are complacent about preserving the status quo.

The moral corruption in our courts is flagrant even though it is carried differently depending on the court level. At the Supreme Court activist judges are seeking to influence society through rulings that impose unwritten laws. At lower levels, judges disregard for the law is blatant. Those denouncing it are being harassed.

The disregard for the principle of upholding the truth in court, the major essence and spirit upon which any justice system operates in a democratic society, has diluted this principle to the point that it has become meaningless. The environment in the justice system is closer to a crude circus than the reputable courts of the past.

### LEGAL AID:

Many of those separating or divorcing do not have the resources to fund their own litigation or are driven by the adversarial system into that position by expenses for psychiatric assessments, lawyers, extensive travel and expenses for the purpose of "visiting" the involved children, alimony and/or outrageously high child support Orders.

In Ontario, the Legal Aid Plan shamelessly keeps double standards. When funding has been available, it has been provided mostly to mothers or it is timed for issues which benefit only them. This is the case right now in Ontario as the Plan found money, miraculously, for applications to process the new provincial child support guidelines even though the agency has been claiming financial bankruptcy.

The Plan also discriminate non-custodial parents by classifying them as single parents for purposes of financial assessment, reason by which many non-custodial parents who apply are allocated the most basic expenses. As a result, many who qualify for partial or pay-back assistance can not take advantage of it since the **criteria does not take into account expenses incurred for housing, feeding, entertaining and transporting children while “visiting”**.

Even in cases where parents have equal joint physical custody or both are leaving on social assistance, the double standards apply and mothers are given assistance while the fathers are not.

### **ACCESS TO JUSTICE:**

The case is frequent where fathers are being forced to represent themselves due to the harsh financial conditions created by the litigation process. The justice system makes no provision to take this condition into account; it merely relies on the pro-se gaining the sympathy of a judge. This compassion is not there most of the time, and even when it is, it does not make up for the absence of professional legal advice. Predictably, a pro-se is highly bound to have made many legal errors by the time he is appearing in court. Thus, even when the courts grant a little bit of help, it does not compensate completely for the absence of professionals. This unbalance is created because judges can only do so much in bending or ignoring the laws before they have to be concerned about the damaged caused to their own reputation. It is a well-known fact among the judicial circles that a judge's performance as a jurist is measured by the number of his/her judgements appealed. The lesser the number the better the good reputation.

Even though the burden of proof is lower at family Courts, evidence is frequently used and is considered heavily in higher courts, including criminal charges. In this case, a little bit of help is not good enough for a person who is innocent.

It may be worth mentioning that the **International Association of Jurists**, a Geneva-based organisation representing the interest of judges around the world, has already **entered a human rights claim with the United Nations** on behalf of Canadian judges, their main argument being that by forcing people to represent themselves the independence of the judiciary is being threatened.

In representing themselves, the pro-se is at a further disadvantage since his/her statements may be perceived as to trying to represent the other party in a negative way. Often, these statements, no matter how substantiated, are taken as being indicative of vindictiveness on the part of the pro-se, while when coming from a lawyer, the same statements do not have the same effect.

Given the bias in favour of mothers, the children are most of the time placed in the interim with them. This makes the mother more bound to obtain legal assistance while the father ends up having to finance his representation. **Given the high moral and financial cost of litigation**, only a very small percentage of cases reach trial. Since non-custodial parents become financially unable to carry on the dispute, they usually settle for unwanted arrangements. Latest figures from Statistics Canada revealed that only 12 percent of cases going to court end up in Joint Custody, of which even a smaller number is actual physical joint custody, rather than only legal. This last one is a token representation for the most.

### **FALSE ACCUSATIONS:**

As more and more men are being forced to claim sole custody, given the fact that there is no provision for more fair alternatives such as joint custody, the animosity between separating parents is higher since they have to compete to come out as the winners. This has created a rise in false accusations of sexual molestation of children, harassment or assault as a way to have the upper hand in court proceedings.

The false allegation of sexual molestation of children is preferred since it involves the children in dispute. Judges, when they are not outright bias, usually err on the side of caution by calling for an investigation by people who have the expertise in this area. By the time the allegations are proved to be false, keeping the children and not disturbing the status quo is usually claimed successfully as being in the best interest of children. **This practice is encouraging to the accusers since there are not any repercussions to fear** and further burdens the accused financially, to the detriment of children and in addition to the mental trauma. Even though false allegation tactics are meant for legal proceedings, **the damage to the child-non-custodial parent relationship usually last a lifetime.**

### **DOMESTIC VIOLENCE:**

It should be dogmatic that domestic violence rises after separation or divorce and that the adversarial structure of the law is the main contributor. Evidence to this argument comes from data compiled by Statistics Canada which indicate that in the United States of America, where fire arms are more widely available, the ratio of wife or husband perpetrated homicide are roughly the same. Actually, in major urban centres, more wives kill husbands by a small margin. This ratio does not apply to other victim-killer relationship. (JuryStat, Volume 14, No. 8, pages 1 and 4).

Concurrent with the homicide decline in the United States of America there has been a change to a presumption of shared parenting which has resulted in an increase of separated or divorced parents being involved equally in the life of their children and a more fair distribution of matrimonial assets after divorce. This relation seems to be conclusive proof that domestic violence, as related to separation or divorce, is associated

with the fairness of the process. In addition, many charges and convictions related to domestic violence are made through false allegations incited by lawyers or women's shelters personnel. The last ones eagerly participate in the schemes for they need to bloat statistics to maintain their victim status, funding and their source of employment while influencing the proceedings in favour of their clients.

Presently, judges take these allegations into consideration, alas in their own bias way. The charges are considered when the allegations are made against the fathers but not when made against the mother. Taking into account claims of domestic violence between the parents, as it is also the case of unsubstantiated child abuse allegations, has only served as incentive for this type of allegations to increase.

### **STATISTICS:**

Vital statistics in the area of assault and sexual molestation of children have been rendered useless as a result of false allegations and the tampering by women's group with the expansion of the definition of domestic assault. Since there is not definition of what constitutes domestic violence, the numbers have been bloated through this scheme.

Presently, a man or a woman killed while carrying an extramarital affair or dating is being classified as the result of domestic violence. Police directives concerning response to espousal assault are also responsible for the bloated and rendered useless data since they are instructed to remove and charge the male in a domestic dispute, regardless of whom did the assault. Lately, in Ontario, female Crown prosecutors are exploiting the long backlogs in court proceedings to inflate the domestic violence figures by offering those charged a lenient penalty for pleading guilty. This is done knowing that those accused will readily accept rather than spend more time in pre-bail or pre-trial detention than the sentence they would get if found guilty.

It may take decades, after the preferred-gender policies are terminated, before non-tampered statistics could have again any value to society.

### **ACCESS CENTRES:**

Even though the existence of access centres may help some children gain access to their parents, their operation is a mixed blessing since judges are more bound to agree to their use, specially if there are any allegations of child abuse, not matter how feeble.

Different centres operate at different times, which leaves many parents with shorter than specified visits. Since centres are sparsely **located over several hundreds of kilometres apart**, their use frequently precludes the end of child-parent relationships. In our interaction with hundreds of parents who have approached our organisation seeking help, we have seen many, mostly fathers, abandon their children after initial attempts to find a

viable solution that would help them keep a relationship. We can only concur with professor Bala in his testimony in front of this committee on February 25, 1998, in that part of the access problem is the absence of one parent, of which the large majority happens to be fathers.

Since centres operate with the help of volunteers, **children end up missing all statutory days of rest**, which is a continued source of animosity between the parents and an aggravation to a child who may become enthusiastic about spending these special times with the non-custodial parent. Most of the time, the custodial parent does not even make up for the visit. Even though centres keep records of missed visitations, their use has not value in court since supervisors openly discourage parents from taking the **voluntary personnel**, many of them students, to court to testify about the truthfulness of the documents they signed. Also, a parent may feel intimidated to subpoena a volunteer out of fear of getting a bad report from a resentful witness who may have been forced to miss classes.

Some custodial parents who have become aware of the **reluctance of personnel to appear in court** or the **legal invalidity of reports** have lost their fear of getting a bad report and deny access.

Since parents have to be at the same place and time for exchanging or “visiting” children, the centres increase the chances of parents getting into a conflict situation.

### **MOBILITY ISSUES:**

Most provincial legislation make provision for the prevention of the removal of children out of the legal jurisdiction where the children are residing at the time of separation. However, this fact frequently becomes meaningless since by the time jurisdiction is established, the status quo is successfully claimed to gain custody. This tactic is well known among lawyers and it is widely used. Further, the practice of enforcing removal suffers of gender bias. The illegal removal of children is treated as a **mobility issue when the mother** removes the children and **kidnapping when carried by the father**.

Provincial courts often ignore each other’s Orders and **police do not recognise other Provinces’ Orders** in addition to reacting in ways that are blatantly biased against fathers.

Kidnapping of children in the aftermath of separation or divorce is associated with the level of animosity created by the adversarial system and it is carried by both parents. Some fathers do it after becoming frustrated with the “justice system”, many mothers out of fear of losing their children after being served with the papers to appear in court.

## **CHILD POVERTY:**

Present arguments and statistics ignore the fact many of the separated or divorce parents were already living under present poverty line standards before separation or divorce. Also ignored is the fact that a small fraction of the money wasted in maintaining the adversarial system or the one spent by the parents in litigation to establish custody and access arrangements would make up, several times over, for the shortfall of those affected. **That money belongs to children, not to lawyers.**

## **CHILDREN'S HEALTH:**

The **American Psychiatric Associations** has recognised that Joint Custody (Equal Parenting) is beneficial to the mental health of children.

## **MEDIATION:**

A good number of people have become to use mediation as alternate systems of conflict resolution since it is economically more sound and because people feel more comfortable living with rules that were crafted by themselves rather than imposed by a third party. For this reason, agreements reached this way tend to last longer and are less bound to create animosity between the parties involved.

The Unified family court and other courts offer mediation services, which have enticed many to use them and benefit from the service. The main difficulty arises when a parent is uncooperative, either because she/he is bent in revenge against the other parent or because he/she is acting on legal advice. Because there are not negative repercussions against the objecting parent, many mothers who become or are made conscious by their lawyers about the gender prejudice against fathers become reluctant to participate in a mediated settlement in the right believe that they can gain more through litigation. This factor is often taken into account by many fathers who agree to unfair settlements in order to avoid a seemingly useless effort to be treated equally.

## **SECOND FAMILIES:**

The courts and the law are hypocritical in the treatment of children since double standards are applied to those born to second marriages. Frequently, children of second marriages are treated as second class citizens who live under poverty level standards.

The problems associated with the financial support to children of the first relationship or the frustration of not being able to enforce access to them is frequently the source of second family dissolution.

## **PARENTAL ALIENATION:**

Research on Parental Alienation Syndrome has been available for a long time and is clinically recognised; however, courts have been reluctant to readily admit it. In cases when experts have been brought in to testify at trials, usually at enormous expense, the courts fail to act to remedy the situation. Many are the fathers who have not seen their children since the children's tender years and who claim that the children still speak bad about them and reject them, the clearest sign of mind tampering by the custodial parent. Still, courts do nothing about it.

Dr. Hazel McBride in Canada and Dr. Gardner in the United States are two of many well-known experts in this field.

## **EQUAL PARENTING:**

**Single-parenting has already proved not to work as a parenting arrangement.** It is the source of a lot of the animosity between parents, which ends affecting children of divorce. In addition, the absence of one parent as a role figure has such a catastrophic effect in a child psyche that it has created other social problems, among them: substance abuse, teenage suicide, unwanted teenage pregnancy, youth crime, academic under-achievement, children's physical growth prevention, child poverty and more dysfunctional families that are bound to repeat and perpetuate the same cycle.

It appears that the main stumbling blocks to the widespread use of **Equal-Parenting** arrangements are those making their living out of the adversarial system. Even though it is not spelled out directly, the legal grounds are there for its implementation, as it has been the odd court case where a judge has ordered **Equal-Parenting** arrangements. Acceptance from the general public and the professionals is also there. The topic has been reviewed many times over with the same overwhelming results: **Equal Parenting is the preferred method.**

Attached to this submission are **twenty-five studies favouring Equal-Parenting.** The research supports this type of parenting arrangement even in cases where there is high conflict between the separated parents.

This system has the added advantage of minimising the possibility for conflict since there is little interaction between the parents at pick-up/drop-off of children from school.

## **POLICE INVOLVEMENT:**

Frequently, during the separation or divorce time, parents call for police involvement to help them settle access or custody disputes. This involvement is very expensive and distracting from more needed police work to combat heavy crime. Further, police are

usually called repeatedly by the same parents who believe police will assist them because they have a court “Order”. Even in cases when parents have gone repeatedly to court to get an Order under s.34.2 of the Criminal Code, which directs police to assist them, most of the time the exercise requires a lot of police involvement and often it leads no where since the custodial parent purposely moved. The enticement for this mischief is the fact that the custodial parent knows that she/he has little to lose, other than the child’s right to see his/her non-custodial parent if found within the specified access time. The odds of this last happening are very slim given the brief weekend access most children get.

In addition, more police time is wasted during false allegation charges.

### **CHILDREN’S AID AGENCIES:**

A lot of time and economic resources are wasted by child protection agencies trying to sort out between false and true claims of child abuse. Further to the damage caused to a child and the falsely accuse parent, the risks are increase for missing true allegations.

### **CHILD MAINTENANCE:**

For most, the child support amounts being paid are so high that they strain child-parent relationships, in some cases they even end it completely. This situation can easily develop by the fact that the non-custodial parent is actually being forced to maintain two households.

Animosity between the parents is often created by the fact that money does not get to the children but is spent in personal use by the custodial parent since there is not accountability procedures.

This situation is further aggravated by the fact that some parents are being forced to provide exorbitant child support amounts in addition to exorbitant alimony payments. In this respect, there is discrimination on the basis of family status since **the law does not impose complete-family parents the same requirements as it does to single-parent household.** This is also contrary to our most basic Constitutional Rights.

Lately, the child-non-custodial-parent relationship is being senselessly terminated or badly affected through the new policy of jailing those parents who are in arrears in child-support payments. Even though one **custodial mother was very timely sacrificed for political reasons** by putting her in jail recently for denying her child access to the father, just as this Joint Committee was starting this consultation, there is not the parallel that the courts seek to present. This is because, child support enforcement is not analogous to access enforcement since access is entirely under the control and will of the custodial parent, while child support obligations are dependent of employment capabilities, fluctuations in the economy and health of the payer.

Further, the senseless jailing does not solve the problem since the incarcerated parent does not earn a living while imprisoned, the jailing of a vindictive custodial parent does.

### **PROFESSIONAL ACCOUNTABILITY:**

Presently, social workers and judges are not financially liable for malpractice. Social workers in Ontario do not even have to be certified by an association for them to be employed.

While a surgeon can be successfully sued for failing by a thousand of an inch while making an incision, judges are not responsible even in cases of gross abuse of power, neglect or mistake. The only governing bodies that can provide some sanction, the Judicial Councils, usually ignore most complaints since most of the council composition is from people who are in the industry. This lack of judges' accountability is a contributing factor in the corruption going on in our courts.

### **FINANCIAL COST:**

The financial cost of the present system is enormous not only to the parents but also to the tax-payers in the form of maintaining courts, crime prevention, correctional services, drug and substance abuse treatment, psychological and health problems, enforcement of child support payments, children's aid agencies, added education assistance, etc.

**The adversarial system** of separation or divorce does not even create jobs to better the economy **for the sake of children's welfare.** Most money tends to accumulate in lawyers who usually employ small numbers of personnel to assist them. On the other hand, community standards resolution programs that sustain the principle of keeping healthier child-parent and pro-family relationships can be implemented at very low cost, thus, saving the tax-payers millions of dollars which can be returned to those who need the money the most, separated parents. This reimbursement may be done in the form of child tax credits or any other program benefiting children of divorce directly.

The paramount financial principle rests in the belief children of divorce and their parents need as much financial help as possible at these very difficult times not to be pillaged and/or financially pitted against each other.

### **EDUCATION:**

The National Centre for Education Statistics of the US Department of Education, in its **Executive Summary** of the September 1997 report on **Fathers Involvement in Their Children's Schools**, the most comprehensive social research ever conducted in this area,

leaves not doubt whatsoever of the academic importance and benefits of maintaining a close relationship between children and their biological fathers.

In the summary (page xi), this reports mentions that it is not contact, per-se, that is associated with student outcomes, but rather active participation, in their children's lives through involvement in their schools that makes a difference.

Among other findings, the report concludes that this kind of benign child reaction to parent involvement is not substituted by step parenting. Like children in single parent households, children in step parent households show elevated rates of maladjustment and school failure compared to children living with both their biological parents (Zill, 1988).

The research clearly indicates that fathers, who head single parent households, become as involved in the scholar activities of their children as single parent household headed by mothers (Findings, page 3, levels of involvement).

The over 100 pages report is supported with scientific studies and references by prominent researchers.

## RECOMENDATIONS

Our position calls for a global solution since we believe it to be necessary for the purpose of achieving the goal of putting our society at peace with itself. We believe partial solutions will not work, as it has proved to be the case in the past. We advocate for remedies that take into account all the problem areas. This approach includes a call to reverse the damage done by previous legislation and seeks compensation to both, alienated children and their now non-custodial parents. For this reason, we are calling for a Family Reunification and Compensation Act that will accomplish the following:

- 1.- Presumption of No-Court.
- 2.- Presumption of Equal Parenting.
- 3.- Mandatory mediation, with litigation only as a last resource.
- 4.- Focus on the child-parent relationship, not the one between the parents.
- 5.- Introduction of community-based programs of conflict resolution that will guaranty children access to their parents within one week after separation.
- 6.- Incentives to reunify alienated children.
- 7.- Recovery of assets which have been pillaged through the Courts or lawyers.
- 8.- Financial compensation for those alienated children and parents who can not be reunited or who choose not to do so.
- 9.- Child-parent reintroduction programs.
- 10.- Exclusion of domestic violence in determination of access and parenting issues, **except when there is substantiated proof of being against the child.**
- 11.- Parenting time compensation to re-establish damaged relationships.
- 12.- Clearing of all criminal convictions arising from separation or divorce.
- 13.- Change in law to punish those found or couching others into making false allegations of child abuse with the same penalty as the accuse would had received.
- 14.- Prosecution of perjury.
- 15.- Passing of Bill S-12.

- 16.- Making access violations a federal criminal act, similar to how it is being done through the access interference provisions being enforced in the State of Illinois in the USA.
- 17.- Creation of and funding for a **Ministry on the Status of Men** until all legislation, which the Ministry can reasonably justify, has been examined for gender prejudice.
- 18.- Abrogation and examination of all legislation concerning family matters that has been passed since the introduction of preferred-gender policies.
- 19.- Immediate consultations and negotiations through a committee composed of recognised and long existing father's rights group.
- 20.- Mandatory anger management counselling for ex-espouses denying access.
- 21.- Judges should be made criminally and financially liable for malpractice.
- 22.- Social workers and child protection agencies, including government agencies, should be over-viewed and made accountable to civilian review boards.
- 23.- Social workers should be certified in order for them to be able to practice. They should also be made financially and criminally liable for wrongdoing.
- 24.- Computerised national registry of Access Orders with immediate access capabilities.
- 25.- Child support amounts that consider only the actual needs of the child, not as a first or second alimony.
- 26.- Mechanisms to ensure that in the odd cases where child support payments are necessary, the actual amount goes to the child.
- 27.- Reinforcement of the friendly parent rule during mediation or litigation with escalating penalties to the unfriendly parent.
- 28.- Probation period for parents entering mediation services (i.e. monitoring for a period of one year while being assisted by conflict resolution programs).
- 29.- A change to having judges elected for 5 years maximum, rather than appointed.
- 30.- Balancing the Judicial Councils composition.
- 31.- Limitation of Access centres to substantiated cases of child abuse.

## IMPLEMENTATION

The Court system could be replaced by a system that upholds community standards of family values, not the law. This approach, once implemented and legally supported, could be expected that the vast majority of those parents separating would accept it.

Mediation is not the ultimate solution that will fix all what is going wrong in the system, but it appears as a necessary step to a more civilised system of conflict resolution. It should be expected that many parents would try to scuttle it by being uncooperative. However, the number of people reaching this stage could rationally be expected to be greatly reduced, thus, allowing the judges to make thorough analysis of the lesser cases and render solutions that are more child oriented.

Equal parenting is the solution to many others areas of difficulties. For instance, Legal Aid and access centre's funding will be greatly reduced.

Community based services, at marginally low cost, will suffice for many, specially if the parties involved were to try to agree on selecting their own parenting co-ordinators.

A clause in The Divorce Act instructing judges to draw a negative inference about an uncooperative parent should be included.

A child focus clause in the Divorce Act indicating that only the relationship between the child and each of his/her parents should be taken into account in a case reaching court.

A clause in the Divorce Act specifying that a judge shall be bound to give a parent compensatory time above equal parenting time in order to re-establish a parent-child relationship.

Income tax Act could provide token incentives for those willing to relocate to where their children are. For instance, it could provide a relocation credit tax. Even the number of people who could actually take advantage of this benefit may be relatively small, the gesture could be a rather meaningful one.

Changes to the Judicial Council composition to include more civilians including men's rights representatives so far as the government maintains the preferred-gender policies or permanently. In addition a change to having the judges elected rather than appointed.

Access Centres could minimise the number of children affected by their use by dedicating them to only the most serious cases of suspected child abuse. Parents in need of them could use them during the summer for the odd exchange between summer vacations if a local school or a community base service is not available. This would increase the amount of **quality time** dedicated to the children rather than to travelling.

ADENDUM  
OF  
STATISTICAL  
AND  
EMPIRICAL DATA  
IN  
SUPPORT OF  
THIS SUBMISSION

## 1) CHILD ABUSE AND INFANTICIDE

1994 - The Toronto Institute for the Prevention of Child Abuse reports in a study that perpetrators of child maltreatment were:

49% mothers, 31% fathers,

Of child neglect:

85% mothers,

of emotional maltreatment:

79% mothers.

In the 0 to 3 year category, boys accounted for 59% of victims. In the 4 to 11 year category, boys accounted for 55.5% of victims. The largest number of investigated families were single mother families.

1986, Health and Welfare Canada reports of a study by Bell finding evidence of mothers being more likely than fathers to be abusive to children. The perpetrator of child abuse was the mother in 38.7%, the father in 18.4% of cases.

1986, Dr. Cyril Greenland, McMaster University, analysed 100 child abuse and neglect death in Ontario, from 1973 to 1982. He found: natural parents were the perpetrators in 63% of cases. Mothers in 38%, fathers in 13% and both in 12% of cases.

1984 - Walker - inter generational transmission of violence by abusive wives to their children in a study of 400 battered wives. 29% of the wives and 35% of the battering husbands had witnessed their mother inflict violence upon their father during childhood.

According to child protective services in the U.S.A., of child abuse committed by natural parents between 1984 and 1987, mothers represent the following percentages of child abusers:

in Virginia: 67%, in New Jersey: 70%, in Texas: 68%, in Iowa: 64.5%, in Minnesota: 62%, in Alaska: 67%.

1984, Joan Ditson and Sharon Shay 'Child abuse and Neglect'  
Lansing, Michigan, Volume 8  
49% of all child abuse is committed by single parent mothers.

1978 Study by Richard Gelles found 76% of mothers as compared to 71% of fathers reporting at least one incident of violence toward children.

1977 - Nagi, Saad Child Maltreatment in the United States  
Columbia University Press, New York, p.47,1977; Statistical Abstract of the United States 1987 table 277. The idea of women being violent is a hard thing for many people to believe. It goes against the stereotype of the passive and helpless female. This, in spite of the fact that women are known to be more likely than men to commit child abuse and child murder (Daly & Wilson 1988 report 54% of parent-child murders where the child is under 17 were committed by the mother in Canada between 1974 and 1983, for instance.

The Statistical Abstract of the United States, 1987, reports that of reported child maltreatment cases between 1980 and 1984, between 57.0% and 61.4% were perpetrated by the mother. Nagi 1977 found 53.1% of perpetrators were female, 21% male and 22.6% both.

1971 Study by Zalba and 1971 Study by Gill showed women as child abusers in 50% of cases.

1969 Study by Bennie and Sclare found 7 out of 10 child abusers are female.

1968 Study by Bennie and Sclare found 50 of 57 child abusers are female.

Of urban parents convicted of murdering offspring, 55 percent are mothers. Sixty-four percent of the time it is a son whom she kills. (Id.)

## 2) FALSE ACCUSATIONS OF CHILD ABUSE

Most cases of false allegations involve mothers falsely accusing fathers. Dullea, 1987 (New York Times), Zweig, 1987 (Los Angeles Times)

Enough anecdotal and case study evidence has been collected to ascertain that parents may accuse one another of sexual molestation of their children during child custody battles. Benedek & Shetky 1984,1985, deJong 1986, Murray 1987, Green 1986, Klajner-Diamond, Wehrspann & Steinhauser 1987, Jaffe et al., 1987, Kaplan & Kaplan 1981

The alleging parent is often a delusional or vindictive woman seeking revenge against her ex-husband. A. Green, child psychologist, Journal of the American Academy of Child Psychiatry.

61-65% of child abuse accusations are found to be unfounded or false. In contested divorce cases with issues of child custody, the false accusation rate has reached 80%. David S. Gil, Brandeis University, Massachusetts, 1985

A study released by the Institute for the Prevention of Child Abuse (I.P.C.A.) found 42% of reported cases of abuse in Ontario to be unfounded. I.P.C.A. Toronto, 1993.

60-85% of child abuse accusations are found to be false or unfounded. V.O.C.A.L., U.S.A. (Victims of Child Abuse Legislation).

3) THE CONTINUING HISTORIC AND SYSTEMATIC DISCRIMINATION  
ON THE BASIS OF GENDER IN THE AWARDING OF SOLE CUSTODY  
AND THE HISTORIC AND SYSTEMIC NON-ENFORCEMENT OF COURT-  
ORDERED ACCESS.

Despite gender neutral divorce laws giving children the right to be with both parents, despite the human rights code prohibiting discrimination on the basis of gender,

Family Court Judges award custody of children to the female parent in over 96% of all cases. A female parent's custodial rights are then strongly enforced by courts and police. A male parent's court ordered right to see his children is ignored by courts and police.

4) THE EFFECTS OF SINGLE PARENTHOOD ON CHILDREN

In the USA alone, 23 million children grow up without a father.

The US National Commission on children reports that fatherless children are 5 times more likely to be poor and are 10 times more likely to be extremely poor, and at great risk of dropping out of school, of alcohol and drug abuse, adolescent pregnancy and child bearing of juvenile delinquency, mental illness and suicide.

1996 - Statistics Canada, Federal Study on the well-being of children finds:  
of 2,800,000 children, 4-11 years old, in Canada 458,000 live with their mother only.

Percentage of children showing anxiety, depression and physical aggression:

living with 2 parents: 25%, with a mother only: 41%

U.S.A. Studies show that from fatherless homes come:

63% of youth suicides (U.S.D.H.H.S., Bureau of the Census)

85% of children with behaviour disorders (Centre for Disease Control)

80% of rapists motivated by anger (applies to boys only) (Source: Criminal Justice and Behaviour, Vol 14, p 403-26,1978)

71% of all high school dropouts (Source: National Principal Association Report on the state of High Schools)

85% of all youth sitting in prisons (Source: Fulton Co. Georgia jail populations, Texas Dept. of Corrections 1992)

Increased suicidal tendencies were found in people who had experienced the loss of the father. Bron, Strack & Rudolph, Univ. of Gottingen, Germany, 1991

British researchers have found adults who suffer parent loss due to separation or divorce have significantly higher risk of developing agoraphobia with panic attacks and panic disorder. British Journal of Psychiatry, 1989

1990 - Children showed the most behaviour problems if their parents were in a legal conflict and the visitation was not frequent or regular. American Journal of Orthopsychiatry, 1990

1989 - Adults who were deprived of a father in childhood due to separation or divorce had a significantly higher risk of suicide and para-suicide in adulthood. (Psychiatrie, Neurologie und Medizinische Psychologie, 1989).

1988 - Kurdek found that in the first year after separation, non-custodial parent involvement was generally associated positively with adjustment in children in divorcing families, especially for children whose parents were experiencing high levels of conflict. Legal conflict was related to behaviour problems. Children showed the most behaviour problems if their parents were in legal conflict and the visitation was not frequent and or regular.

1990 - Children with frequent and regular visits showed the fewest behaviour problems. Regular visitation by the non-custodial parent in the first year led to higher self esteem later. (American Journal of Orthopsychiatry, 1990)

Scandinavian research has found a significantly higher number of adults who attempted suicide had lost a parent through divorce in childhood. Acta Psychiatrica, Scandinavia, 1990,1993

Children who were separated from their father for a period of three months or longer and between the ages of 6 months to 5 years old, suffer a higher risk (2.5 to 5 times higher) of hysteria, emotional disorders and conduct disorder than other children. Indian Journal of Psychiatry, 1988

1992 - An examination of 1018 pairs of adult female twins found that females separated from a parent prior to 17 years of age were at increased risk for major depression and generalized anxiety disorders. (Kendler, Neale et al., 1992, Archives of General Psychiatry).

## 5) DOMESTIC VIOLENCE

1994 July, according to "Domestic Assault in the USA" by Kanton and Straus, the average male-female spousal abuse rates for 1992 were: Wife assault 2.0%, reported by 2.3% of wives and 1.7% of husbands. Husband assault 4.6%, reported by 5.8% of wives and 3.3% of husbands.

1991 December- Reena Sommer, Gordon E. Bames and Robert P. Murray Department of Family Study, University of Manitoba, Canada, a study of 1257 (615 male and 642 female) Winnipeg residents found that 39.1% of cohabitating females and 26% of cohabitating males were perpetrators of spouse abuse.

1989 - O'Leary K. Daniel., Baring J., Arias, Ilena, Rosenbaum Alan, Malone J., and Tree A., "Prevalence and stability of physical aggression between spouses: a longitudinal analysis," Journal of Consulting & Clinical Psychology. 57(2):263-268, 1989. This report notes that 31% of men and 44% of women in this study reported that they aggressed against their partner in the year before marriage. Eighteen months after marriage, 27% of men and 36% of women reported being violent towards their partner.

1988 Survey of Couples by Brinkerhoff and Prof. Eugen Lupri, University of Calgary, Canada shows that:

17.8% of husbands admit to abusing their female partner and 23.3% of wives admit to abusing their male partner and that severe wife assault was 4.8%, severe husband assault was 10.0%

1986. Shupe, Stacey and Hazlewood "Violent Men, Violent Couples" chapter 3 - 28% of married men reported their wives had slapped, kicked or punched them.

1985, National Family Violence Survey, USA, Prof. Straus, using information from 2,994 women, found a rate of assaults by wives of 124 per 1000 couples, compared with 122 per 1000 for assaults by husbands.

1985 Study of Texas University students by Breen: 18% of men and 14% of women reported violent acts by a romantic partner.

1984 Study of 6,200 cases of reported domestic assault by Prof. R.L. McNeely and Coramae Richey Mann shows that weapons were involved in 86% of female on male violence and in 25% of male on female violence.

1982 Henton, Cate, Koval, Lloyd and Christopher:  
of 344 college students 79 had experienced premarital violence, nearly 70% experienced mutual violence. Of the remaining students, 10% said the male was the only abuser, 22% said the female was the only abuser.

1980 Straus et al. - of 2,143 couples in 1975, 28% had experienced violence at some point in their marriage, 16% within the last year. Half of the abuse was mutual.  
Annual incidents of overall violence: 12.1 per 100 husbands, 11.6 per 100 wives.  
When examining severe violence, women were more violent than men.  
Severe husband to wife violence: 3.8 out of 100 families  
Severe wife to husband violence: 4.6 out of 100 families

1979 - Nisonoff, L. & Bitman, I Spouse Abuse: Incidence and Relationship to Selected Demographic Variables, *Victimology* 4, 1979, pp.131-140.  
Subjects were asked in a telephone survey about their experiences of domestic violence (Nisonoff & Bitman 1979). 15.5% of the men and 11.3% of the women reported having hit their spouse; 18.6% of the men and 12.7% of the women reported having been hit by their spouse.

## **Research Favouring Equal Parenting over Single Parenting**

D.A. Luepnitz. *Child Custody: A Study of Families after Divorce*. Lexington Books 1982.

Luepnitz studied single parent custody and joint custody. Most single parent children were dissatisfied with the amount of visitation they had, whereas the children of joint custody arrangements seemed reasonably happy with their exposure to both their parents. The quality of the parent-child relationship was determined to be better for joint custody. (The ncp-child relationship is described as more like an aunt or uncle-child relationship.)

S.A. Nunan. *Joint custody versus single custody effects on child development*. Doctoral thesis 1980. California School of Professional Psychology, Berkeley, UMI No. 81-10142

Nunan compared 20 joint custody children (ages 7-11) with 20 age-matched children in sole maternal custody. All families were at least two years after separation or divorce. Joint custody children were found to have higher ego strengths, superego strengths and self-esteem than the single custody children. The joint custody children were also found to be less excitable and less impatient than their sole custody counterparts. For children under four at the time of separation the differences were very small.

B. Welsh-Osga. *The effects of custody arrangements on children of divorce*. Doctoral thesis 1981. University of South Dakota. UMI No. 82-6914.

Welsh-Osga compared children in intact families with joint custody and single custody families. Age range 4 1/2 to 10 years old. Children from joint custody were found to be more satisfied with the time spent with both parents. Parents in joint custody were found to be more involved with their children (Joint custody parents found to be less overburdened by parenting responsibilities than sole custody parents). Children from all four groups (intact families, sole maternal, sole paternal, joint custody) were found to be equally well adjusted by their various standardized measures.

D.B. Cowan. *Mother Custody versus Joint Custody: Children's Parental Relationship and Adjustment*. Doctoral Thesis 1982. University of Washington. UMI No. 82-18213.

Cowan compared 20 joint custody and 20 sole (maternal) custody families. Children in joint physical custody were rated as better adjusted by their mothers compared with children of sole custody mothers. The children's perceptions in sole custody situations

correlated with the amount of time spent with their father. The more time children from sole maternal custody spent with their fathers, the more accepting both parents were perceived to be, and the more well-adjusted were the children.

E.G. Pojman. Emotional Adjustment of Boys in Sole and Joint Custody compared with Adjustment of Boys in Happy and Unhappy Marriages. Doctoral thesis 1982. California Graduate Institute. UMI No. ?

Pojman compared children in the age range 5 to 13 years old. Boys in joint custody were significantly better adjusted than boys in sole maternal custody. Comparing boys in all groups, boys in joint custody compared very similarly to boys from happy families.

F.B. Karp. Children's adjustment in joint and single custody: An Empirical Study. Doctoral thesis 1982. California school of professional psychology, Berkeley. UMI No. 83-6977.

Age range of children 5 to 12 years, studying early period of separation or divorce. Boys and girls in sole custody situation had more negative involvement with their parents than in joint custody situation. There was an increase reported in sibling rivalry reported for sole custody children when visiting their father (ncp). Girls in joint custody reported to have significantly higher self-esteem than girls in sole custody.

J.A. Livingston. Children after Divorce: A Psycho-social analysis of the effects of custody on self esteem. Doctoral thesis 1983. State University of New York at Buffalo. UMI No. 83-26981.

Children in joint custody situations were found to be better adjusted than children in sole custody situations.

L.P. Noonan. Effects of long-term conflict on personality functioning of children of divorce. Doctoral thesis 1984. The Wright Institute, Graduate School of Psychology, Berkeley. UMI No. 84-17931.

Long-term effects were studied in joint custody, sole maternal custody and intact families. Children in joint custody families were found to be more active than in sole custody families or intact families. In low conflict situations children did better (demonstrated less withdrawal) than in either sole custody or intact families.

V. Shiller. Joint and Maternal Custody: The outcome for boys aged 6-11 and their parents. Doctoral thesis 1984. University of Delaware. UMI No. 85-11219.

The thesis compares 20 boys in joint custody with 20 matched boys in sole maternal custody. A number of tests were used. Boys from a joint custody environment were found to be better adjusted than boys from a sole custody environment.

M.R. Patrician. The effects of legal child-custody status on persuasion strategy choices and communication goals of fathers. Doctoral Thesis 1904. University of San Francisco. UMI No. 85-14995.

90 fathers were questioned regarding how unequal recognition of parental rights might encourage conflict. Joint legal custody was found to encourage parental cooperation and discourage self-interest. Sole custody in both custodial AND non-custodial status encouraged punishment-oriented persuasion strategies. Unequal custody power was perceived as inhibiting parental cooperation by both parents.

G.M. Bredefeld. Joint Custody and Remarriage: its effects on marital adjustment and children. Doctoral Thesis. California School of Professional Psychology, Fresno. UMI No. 85-10926

Both sole and joint custody children adjusted well to the remarriage of their parents; no significant difference found between the groups. The parents of joint custody situations, however, expressed more satisfaction with their children and indicated that they appreciated the time alone with their new spouse. Sole custody children also reported seeing their father less often after remarriage of the mother; this did not happen in joint custody situations.

B.H. Granite. An investigation of the relationships among self-concept, parental behaviours, and the adjustment of children in different living arrangements following a marital separation and/or divorce. Doctoral thesis 1985. University of Pennsylvania, Philadelphia. UMI No. 85-23424.

Parents in sole custodial homes (both maternal and paternal) were perceived as using psychological pressure techniques to control children, e.g. inducing guilt. However, in joint custody homes, the perception of the children was that such techniques were seldom used.

No difference in self-concept was detectable among the different homes. Children's ages 9-12 years. 15 joint, 15 maternal sole, 15 paternal sole.

E. Handley. The experience of the child in sole and joint custody. Doctoral thesis 1985. California Graduate School of Marriage and Family Therapy.

Joint custody children more satisfied than sole custody children.

S.M.H. Hanson. Healthy single parent families. *Family Relations* v.35, p.125-132, 1985.

21 joint custody and 21 sole custody families compared. Mothers in joint custody found in better mental health. Mothers with sole custody sons had the least amount of social support and mothers with joint custody of sons had the most. Joint custody mothers reported best child-parent problem solving of all.

J. Pearson and N. Thoennes. *The Judges Journal*, Winter, 1986.

Child support compared among sole custody and joint custody. Joint custody shown to produce much better compliance in child support payments to the mother.

M.B. Isaacs, G.H. Leon and M. Kline. When is a parent out of the picture ? Different custody, different perceptions. *Family Process*, v.26, p. 101-110, 1987.

This study compares children from five groups: joint physical custody, joint-legal maternal-physical, joint-legal paternal-physical, sole maternal and sole paternal custody. On their measurement of how children perceive the importance of family members, sole custody children were three times more likely to omit one parent than joint custody situations.

F.S. Williams. Child Custody and Parental Cooperation. *American Bar Assn., Family Law*, August 1987.

Williams studied high-conflict, high-risk situations. He found that children in sole custody (typically but not exclusively maternal) much more likely to be subject to parental kidnapping and/or physical harm. He found that high-conflict families do better and are more likely to learn cooperative behaviour when given highly detailed orders from the judge.

E.E. Maccoby, R.H. Mnookin and C.E. Depner. Post-divorce families: Custodial arrangements compared. *American Association of Science*, Philadelphia. May 1986.

Mothers with joint custody were found to be more satisfied, when compared with mothers in sole custody situation.

V. Shiller. Joint versus maternal families with latency age boys: Parent characteristics and child adjustment. *American Journal of Orthopsychiatry*, v. 56, p. 486-9, 1986. Interviews with boys as well as with both parents. Age group 6-11. Found boys from joint custody families better adjusted than comparison group of boys from sole maternal custody families.

J.B. Kelly. Longer term adjustment in children of divorce: Converging Findings and Implications for Practice. *Journal of Family Psychology*, v. 2, p.112-140, 1988.

Zaslow N. Sex Differences in children's response to parental divorce. Paper 1. Research methodology and post-divorce family forms. *American J. of Orthopsychiatry*. 58:355, 1988.

Zaslow M. Samples, Variables, Ages and Sources. *Am. J. Orthopsychiatry* 59:118, 1989.

J.S. Wallerstein and S. Plakeslee. *Second chances: Men, women and children after divorce*. New York, Ticknor and Fields, 1989.

L.M.C. Bisnaire, P.Eirestone and D. Rynard. Factors associated with academic achievement in children following parent separation. *American J. of Orthopsychiatry*. v.60(1), p.67-76,1990

Visitation found to be a most significant factor in enabling children to maintain pre-divorce academic standards.

J. Pearson and N. Thoennes. Custody after divorce: Demographic and attitudinal patterns. *American Journal of Orthopsychiatry*, v. 60(2), p. 233-249, 1990. Regular visitation shown to be significant in a number of factors explaining positive adjustment patterns.

D. Popenoe, Associate Dean for Social and Behavioural Sciences of Rutgers University, co-chairman of the Council on Families in America. "The Controversial Truth: Two-parent Families are Better". Published in *Speak out for Children*, v.8 Winter 1992-3.

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