

Moving toward more balance in divorce law

OUR VIEW

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THERE'S NO "ONE size fits all" solution when it comes to divorce, particularly when custody of children is involved. Every divorce is different, every couple's situation unique.

Our courts do, however, have what might be called a "default" position, which generally favours mothers over fathers when it comes to primary custody of a couple's children.

The default is based on the time-honoured principle that women are the nurturers and caregivers in a family, while men are breadwinners, and therefore less emotionally involved with their offspring than mothers. Under this default, mothers are currently given primary custody in about 70 per cent of divorce cases, although this number is falling — 10 years ago the figure was 75 per cent.

Next month, the Senate-Commons committee on child custody and access will release a report that

challenges this assumption. The report will suggest that federal divorce law be changed so that both parents are equal when it comes to determining custody — a concept the committee calls "shared parenting."

It doesn't mean that custody will always be a joint, 50-50 proposition — again, one size doesn't fit all. But joint custody would be the new "default" position, and it would be up to one or both parties in a divorce to demonstrate to the court that joint custody would not work.

Will it work? At first, probably not very well in some cases. It's still true that many men aren't as well-equipped by culture and training as their ex-wives to look after children (this male ineptitude has been a source of comedy and tragedy in films such as *Mrs. Doubtfire* and *Kramer vs. Kramer*). Many ex-wives complain that their former husbands never gave them much help with the kids when they were married — why the sudden change of heart now that they're in divorce court?

Balanced against this is the fact that most fathers do love their children as much as mothers, although they may display this love differently, and the growing certainty that children of divorce need contact with both parents (always assuming that the parents are not a danger to their children).

So, if the law changes, yes, it will be a challenge for men to become equals with their ex-wives when it comes to child-raising. It will require adjustments in their work schedules, and they may have to take lessons in cooking and home economics. However, women have shown they can adjust quite successfully to what used to be called a man's world; why can't men adjust to what are traditionally regarded as women's roles?

Should the law be changed? Yes. As it stands, the laws on divorce appear to be stacked in favour of women. For example, B.C. is planning to refuse driver's licences to men who are behind on their court-ordered child-support payments. Fair enough, but what about women who won't let ex-husbands have court-ordered access to their children? Why aren't their licences in jeopardy?

Ultimately, divorce courts should be aiming for the best interests of the children, not the parents. Most of the time, it's in the best interests of children to be involved with both parents after a divorce. If a new divorce law is needed to make this happen more often, as the Senate-Commons committee believes, so be it.