

Dressed
for
Success

in
Family
Court

The Law Courts

Greg Armstrong (left), here with Kate Miotto, dons drag to draw attention to a perceived legal bias favouring mothers.

Linde stirs custody debate

> BY CHARLIE SMITH

Vancouver lawyer Carey Linde is one of the city's foremost crusaders for fathers' rights. So it shouldn't be a big surprise that he wants Attorney General Wally Oppal to amend the Family Relations Act to recognize that fathers have equal rights as parents in custody, access, and guardianship.

In an interview in his Howe Street office, Linde said this could be accomplished by introducing a new section in the law stating that there is a "rebuttable presumption of shared parenting." "If one parent says I want 50-50 access, it's going to have to be the other parent to prove it shouldn't be the case," Linde said. "Now it's the complete reverse."

The attorney general's ministry is reviewing the Family Relations Act. Linde noted that there is already a legal presumption that property acquired after marriage should be divided equally. But Linde suggested that the onus is still on men to prove why they should have an equal right to parenting. "Where the time and money and energy is being spent now is on children, because there is no presumption," Linde said.

He added that he doesn't think the courts should be allowed to rebut shared parenting if one parent makes allegations about the other's treatment of the children without corroborating evidence or without a report from a doctor or registered psychologist. Linde also said that the past and present conduct of the parents toward one another should also be irrelevant after they've separated.

Grace Choi, chair of the Vancouver family-law section of the B.C. branch of the Canadian Bar Association, told the *Straight* that she doesn't think the B.C. legislature will adopt Linde's recommendation. "Basically, what he is trying to do is limit the scope of the evidence that a court should hear when considering what to do with custody, access, guardianship—all

those things—when the best interests of the child is paramount," Choi said.

UBC law professor Susan Boyd, who specializes in family law, told the *Straight* she doesn't think that a legal presumption of shared parenting is always appropriate, because not all biological fathers and biological mothers end up sharing a household or sharing parenting. She also wondered how it would apply with lesbian parents or in cases in which three or four people are involved in parenting a child.

"Do we want to have a rebuttable presumption of shared parenting or joint custody in all of those scenarios?" Boyd asked. She also said that spousal abuse "often accelerates when parents split up."

Linde said that 15 percent of his firm's clients are women who are dealing with a "control-freak ex-husband" or with a "legitimate abuser". However, he also said that there are lots of men who end up in trials against female spouses with borderline personality disorder, which causes havoc in the family and for the children.

"The judges are too quick to think if there is a problem, it must be caused equally by both of the parties," he said. "The judges are not strong enough to call a spade a spade. They'll do it more frequently if they think the man has done something wrong."

Linde claimed that if the Family Relations Act was amended to incorporate a "rebuttable presumption of shared parenting", many women in custody fights would stop playing "head games" with former spouses.

Alison Brewin, executive director of West Coast Women's Legal Education Action Fund, told the *Straight* that it's a "myth" that women act out their bitterness in the court system. She added that women often can't get their story across in court because it's too expensive. "The court still has not grasped the impact of violence against women and what that means for the children," Brewin said.

Linde said that he used to be a commercial and corporate litigator

but took a two-year hiatus in the early 1990s. During this period, he learned more about the importance of fathers in the raising of children.

"One of the most interesting studies ever done was done in Sweden, with thousands of people," Linde said. "The results were the children who scored best across the board were those children raised by their fathers."

He said that the study found that intact families scored second-best, and children raised by single mothers ranked third in such areas as the lack of juvenile delinquency, staying out of prison, maintaining job skills, and empathy. He said it's an interesting statistic, but he also recognizes that the sample was probably skewed because it's the motivated fathers who are more likely to seek and gain custody of their children.

"The sample of fathers who have taken the trouble to fight the system—to become the custodial prime [parent]—are not your average parent or your average father," Linde said. "They're probably better off financially, intellectually, et cetera, and they've made the effort."

He claimed that the legal system has historic gender bias that deems mothers to be more compassionate and better at rearing children. But he said the idea of equal-time shared parenting is catching on among judges. The National Association of Women and the Law, on the other hand, has claimed that women's "systemic inequality in society is also reflected in family law contexts".

Vancouver family lawyer Georgiale Lang told the *Straight* that Linde's advocacy is a major reason why more fathers are receiving joint custody. However, Lang added that she doesn't expect the B.C. or federal governments to grant a legal presumption of shared parenting.

"I think there would be a lot of backlash from the Canadian Bar Association," Lang predicted. "I think there will be a huge backlash from judges across Canada." ♦

Is there gender bias in family-law cases?

**CAREY LINDE**

Vancouver family lawyer

"There is an inherent bias in the system. Any man that has gone through the system will laugh at the suggestion that there is no gender bias. Every family lawyer who is in the business knows that there is gender bias. It's only the law society and defenders-of-the-victim feminists...who stand up and deny all of this."

**SUSAN BOYD**

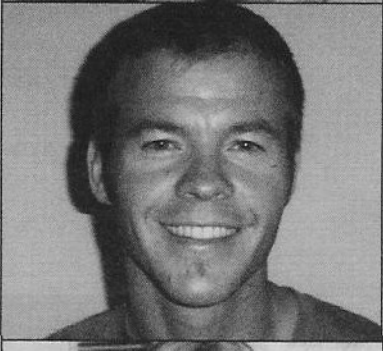
UBC law professor

"My view would be that if anything, it's gender bias against women and mothers as much as it might be against fathers. Actually, I did a study with a research group and some students, a sample of child-custody cases from across Canada...We didn't find any gender bias against fathers."

**GRACE CHOI**

Chair, Vancouver family-law section, Canadian Bar Association

"Personally, I think the judges try very hard not to have those kind of biases. I think that it's very difficult to make sweeping generalizations because everything is so fact-specific. I mean, in my experience, courts are trying—in child-related issues—to keep the status quo."

**JEFF GORESKI**

Father of a seven-year-old son

"I guess I feel lucky that I came out with a very equal arrangement with my son's mom, and now we have a great coparenting arrangement and my son is thriving. But I really did have to be careful and stake my ground. I do see that there is definitely a strong female bias in the court system. We have to change that."

**GEORGIALEE LANG**

Vancouver family lawyer

"I think in past years, men have really been shafted by the British Columbia courts and courts right across Canada. I don't think there is gender bias. I think there is so much legal history and precedent...We have to remember there was a time when there was a 'tender years' doctrine—children must go with their mother."

Divorce, Canadian style

- > Approximate number of children from 0 to 19 who experienced separation and divorce in Canada in 2001: 2.1 million
- > Median total income for single fathers in Vancouver in 2005: \$45,500
- > Median total income for single mothers in Vancouver in 2005: \$27,700
- > Men who had divorced or separated were six times more likely to report an episode of depression over the next two years compared with married men.
- > Women who underwent a marital breakup were 3.5 times more likely to report a bout of depression than their counterparts who were still in a relationship.
- > Divorces in Canada in 2003 involving husbands who had previously been divorced: 16.2 percent
- > Divorces in Canada in 2003 involving wives who had previously been divorced: 15.7 percent

Source: Statistics Canada