The Special Joint Committee

A Threat to Women's

BY BONNIE DIAMOND

The public was led to believe that most divorced and separated families in Canada are tangled in a web of endless wrangling over the children. As the twenty-first century gasps its last breath, women's equality rights are under serious siege. A brief look at the parliamentary Special Joint Committee on Custody and Access provides one clear example of modern, political assault on women's hard-won gains, this time through the Divorce Act. To fully understand the extent of the threat it is useful to look at the origins and process of the Special Joint Committee on Custody and Access and at its subsequent report, filed in December 1998, entitled For the Sake of the Children.

The Special Joint Committee was a political concession made by the 1997 Justice Minister, Allan Rock, to the father's rights movement. Rock, at the urging of women who were suffering financial hardships after separation and divorce, had introduced a bill to establish Guidelines on Child Support. The proposed guidelines standardized child support based on the income of the non-custodial parent, usually fathers, and on the number of children to be supported. Equally important, the Bill removed the necessity for custodial parents, usually mothers, to pay income tax on child support, and eliminated the automatic tax deduction for payers of child support. The new guidelines came about as a result of Suzanne Thibaudeau's court challenge in the early '90s (Thibaudeau v. Canada). Thibaudeau argued that forcing custodial parents to pay income tax on child support was a form of sex discrimination because it had an unfair impact on custodial parents, the majority of whom are women. Although the Supreme Court did not agree with her, the federal government proposed the tax change, and parents, lawyers, and judges were given a formula for determining the amount of child support. Fathers' rights advocates charged that the new guidelines were an unfair intrusion of government into their lives. They argued that if government was going to enforce child support, it should also enforce father's rights to have access to their children (Mitchell). Just weeks before the Child Support Guidelines were to come into effect, a group of Senators, Ann Cools among them, threatened to reject the Bill. Rock reluctantly appointed the parliamentary Special Joint Committee on Custody and Access and included Ann Cools in its membership. The Committee was jointly chaired by two Liberals, Senator Landon Pearson and M.P. Roger Galloway.

Fathers' rights groups or individual fathers dominated the witness list with their personal stories of "parental alienation" and personal loss. It seemed that non-custodial fathers were given precedence at the hearings and their tales of "vindictive" ex-wives illegally denying their rights to see their children went unchallenged. Committee Chair Landon Pearson did not stop fathers' rights advocates from heckling women during their presentations (Landsberg 1998b).

On the other hand, women's groups were repeatedly denied access to the hearings and when they were invited to appear they were jeered, mocked, and their well-researched presentations were derided (Landsberg 1998a). Some women's groups said that they were laughed at when they testified about wife battering and abuse (Landsberg 1998b). Research and documentation brought forward by women and women's groups was dismissed by some Committee members as "propaganda" (Shaughnessy) although much of that data was derived from Statistics Canada's National Survey on Violence Against Women. Women's organizations and other spokeswomen from wife abuse shelters pointing out that some of the non-custodial fathers who appeared had been charged with assaulting their spouses were threatened by Cools with lie-detector tests (Mitchell). Committee members asked shelter spokeswomen how many women who showed up on their doorstep were lying about abuse (Mitchell). Cools publicly declared that mothers pose a greater abuse threat to children than fathers (Cools) despite her being acquainted with the findings of a 1996 study by Statistics Canada indicating that fathers were responsible for 73 per cent of physical assaults and 98 per cent of sexual assaults committed on children by parents (Statistics Canada).

The fact that mothers are most often appointed the custodial parent after divorce was cited as evidence that courts are biased against fathers, even though approximately
on Custody and Access
Equality Rights

70 to 80 per cent of divorcing mothers and fathers come to a mutual agreement that the mother will continue to be the primary caregiver following divorce without resorting to the courts. In most cases this continues the parenting arrangement that was in place prior to the separation.

A week before the Committee filed its report, Ann Cools called for the resignation of the Honourable Hedy Fry, Secretary of State for the Status of Women, following the publication of a *Globe and Mail* article in which Fry expressed her reservations about the tactics of some Committee members ("Face-Off Over Child Access"). One *Ottawa Citizen* headline read that Fry had been accused of "sabotage" for publicly speaking out to set straight the record on women (Cobb). Countless letters to the editor and opinion pieces, written by the National Association of Women and the Law (NAWL) and other women's organizations, were repeatedly refused publication by editors of the major Canadian newspaper.2

When Michele Landsberg, a femini-nist columnist for *The Toronto Star*, exposed the bias of the Committee in her column, Ann Cools threatened her with a charge of contempt of Parliament ("Face-Off Over Child Access"). It was no surprise, given the poisoned process of the Committee, that its report is toxic to women's rights.

The hearings and media coverage of the Special Joint Committee on Custody and Access painted a frightening and false picture of the state of custody and access in this country and of women's behaviour towards men. The public was led to believe by both the Committee and the mainstream media that most divorced and separated families in Canada are tangled in a web of endless wrangling over the children with hoards of distraught fathers weeping on their "callous ex's" doorsteps. The fact that most divorcing couples work out custody and access issues without going to court and after the first year or so of sorting out the details, settle into a workable arrangement is not mentioned in the *Report*. This is remarkable considering that easily-accessible Department of Justice statistics reveal that only 3.8 per cent of all custody and access cases are resolved through the courts and only about five per cent of those cases ever proceed to the trial stage (Department of Justice).

At the time of the *Report*’s release, Penni Mitchell, in a column for *The Winnipeg Free Press*, summed up the implications of this report for women and their children very well. "The Joint Committee on Child Custody and Access’ final report will turn Canada's *Divorce Act* into a tool for chaos for women and children in high-conflict families" (Mitchell).

The *Report* proposes eliminating the terms "custody" and "access" and replacing them with a form of mandatory joint custody called "shared parenting." This concept is not well-defined in the *Report* but it implies that parents "share" equal authority over children without necessarily "sharing" equal day-to-day responsibility for children. The terms of shared parenting would be outlined in "parenting plans" which parents would be required to present as the basis of "parenting orders," a replacement for custody orders. These "parenting plans" would be developed after educational classes that would teach the benefits of shared parenting. Those who could not easily work out "good parenting" plans would be sent to mandatory mediation.

The fulcrum of the *Report* is a list of criteria that would be used determine "the best interests of the child." Preference would be given to parents who favour shared parenting; to those who are most willing to encourage a close and continuous relationships between the child and the other parent; to those most willing to attend mediation and educational sessions; and to those best able to provide the necessities of life to the child. Any notion that mothers are superior caregivers would be against the best interests of the child (Mitchell).

In an analysis prepared for NAWL, family law practitioner Carole Curtis points out that the language used to describe post-separation child-care arrangements (from "custody and access" to "shared parenting") will not result in a shift of long-ingrained historical and social patterns of caregiving. Worse, it will encourage court disputes in those high-conflict families where parents look for every opportunity to do battle. Curtis points out that the existence of the Joint Committee report is already creating confusion, in that some lawyers and clients think the suggestions in the *Report* are already the law (Curtis).

The area of custody and access is a complicated one, and the consequence of changes to the law profound. Policy-
making in the area of custody and access law must be
evidence-based, following a careful analysis of existing
data, not merely the anecdotal summaries of “town-hall”
meetings. The bibliography in the Report refers only to the
material that was presented to the Committee by witnesses
and other presenters. There is a very large, con-stantly
growing, and sophisticated body of literature regarding
custody and access which was entirely ignored by the
Committee. Custody and access is the subject of scholarship
by experts, both academics and practitioners, from many
different and highly skilled disciplines: mental health
professionals (both clinicians and academics, including
social workers, psychologists, psychiatrists) and
professionals in the family law system (judges, lawyers).
There are many new articles published every month about
custody and access. This Committee made no effort to
examine even the available research. Nor did the Committee
commission any research on the area, which should also be
used to inform any policy-making with consequences of
this magnitude. This, sadly, is an opportunity missed.

The most disturbing aspect of the Committee workings
and its report is the abject failure to address the issue of
violence against women. Violence and sexual abuse of
children in families is a disturbing and widespread
occurrence in Canada (Rodgers). The demand for services
for assaulted women and their children leaving abusive
relationships continues to grow. The number of children
disclosing sexual abuse is also increasing. Yet the Report
on custody and access is almost entirely silent on the two
most detrimental and significant issues facing Canadian
children. Only inferentially does the Report deal with either of these
very serious issues, by referring to the incidence of “false
reporting.” By doing so, the Report seemingly denies the
existence of wife assault and sexual abuse of children.

Women’s groups have worked tirelessly for years to
ensure that the occurrence of violence against women in
relationships, and the incidence of sexual abuse of children
in the homes by their father or their mother’s partner is
brought to the attention of and, acted upon, by all
governments in Canada. Courts simply cannot assume
that women and children are safe after separation. In fact,
the data is overwhelming that violence in the home
escalates when a man fears that he will lose his wife or
partner. Tragically, this is the point at which women are
most often killed by their spouses and partners (Crawford
and Gartner).

The Report also completely ignores contemporary evi-
dence that processes such as mediation are not suited to
to parties where violence is present (Goundry et al.) and
recommends mandatory mediation as a first step in working
out parenting plans. The Report recommends that the
Divorce Act be amended to state that divorced parents
and their children “are entitled to a close and continuous
relationship with one another,” a clause that could force
children who have been abused into regular contact with
their abusers. A woman could face the impossible choice
of handing over children to an abusive parent or having to
face criminal sanctions for defying a court order. There is
no recognition that violence witnessed or experienced by
children should be a factor in determining custody. Women
reporting abuse could be jailed for making “false allegations”
and could be deemed “unfriendly” parents for wanting
to maximize contact with the other parent. Women who
flee the family home “without suitable arrangements for
contact between the child and the other parent” could be
seen as acting contrary to the best interests of the child.

There is no recognition that in cases of wife or child abuse,
including sexual abuse, no access by an offending parent
would sometimes be in the child’s best interests.

The recommendations in the Report call for a review of the
Child Support Guidelines to reflect the thrust of the
Committee’s new approach and language brings the process
full circle and perhaps reveals the real motivation behind
the fathers’ rights groups. Would the new concept of
“shared parenting” completely exempt either parent from
paying child support? That could be one implication of
adopting the “shared parenting” scheme that is suggested.

The report certainly hints that non-custodial parents who
have children in subsequent relationships might be able to
opt out of the new support guidelines. It is also clear that
any expenses related to facilitating contact between a
parent and child would be deducted from support
payments. Which brings us right back to why the
Committee was struck in the first place—an attempt by
some non-custodial fathers to resist the newly-proposed
Child Support Guidelines.

In May 1999, Justice Minister Anne McLellan formally
responded to the Report of the Joint Committee on Custody
and Access. While she did not commit to acting on its
recommendations neither did she condemn them. She
instead called for a three-year period of consultation
before proceeding with reforms of the Divorce Act. Women
and women’s groups will have to fight hard during this
period to resist the changes put forward by the Joint
Committee which have garnered some significant public
support. The Committee’s workings, the media support
for anti-woman sentiments expressed by members of the
Committee, and the failure of other Committee members
to stand up for women’s rights, all signal the danger
presented by the increasingly organized father’s rights
movement. These men are feeling strengthened by the
support they received by the members of the Special Joint
Committee on Custody and Access and they will escalate
their political challenges. Some fathers’ rights groups are
threatening to launch a Charter challenge against the
Women’s Program at Status of Women Canada which
funds equality-seeking projects. Recently they have also
laid a complaint against Madame Justice Claire L’Heureux-
Dubé for her Supreme Court judgment in R. v. Ewanchuck
where she clearly articulated that when it comes to sexual
assault “no means no.” In other times these challenges
might be laughable. However, given the inroads made by
fathers' rights groups on custody and access who knows where these threats will go. One point is made very clear by this political exercise: women's equality rights cannot be taken for granted as we enter the next millennium.

The author wishes to acknowledge the work of many women who have worked hard with NAWL on the issue of women's rights in the Divorce Act, particularly, Carole Curtis, Penni Mitchell, Michele Landsberg, and Louise Shaughnessy, whose work forms the basis of this article.

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References


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Levitation

A headlong wind swerves broadside, tumbles the fronds and shivers the bug screen.

I hear the refrigerator's agonizing hum, and him who rustles his paper, turning the pages one by one.
I hear his smoke-filled breath.

I sit eyes glued to a page in a book about Anaïs, who speaks: "Poetry is a way to learn levitation."

The rain follows, twists the palm tree disheveled. Tears succumb, glancing off its cut-up bark.

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