



Canada Court Watch Report



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Ontario Court of Appeal ruling a blow to children and families!

By Rosemary Underwood, Justice Reporter

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The Ontario Court of Appeal has ruled that warring couples shouldn't be awarded joint custody of a child unless they can show they're able to co-operate as parents.

It is obvious that those who made this decision are somewhat detached from reality and certainly have never been victims of the vindictive wife syndrome" - the ex-wife who, in the painful aftermath of divorce, makes it her sole mission in life to inflict suffering upon her ex-husband. In a typical scenario the divorce has been initiated by the wife. In order to ensure an easy and indisputable (and lucrative for lawyers) custody battle, very often on the advice of her unscrupulous lawyer, she has falsely alleged abuse, which allegation the court inevitably accepts as truth. As an aside, such perjury should be deemed a criminal offense and perpetrators and their lawyers should be made to suffer the full consequences of their malevolent and illegal acts.

Given this new edict handed down by the Ontario Court of appeal, things just got worse. Now, all she must do to win all the marbles in this despicable game is maintain a hostile attitude toward the father of her

children. If she manages to do this satisfactorily she will receive the highly tax-supported, nevertheless "rubber stamp" Office of the Children's Lawyer custody prize: sole custody, full child support and the Wednesday night/every other weekend visitation rights (which in all likelihood she will choose to ignore with impunity) for the father of these hapless children.

Much more seriously, this decision flies in the face of any family research you care to scan on the negative impact on children of divorce deprived of one parent. In virtually every criteria of deviant behavior you care to mention such children are disproportionately represented. Virtually all research states emphatically that children of divorce fare much better on any criteria studied if they have access to both parents.

But a salient factor that is always overlooked is this: parents divorce, children do not. They are still every bit as much Dad's children as they are Mom's, and no court, not even a supreme court, can ever change that. Worse, here we have a highly charged socio-emotional decision being made by those who have no formal education or experience in

developmental psychology, social work or any other discipline related to the best interests of children. Surely it is nothing less than malpractice for lawyers, however competent they may be in law, to usurp the authority belonging to other disciplines. It is tantamount to child abuse that our justice system permits unqualified people to make uneducated decisions that will affect children negatively for the rest of their lives.

The term custody should be removed from the lexicon of divorce. Except in the case of abuse, (but only if proven in a criminal court where such cases belong), or in rare cases where one parent no longer wishes to be part of the child's life, "custody" should be replaced by mandatory shared parenting as outlined in the "For the Sake of the Children " document.

Court battles over custody are not only severely emotionally exhausting to the parties involved but are an appalling waste of tax dollars and financially draining on the couple, hence the children. Much too often the post-secondary education funds are transferred from the couple's children to those of the lawyers involved.

In 1997 the Canadian government very wisely commissioned a very excellent multi-party/senate study of what constitutes the best interests of children of divorce. The outcome of more than twelve months of very comprehensive study, 39 hearings right across Canada and over 500 submissions, produced the very excellent (and very expensive) document "For the Sake of the Children" which, sadly, has gathered dust in Ottawa ever since, while uninformed bodies such as the Ontario

Court of Appeal make uneducated guesses about the subject.

Lawyers are products of our adversarial legal system and it is the only system they understand. Indeed this adversarial approach not only escalates the animosity between parents but unnecessarily prolongs cases. This, in turn, is lucrative for the lawyers involved, so there is little incentive within the legal system to find better solutions. But there are other solutions based on mediation techniques which tend to defuse the animosity and encourage a more cooperative approach.

In rare cases where couples truly cannot stand the sight of each other, creative arrangements enlisting grandparents, friends or even social workers as intercessors, if necessary, could still facilitate both parents spending equally shared time with the children, at least until such time as the parents could receive counseling, or until "the fresh wounds from their failed marriage," have had a chance to heal.

"It is time for Parliament to curb the Court and to protect our children from these brutal, incorrect and inappropriate decisions."

It is unconscionable that our society is permitting judges to make decisions for which they have no training. To demonstrate both humanitarian and fiscal responsibility the government should implement the recommendations of the of the "For the Sake of the Children" document without further delay.