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DIVORCE LAW REFORM AND THE GENDER OF CHILD CUSTODY LAW

By Susan B. Boyd

Susan B. Boyd is Professor of Law and Chair in Feminist Legal Studies at UBC. Her book *Child Custody, Law, and Women's Work* was published by Oxford University Press Canada in 2002. A version of this article also appears in *Jurisfemme*.

In December 2002, the federal Minister of Justice introduced Bill C-22. If enacted, the Bill will significantly change the child custody and access provisions of the *Divorce Act*. Women's groups have long called for changes to the *Divorce Act* to acknowledge the ways in which power imbalance, caregiving responsibility and woman abuse influence the dynamics of custody disputes. These calls are reflected to some extent in Bill C-22. However, some of the proposed changes are cause for concern and reflect the lobbying of fathers' rights advocates over recent years. Although a presumption in favour of shared parenting or joint custody has not been introduced, the Bill may allow such a presumption to become entrenched in practice, threatening the well-being of some children and their caregivers (usually their mothers).

The proposed changes should be considered carefully by those who are concerned with both the best interests of children and with women's equality interests. Despite the government's focus on a child-centred family justice strategy, evidence from other countries with similar legislation suggests that Bill C-22 may not result in less acrimonious disputes over children. Nor will it necessarily resolve the problems facing women and children in custody disputes, particularly those related to economic insecurity, power imbalance, and unequal responsibility for childcare. We need to consider whether the Bill offers tools with which to redress women's inequality within family law or further "tilts" the family law system against women and children. If family law does not contribute to women's equality, it will not ensure the best interests of children, since society still assigns primary caregiving roles to women.

Changing the Language to Parental Responsibilities

Bill C-22 would radically change the language and framework for determining disputes about children in the *Divorce Act*. Judges would no longer award "custody" or "access" to parents, but rather would make "Parenting Orders" regulating the "exercise of parental responsibilities". As in England and Australia, the aim of introducing the language of parental responsibilities is to create a new normative standard of co-operative parenting behaviour for separated couples with children. The idea is to focus parents' attention on children's needs and to reduce conflict.

No one could disagree with these goals, but the question is whether the proposed changes *will* generate improved behaviour by those parents who seem

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