CAN CHILD CUSTODY LAW MOVE BEYOND THE POLITICS OF GENDER?

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In 1989, Carol Smart and Selma Sevenhuijsen published *Child Custody and the Politics of Gender*,[1] an important collection of feminist essays that revealed the complex ways in which unequal gender relations infused the law of child custody and access. In the same year, the *Canadian Journal of Women and the Law* published a special issue on "Women and Custody."[2] Articles in both collections pointed to the undervaluing in child custody law of women's care-giving roles in families and society as opposed to the overvaluing of men's (still limited) caring roles. The collections also examined the rise of the fathers' rights movement, and the role that images of fatherhood played in the politics of parenting generally. They showed how children form part of a nexus of power within family relations, and that fathers' relationships with children can entail a power relationship with the mother of the children.[3]

In this comment, I examine to what extent the politics of gender in child custody law have changed in the decade since these two important publications. As we begin the twenty-first century, with many issues related to custody and access as yet unresolved in Canada, can we leave behind a focus on the politics of gender? Can recent law reform initiatives in the field of child custody and access succeed in re-focusing attention on children's interests, as opposed to the interests of mothers and fathers? We are fortunate in Canada to be able to draw on studies of similar reform initiatives that were attempted in the late twentieth century in jurisdictions such as

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[1] C. Smart & S. Sevenhuijsen, eds., *Child Custody and the Politics of Gender* (London: Routledge, 1989).

[2] "Women and Custody" (1989) 3:1 C.J.W.L..

[3] C. Smart, "Power and the Politics of Child Custody" in Smart & Sevenhuijsen, *supra* note 1 at 1.

England, Australia, and Washington State.[4] These studies, to my mind, reveal that an understanding of the shifting, complex nature of gender relations and gender politics remains crucial to an understanding of the dynamics of child custody and access law.

With the ongoing review of child custody and access law in Canada at the end of the 1990s, we still hear a great deal about gender bias in the laws relating to children. But despite the active engagement in the law reform process by women's groups, the focus has been on gender bias against fathers rather than mothers, and the ways in which children's interests are damaged as a result.[5] It appears that the fathers' rights movement quite successfully set the agenda for the 1998 review of custody and access by the Special Joint (Senate and House of Commons) Committee on Child Custody and Access (hereafter "the Committee")[6] by asserting that gender bias in this field operates against fathers, not mothers. These groups also aligned the rights of fathers with the needs and best interests of children. They asserted that there was a crucial need for the "children of divorce" to have contact with their fathers in order to ensure the psychological well-being of the children.

These assertions linking fathers' rights with children's interests have been accorded wide currency and have been legitimated during the law reform process, despite the conflicting evidence in social science studies on "children of divorce." Taken as a whole, these studies show that continuing contact with each parent is only

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[4] C. Smart & B. Neale, *Family Fragments* (Malden: Polity Press, 1999) [hereinafter *Family Fragments*]; H. Rhoades, R. Graycar & M. Harrison, *The Family Law Reform Act 1995: Can changing legislation change legal culture, legal practice and community expectations?* Interim Report (Family Court of Australia and the University of Sydney, 1999), online: <http://www.familycourt.gov.au/papers> (last modified: 08 March 2000); J.W. Ellis, "Plans, Protections, and Professional Intervention: Innovations in Divorce Custody Reform and the Role of Legal Professionals" (1990) 24 U. of Michigan J. of Law Reform 65; D.N. Lye, *Washington State Parenting Act Study*, Report to the Washington State Gender and Justice Commission and Domestic Relations Commission, June 1999, online: <http://www.courts.wa.gov/parent/home.htm> (date accessed: 2 February 2000).

[5] In re-reading material related to the mid-1980s reform of the child custody provisions in the *Divorce Act*, I was struck by the similarities of the discourse of the fathers' rights groups at that time to the discourse of the late 1990s.

[6] Canada, *For the Sake of the Children: Report of the Special Joint Committee on Custody and Access* (Ottawa: Special Joint Committee on Custody and Access, 1998) (Joint Chairs: L. Pearson & R. Gallaway).

one factor associated with positive outcomes for children.[7] If anything, the studies show there is no evidence that frequency of visiting or amount of time spent with non-custodial parents is significantly related to a good outcome in children.[8] However, the discourse in child custody debates is often not based on evidence in studies but rather on rhetoric. In the final report of the Committee, *For the Sake of the Children*, little effort was made to review the contradictory results of the studies or to make use of the helpful reviews of the social science literature that already existed.[9]

Moreover, the short section on "Gender Bias in the Courts" in the Committee's Report focussed entirely on fathers' experiences of gender bias, ignoring the notion that gender bias against mothers might exist.[10] No reference was made to mothers' experiences of gender bias, the undervaluing of their primary care-giving, or the overlooking of domestic abuse by the courts, though these points had all been made in oral and written submissions to the Committee.[11] Nor was Canadian academic literature on the subject cited.[12] Women's groups had attempted during the Committee's hearings to link the need to take account of gender-based phenomena such as care-giving and the systemic nature of abuse with the best interests of children. However, the section on Gender Bias promoted a view of custodial mothers as manipulative and selfish, ignoring the studies that show that most

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[7] See review of the social science literature in M. Bailey & M. Giroux, *Relocation of Custodial Parents: Final Report* (Ottawa: Status of Women Canada, 1998) at 43-58, online: <http://www.swc-cfc.gc.ca> (last modified: 08 May 1998). See also Lye, *supra* note 4 at c.4.

[8] J.S. Wallerstein & T.J. Tanke, "To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce" (1996-97) 30:2 Fam. L. Q. 305 at 311.

[9] For instance, Bailey & Giroux, *supra* note 7; N.M.C. Bala *et al.*, *Spousal Violence in Custody and Access Disputes: Recommendations for Reform* (Ottawa: Status of Women Canada, 1998), online: <http://www.swc-cfc.gc.ca> (last modified: 23 February 1998). Status of Women Canada had commissioned this research specifically in order to provide a resource to the Special Joint Committee.

[10] *For the Sake of the Children*, *supra* note 6 at 15-16.

[11] E.g. in the briefs and submissions of the Ad Hoc Committee on Custody and Access, and of the National Association of Women and the Law. Available via the Women's Justice Network website, online: <http://www.web.net/wjn/backgroundinformation.htm> (date accessed: 02 February 2000). Issues raised by women's groups were summarized in the report *For the Sake of the Children*, *supra* note 6 at 12-13, and 41, but not in the section on Gender Bias.

[12] D. Bourque, "'Reconstructing' the Patriarchal Nuclear Family: Recent Developments in Child Custody and Access in Canada" (1995) 10 Can. J. L. & Soc. 1; S.B. Boyd, "Is There an Ideology of Motherhood In (Post) Modern Child Custody Law?" (1996) 5:4 Social & Legal Studies 495; M. Rosnes, "The Invisibility of Male Violence in Canadian Child Custody and Access Decision-Making" (1997) 14:1 Can. J. Fam. L. 31.

custodial mothers would like to see more participation by fathers in their children's lives, not less.[13] The Report of the Committee also urged imposition of a norm of shared parenting in legislation that would empower fathers and apparently solve these problems. A key recommendation of the Committee was that "shared parenting" replace the concepts of "custody" and "access" in the *Divorce Act* and other family laws.

The omission of arguments by women's groups in the Gender Bias section of the report must be placed in the context of the history of the Special Joint Committee and the Joint Committee's mandate. The Special Joint Committee was established in response to the complaints and concerns of fathers' rights groups about the 1997 reforms to child support (including the child support guidelines and enhanced enforcement measures). As the introduction to the Report says, these reforms contained in Bill C-41 passed through the Senate Committee only when the Honourable Allan Rock, Minister of Justice at the time, agreed to strike a parliamentary committee consisting of Senators and Members of the House of Commons to examine custody and access-related concerns. The mandate of the Committee was:

> to examine and analyze issues relating to custody and access arrangements after separation and divorce, and in particular, to assess the need for a more child-centred approach to family law policies and practices that would emphasize joint parental responsibilities and child focused parenting arrangements based on children's needs and best interests.[14]

The wording of the mandate differed somewhat from the original wording proposed, and strengthened the emphasis on *joint* parenting arrangements, a key plank of the fathers' rights movement. This shift in focus resulted from an amendment moved by Senator Anne Cools on October 28, 1997 and adopted by the Senate.[15] Senator Cools had been particularly insistent that the stories told by non-custodial fathers be taken into account. The original mandate of the Committee contained in a motion of Senator Pearson, seconded by Senator Carstairs, read as follows:

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[13] C.J. Richardson, *Court-based Divorce Mediation in Four Canadian Cities: An Overview of Research Results*, A Report for the Department of Justice Canada (Ottawa: Department of Justice, 1988) at 36; D. Perry *et al.*, *Access to Children Following Parental Relationship Breakdown in Alberta* (Calgary: Canadian Research Institute for Law and the Family, 1992) at 37.

[14] *For the Sake of the Children*, *supra* note 6 at 1.

[15] Journals of the Senate, Oct. 28, 1997, *ibid.* at x.

> to examine and analyze issues relating to parenting arrangements after separation and divorce, and in particular, to assess the need for a more child-centred approach to family law policies and practices that would emphasize parental responsibilities rather than parental rights and child-focused parenting arrangements based on children's needs and best interests.[16]

This emphasis on parental responsibility may well have allowed a focus on women's disproportionate responsibility for childcare in Canadian society, and the relationship between that care-giving responsibility and children's interests. But from the start, the Committee was oriented by its mandate towards a preference for joint parenting arrangements and the link between joint parenting and the best interests of children was already assumed. The original mandate would not have made this assumption, but rather left more open a determination of what parenting arrangements might be more child-centred.

In emphasizing joint parenting as a goal from the outset, the Committee embraced a central tenet of the fathers' rights movement. As the work of 1980s feminists revealed, fathers' rightists have lobbied hard for a presumption in favour of joint custody, even though few fathers seek actual care of and responsibility for children as distinct from legal custody rights in relation to decision-making power. Anne-Marie Delorey suggested that "fathers who favour joint legal custody are actually seeking more rights and control without a corresponding increase in responsibility for their children."[17] The compromise that Canadian legislators adopted at that period in 1980s reform to divorce law was to make joint custody orders a clearer option, but not a presumption, under the *Divorce Act* (section 16(4)) and to introduce a section emphasizing maximum contact between children and non-custodial parents (the so-called "friendly parent rule" of section 16(10)).[18] This section directed courts to take into consideration the willingness of the person seeking custody to facilitate such contact. These changes tended to make mothers who sought sole custody or restrictions on custody appear to be selfish and somehow "at fault."[19]

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[16] *Ibid.* at ix.

[17] A.M. Delorey, "Joint Legal Custody: A Reversion to Patriarchal Power" (1989) 3:1 C.J.W.L. 33 at 38.

[18] *Divorce Act*, R.S.C. 1985 (2nd Supp.) c.3.

[19] Delorey, *supra* note 17 at 38.

In contrast, fathers' rightists have been able to position themselves as a disadvantaged group in the family-law system, often by drawing on conceptual frameworks related to equality law and essentialism that were developed originally by feminists. They have then been able to position themselves as advocates on behalf of children. Vancouver lawyer Carey Linde, of "Divorce for Men" suggested in his submission to the Special Joint Committee that the problem is with the "judicially assumed presumptions" – that is, the maternal presumption or tender years doctrine – that he suggests govern the day-to-day determinations of the best interest of the child test in the lower courts. These "presumptions," he says, "spring from and are maintained out of gender biases still ingrained in the system."[20] Linde illustrates his point as follows:

> Suppose fifty couples – fifty dads and fifty moms – all come into the courts on the same day. In each case both spouses are seeking an order for exclusive possession of the matrimonial home – seeking to have the other parent kicked out of the house, leaving the kids at home. All the dads and all the moms are equally good parents. All one hundred individuals have exactly the same income and stable jobs. The kids are all around 10 to 12 years old. If gender equity prevailed in our courts as some would lead us to believe, at the end of the court day 25 men should be ordered out and 25 women ordered out. Half the parents left in the home with the kids should be dads and half moms. If you believe that, you believe in the tooth fairy.[21]

Linde invokes a rather simplistic model of formal equality that focuses on a count of "successful" custody applications, rather than on the care-giving patterns in the child's life, which are not yet equally distributed as between women and men. Later in his brief, he applauds the "equity feminists" who support fathers and he criticizes the "gender feminists" or "adolescent feminists" who "want to borrow the car [the child presumably], but are not willing to pay for the gas."[22] As is typical in fathers' rights discourse, Linde implies that it is problematic for non-residential parents to contribute to their child's financial support. Fathers' rightists typically argue that mothers have been privileged with custody of children while fathers are unjustly required to pay outrageous child support.[23]

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[20] "Unethical Lawyers Abuse Children," Carey Linde's brief is available on Linde's website, online: <http://www.divorce-for-men.com/JOINTCOM.doc> (date accessed: 02 February 2000).

[21] *Ibid.*

[22] *Ibid.*

[23] C. Bertoia & J. Drakich, "The Fathers' Rights Movement: Contradictions in Rhetoric and Practice" (1993) 14:4 J. of Family Issues 592 at 606-10. See also M. Kaye & J. Tolmie, "Discoursing Dads: The Rhetorical Devices of Fathers' Rights Groups" (1998) 22:1 Mel. U. L. Rev. 162 at 185-6.

Another example of the ways in which fathers' rights arguments are being constructed is provided by a 1998 article by Paul Millar and Sheldon Goldenberg: "Explaining Child Custody Determinations in Canada."[24] Despite the notoriously partial nature of Canadian statistics on custody and access, and the fact that they include "consent" awards where parents have agreed to a custody arrangement, these figures are often used by scholars and fathers' rights groups to bolster an argument that the legal system is biased in favour of mothers and against fathers. Millar and Goldenberg first attempt to establish the "scientific" credibility of their study – done from "an empirical and sociological stance, within its historical context" – in contrast to what they call in their abstract "earlier studies of Canadian child custody determinations [that] have been written from ideological and feminist viewpoints."[25] They thereby position themselves outside of ideology or bias, as neutral analysts. Millar and Goldenberg give the impression that once the more-or-less absolute preference for paternal custody of legitimate children was eradicated in the nineteenth century, mothers then benefited almost totally from the so-called "maternal presumption" or the tender years doctrine. They argue that since mothers are still far more likely to receive custody than fathers (based on the statistics), gender bias in the system operates against fathers.

Historical research, including my own, has revealed a much more complex story than that portrayed by Millar and Goldenberg.[26] There is no question that the tender years doctrine represented an important discursive shift in custody decision-making of the mid-twentieth century. However, not only was this doctrine rejected legally by the Supreme Court of Canada in the 1970s, but more importantly, the doctrine never represented a firm presumption in favour of mothers. The presumption was highly contingent on "good behaviour" and on strict expectations of mothers. It was all too easy for a father who chose to challenge a mother's suitability as a custodial parent and to rebut any presumption in favour of maternal custody. Moreover, the presumption only operated in relation to young children and in circumstances where the mother could demonstrate that she conformed to the high expectations of proper motherhood. Mothers who were adulterous, lesbian, employed, or who appeared to abandon their husbands for no apparent good reason (in the minds of the judges) were rarely able to meet these expectations. For example, in 1966, the British

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[24] P. Millar & S. Goldenberg "Explaining Child Custody Determinations in Canada" (1998) 13:2 Can. J. Law & Soc. 209. The National Post also devoted attention to this study: P. Waldie, "Study Finds Bias Against Men in Custody Cases" *The National Post* (2 Sept. 1999) A1, A2.

[25] Millar & Goldenberg, *ibid.*

[26] This research will be reported in my forthcoming book *Child Custody Law: Women's Work.*

Columbia Court of Appeal affirmed a trial judgement that granted custody to the father, mainly on the basis that the judge could not understand the mother's "arbitrary" conduct in leaving her husband and depriving the children of the advantage of living with both parents in a family home. The mother was a physiotherapist with an "excellent salary." The husband's "acts of violence towards the wife on three occasions within a short period" were classified as "of a mild nature" and "on each occasion provoked by the wife." The trial judge found that in the circumstances, "why should a husband and father be penalized by depriving him of the custody of his infant children, which is one of his most sacred rights."[27]

Millar and Goldenberg explore various explanations for the fact that mothers have received custody orders more frequently than fathers even since the legal demise of the tender years doctrine. They dismiss arguments that the custody awards reflect the fact that women are primary caregivers of children, regardless of whether they are employed or not, and regardless of whether they are living in intact families or have separated or divorced from the other parent. They discount this idea by citing the incidence of women in the labour force, including working single mothers, and suggesting that women are spending less time in the home. Overall, they argue that the underlying gap in gender roles in childcare and domestic labour is decreasing over time.

Having determined that social science studies provide no reason for the gender bias they detect in child custody awards, Millar and Goldenberg turn to the legal system for an explanation. They find that the rise in number of female judges during the 1980s was too small to explain the continuation and (they argue) rise in maternal custody awards during the 1980s. However, they detect another possible cause: the fact that the first seminars on gender issues for the judiciary began in the mid-1980s, focusing on "how the legal system is unfair to women." The authors conclude that the possibility that judicial education is "teaching sexism may be a concern" and say that "the adoption of gender bias seminars for the judiciary may have contributed to a recent increase in sexism in child-custody determinations."[28] They recommend that judicial educators use material (perhaps they mean their own article) which "reflects the realities of child-custody determinations in Canada and the current state of social science evidence concerning gender roles and gendered abilities to parent

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[27] *Re Moilliet* (1965), 54 W.W.R. 111 at 115, aff'd (1966), 58 D.L.R. (2d) 152.

[28] Millar & Goldenberg, *supra* note 24 at 224.

children."[29] Fathers are, therefore, portrayed as victims of a legal system that has been biased against them, and is even more biased now that judicial educators have been mislead, presumably by feminists, into believing that the legal system is unfair to women. Feminists are implicitly portrayed as using poor research skills and as possessing a powerful propaganda machine that can have a direct impact on judicial education and on decision-making in courts.

What, then, can we expect from the current law reform process, given the presence of these powerful discourses that some might characterize as a "backlash" against women and progressive social change? The controversial and flawed report of the Special Joint Committee arguably reinforced these discourses. Moreover, it was not helpful in diminishing the problematic indeterminacy and potential for destructive litigation that exists in the current law.[30] It also appears that the Government of Canada, while being somewhat cautious in emphasizing "one size does not fit all" and that there should be no presumptions in custody and access law, has embraced some of the problematic assumptions of the Committee's Report.[31] The Minister of Justice stated, "I believe the Committee's recommendation to adopt the new term 'shared parenting' has promise."[32] The more substantive Government response included the following statement:

> The Government of Canada endorses the view of the Joint Committee that the family law system must discourage the estrangement of parents from their children. A great deal of the literature in this area concludes that children's well-being and development can be detrimentally affected by a long-term or permanent absence of a parent from their lives. Most children want and need contact with both their parents even after those parents divorce.[33]

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[29] *Ibid.*

[30] For reviews of the Report and the Committee's process, see N. Bala, "A Report from Canada's 'Gender War Zone': Reforming the Child-Related Provisions of the *Divorce Act*" (1999) 16:2 Can. J. Fam. L. 163; B. Diamond, "The Special Joint Committee on Custody and Access: A Threat to Women's Equality Rights" (1999) 19:1&2 Can. Woman Studies 182; M. Laing, "For the Sake of the Children: Preventing Reckless New Laws" (1999) 16:2 Can. J. Fam. L. 229.

[31] Canada, Department of Justice, *Government of Canada's Response to the Report of the Special Joint Committee on Child Custody and Access, "Strategy for Reform*, May 1999," online: <http://www.canada.justice.gc.ca/Publications/Reports/sjcarp02> (last modified: 10 May 1999).

[32] *Ibid.*

[33] *Ibid.*

The contradictory nature of the research on this point, showing that the benefits of contact are in fact contingent on various factors, was once again overlooked.[34]

The fact that extremist positions from the fathers' rights lobby succeeded in influencing public discourse, in the media, in the Senate, and ultimately in the Special Joint Committee does not necessarily mean that the most extreme ideas from that lobby will appear in new laws and approaches to custody and access. However, it does mean that any "compromise" position resulting from the law reform process will likely veer more closely to the fathers' rights position than it might otherwise have done. It also means that the Government of Canada has eschewed any meaningful gender analysis in its Response. As well, discussion of "family violence" has been subsumed under the neutralizing headings "high conflict" (in the Committee's Report) or "managing conflict" (in the Government of Canada Response). It may then be more difficult for any new legislation to introduce an emphasis on the relevance of systemic male abuse of women and children to child custody decision-making, an emphasis that was recommended by women's groups. Without this emphasis, a move towards shared parenting (which at this point the Government appears to endorse) may increase the difficulties – and indeed the danger – that women and often children face when leaving abusive relationships.

The experience from other jurisdictions is instructive. In England, Carol Smart and Bren Neale found that under the *Children Act 1989* (c.41), a strong presumption in favour of contact between children and non-residential parents has emerged regardless of any prevailing circumstances, such as abuse. They found that contact had taken on an increasingly rigid and dogmatic form.[35] Even when abuse has been emphasized in legislation, as in Australia and Washington State, it has tended to take a back seat to the push toward contact or shared parenting in other provisions of the statute.[36] In Washington State, survivors of domestic violence often have parenting plans that they believe compromise their own and their children's safety.[37] In Australia, it appears to have become more difficult to obtain an interim order

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[34] See Bailey & Giroux, *supra* note 7; Lye, *supra* note 4.

[35] C. Smart & B. Neale, "Arguments Against Virtue – Must Contact be Enforced?" (1997) 27 Fam. L. 332.

[36] Ellis, *supra* note 4 at 72, 75 *et seq.*. Ellis has also shown that when primary care-giving is mentioned in a statute, it remains easy for courts to fail to give it adequate weight: J.W. Ellis, "The Washington State Parenting Act in the Courts: Reconciling Discretion and Justice in Parenting Plan Disputes" (1994) 69 Washington L. R. 679.

[37] Lye, *supra* note 4.

suspending contact due to domestic violence.[38] Canadian governments should also take note that the Australian reforms intended to enhance shared responsibilities by parents and to give non-custodial parents (mainly fathers) a greater sense of involvement in relation to their children have resulted in increased litigation, particularly as a result of fathers initiating contact-related litigation.[39]

The Government of Canada, and provincial governments in Canada, are likely to find that presumptions in favour of primary caregiver or custodial parents in relation to decision-making for example, are too politically controversial to embrace. The fathers' rights groups have fairly successfully generated an impression in the general public that the system inappropriately limits paternal participation in children's lives; any legal move regarded as reinforcing maternal custody is likely to be viewed as problematically gender biased as a result. However, if children's interests truly are to be placed front and centre in custody and access law (or whatever we may end up calling it), some way of ensuring children greater certainty and continuity in terms of care-giving relations and in terms of what they can expect from the legal system is surely desirable. Carol Smart in her most recent work, based on a study of the impact of the law reforms to custody and access in the English *Children Act 1989*, has suggested that a feminist ethic of care be deployed.[40] This approach would include the following principles: (1) that decisions or outcomes be derived from the realities of the lives of the people involved, including who the primary carer has been, whether both parents have a relationship with the child, and whether there is a climate of coercion and fear; and, (2) that the child be placed in a set of relationships and the quality of those relationships – including a history of caring for children – be taken into account. "The principle of care would import the concept of connectedness and would place less emphasis on rights. Thus, it would lean toward maintaining contact with all family members where possible, but not at the cost of coercion."[41]

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[38] Rhoades, Graycar & Harrison, *supra* note 4 at 59-60.

[39] *Ibid.* See also M. Harrison & A. Nicholson, "Better Laws for Promoting the Best Interests of Children? A Commentary on the Australian Family Law Reform Act 1995" (2000) Special Lectures of the Law Society of Upper Canada 16:1.

[40] *Family Fragments, supra* note 4 at 192-7. This approach draws on the work of Dutch feminist scholar S. Sevenhuijsen, *Citizenship and the Ethics of Care: Feminist Considerations on Justice, Morality and Politics* (London: Routledge, 1998).

[41] *Family Fragments, supra* note 4 at 193.

As long as familial relations remain gendered, family laws and changes to them are likely to produce differential impacts on women and men. In the end, we may do better to confront these differences directly than to avoid the implications of gender-based difference in current parenting relations and in law reform processes. There is not yet a level-playing field in parenting or in child custody law, and until women's inequality has been eradicated in social relations of the family, it would be extremely dangerous to assume that there is such a level field. More dangerous still is the fact that while the arguments of fathers' rights groups have achieved some influence on public policy, feminist arguments and the arguments of women's groups have not had a high standing in family law reform. As Carol Smart has said, "[f]eminism is associated with a single-minded pursuit of women's interests which, it is presumed, inevitably leads to the trammelling of children's interests and – of course – the interests of men."[42] If decision-makers and policy-makers could put aside these assumptions and this caricature of feminism, the direction of child custody law reform might prove more encouraging, and the interests of children might properly be placed at the centre of the debates.

[42] *Ibid.* at 186.