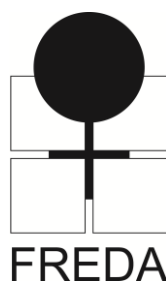


**Myths and Stereotypes in Family Law:
Exploring the Realities and Impacts of Custody and Access/Shared Parenting**

Prepared by
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Myths and Realities of Custody and Access
Compiled by
Margaret Denike, Vancouver Association of Women and the Law
Agnes Huang, Vancouver Status of Women
The FREDA Centre
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Introduction

This document, presenting myths, stereotypes, and realities of family law and custody/access processes, was compiled as an update to the 1998 document *Myths and Realities of Custody and Access* (Denike, Huang, & The FREDA Centre, 1998). In this updated version, we revisit the myths that were identified in the original text and apply current approaches to family law, relevant legislation, and recent scholarly literature to provide a contemporary assessment of those myths and the current realities. We have also included and addressed new myths and stereotypes that have emerged since 1998.

We have prepared this report in order to debunk myths, present evidence of the realities, and inform decision-making processes in family law in cases involving domestic violence. It is important for professionals, parents, scholars, and advocates who are navigating family law systems and processes to be aware of these myths and realities.

The myths in this document are relevant to cases involving men and fathers who are abusive toward their partners and/or children, and address assumptions about – and intersections between – domestic violence and family law. We acknowledge that most men and fathers are not abusive. However, these myths and realities are relevant to many families who are navigating family law and custody and access processes.

Myths, Stereotypes, and Realities

Myth: Men and women are equal participants in the care of children.

REALITY: The societal expectations for fathers' roles within – and contributions to – families have shifted from absent breadwinners to emotionally engaged caregivers (Collier & Sheldon, 2006, p. 11). While the expectations of fatherhood have evolved, a change to fathers' actual contributions to the family (e.g., care giving) is disputed among scholars (p. 11). Women are still, however, the primary caregivers in both lone - and dual - parent families “regardless of their employment status and that of their partners” (Rosen, Dragiewicz, & Gibbs, 2009, p. 517).

According to the 2011 census, mothers headed 79% of lone-parent households across Canada (Statistics Canada, 2013). While the number of lone-parent households headed by fathers has more than doubled since 1996 (i.e., 7.3% to 21%), there is still great disparity which indicates a gendered division of labour.

The division of labour in childrearing is demonstrated through the issue of care. For example, Boyd (2013) suggests that mothers are expected to “care for” their children (e.g., childrearing), while fathers are expected to “care about” their children (e.g., love) (pp. 62-65). This indicates the continued existence of gender roles, and subsequent division of labour, in familial structures both pre – and post – separation, with the mother as the expected primary caregiver.

Myth: Men want to participate more in raising their children after separation or divorce.

REALITY: Some authors suggest that the process of family law is biased towards mothers, and that fathers are penalized “for the division of household labor they assumed while the family was still together” (Crowley, 2009a, p. 232). In contrast to this claim, research suggests that fathers maintain a strong patriarchal-centric approach to parenting post-separation, requesting rights and decision-making power without subsequent caretaking responsibilities (i.e., the formal equality model) (Boyd, 2004; Boyd, 2006; Collier & Sheldon, 2006; Crowley, 2006; Dragiewicz, 2008; Flood, 2010; Rosen, Dragiewicz, & Gibbs, 2009). Boyd (2013), however, identified a tension between the requests of fathers' rights groups (i.e., formal and legal equality) and that of non-advocate fathers who desired actual caretaking responsibilities (see Ives et al., 2008, in Boyd, 2013).

Myth: Men who fight for custody are thinking about the best interest of their child(ren).

REALITY: Similarly, according to Boyd (2004), fathers' rights groups have suggested the use of shared parenting and joint custody legislation is a deterrent for divorce (p. 53), because the threat of continued contact post-separation could discourage women from pursuing divorce/separation in high conflict and abusive families/relationships. This reveals that shared

parenting could facilitate continued patriarchal control as opposed to focusing on the best interest of the child(ren).

Advocates and scholars alike rarely contest the value of contact between children and non-abusive fathers. However, supporting contact between abusive husbands/fathers and children under the presumption that “kids need both parents” neglects that contact with a “well-functioning parent” and “avoidance of conflict” are actually in the best interest of the child(ren) (Boyd, 2004, pp. 54-55).

Myth: Including the presumption of “shared parenting,” “joint custody,” or “enhanced access” in divorce law will result in good and responsible parenting.

REALITY: The presumption of shared parenting does not facilitate good and responsible parenting in situations where it did not already exist. Shared parenting reinforces paternal rights without subsequent responsibilities, by “favouring paternal authority and maternal responsibility” (Boyd, 2006, p. 39). Furthermore, through the use of shared parenting the desires and equality of parents is prioritized above the children’s needs, which may jeopardize a child’s well-being if paternal contact is valued above freedom from conflict (Smart, 2004, p. 485).

Myth: The presence of any father in a child’s life is better than no father at all.

REALITY: According to Crowley (2009b), in cases of domestic violence, “judges who hold the popular view that any paternal contact – even by violent individuals – is ‘good enough’ contact, will continue to be awarded custody rights to these men” (p. 730). Furthermore, fathers’ rights groups suggest that shared parenting, and continued paternal contact post-separation, is in the best interest of the child(ren) (Boyd, 2004, p. 54). However, this assumption disregards the notion that contact with an abusive parent has negative consequences on children, and that the focus should be on contact with “well-functioning,” non-abusive parents and “avoidance of parental conflict” (pp. 54-55). Non-conflictual environments, and those that are free from abuse, are in the best interest of children’s development.

Being the direct recipient of abuse can have negative long-term impacts on the “behavioural, developmental, emotional and physical health of the child” (Justice Canada, 2013, p. 24). However, shifting the focus from directly experiencing abuse to witnessing abuse between parents, Justice Canada (2013) asserts that “children who are exposed to violence by one parent against another often suffer from emotional, social, cognitive, and behavioural maladjustment problems including emotional/anxiety disorders, and may also exhibit aggressive behaviours and engage in delinquent acts” (pp. 24-25). Furthermore, there are links between children who witness abuse and intergenerational relationship and family violence (Justice Canada, 2013). Therefore, while it is important to engage most fathers in families post-separation, the

assumption “any father” is “better than no father at all” disregards the impact that witnessing and/or experiencing abuse has on children.

Myth: More and more men are being denied access to their children by women and the family law process.

REALITY: There are an increasing number of joint custody and shared parenting arrangements in Canada (Amyot, 2010, p. 26), and there is reason to believe that these numbers will continue to increase now that British Columbia’s *Family Law Act* prioritizes shared parenting arrangements and the maintenance of relationships between parents and children post-separation (Ministry of Justice, 2013). Furthermore, there is little support for the notion that the legal system is biased towards women, because fathers are awarded “primary or joint physical custody a majority of the time when they actively seek it” (Watson & Ancis, 2013, p. 167).

Contrary to the assumption that mothers are denying fathers’ access to children post-separation, Collier and Sheldon (2006) assert that mothers are not opposed to fathers’ contact with their children. In fact, “empirical studies suggest that the majority of mothers would welcome fathers to spend time with their children” (p. 9).

Myth: Frequent and continuing access by the non-custodial parent is in the best interest of the child(ren).

REALITY: As noted above, there is a difference between healthy contact between a “well-functioning” parent and their child(ren) and putting children at risk through the facilitation of continued contact with a controlling and/or abusive parent. Furthermore, for abused women frequent and continued contact with their abuser extends violence into their lives post-separation (Dragiewicz, 2010), which puts women at continued risk and harms children if they are witnesses to the abuse. Witnessing and/or experiencing abuse, emotional or physical, is not in the best interest of the child(ren) under any circumstance. Therefore, in custody determinations it is key to facilitate healthy relationships with non-violent custodial parents, instead of prioritizing paternal control over safety from abuse.

Changes to family law processes may be required in order to address the tension between paternal contact and safety from abuse (i.e., direct and indirect). Justice Canada (2013) suggests that “for the most part, family law lawyers in Canada are not required to screen their clients for family violence” (p. 49) and do not utilize a screening tool to assess if there is a history of violence. However, the recent enactment of British Columbia’s *Family Law Act (FLA)* denotes important progress, because this act requires lawyers, mediators, and other key family law personnel to screen each case for a history of family violence (Justice Canada, 2013).

Myth: Contact with both parents is more important than freedom from violence.

REALITY: There are two possible ways for children to experience family violence: 1) as witnesses of violence; 2) as the recipients of violence (Johnson & Dawson, 2011). Children may be physically and/or emotionally abused and, if not targeted directly, they often suffer emotional trauma and other negative outcomes by witnessing abuse (Berman, Hardesty, & Humphries, 2004). Furthermore, children’s exposure to violence (i.e., witnessing) leads to trauma, as well as “internalizing and externalizing problems in children” (Evans, Davies, & DiLillo, 2008, p. 12). Witnessing, as well as being a recipient of, violence is widely accepted as a catalyst of the intergenerational partner and familial violence (Schwartz et al., 2006).

Myth: The family court system is being bogged down by custody and access disputes.

REALITY: The family court system is not bogged down by custody proceedings, because the “vast majority of family law cases” are handled outside of court through “negotiation, mediation, or judicial dispute resolution processes” (Neilson, 2012, p. 103). Even cases with claims of abuse and histories of violence, which often require supervised access arrangements and protection orders, are often settled outside the purview of a family court judge through the processes of settlement and mediation.

Myth: Mediation and alternative dispute resolution are solutions to protracted custody and access battles in court and lead to ideal custody and access arrangements.

REALITY: As noted above, the majority of custody arrangements are settled outside of formal family court proceedings through alternative dispute resolution processes (e.g., negotiation, mediation). However, abusive parents frequently obtain access, often unsupervised, and custody of their children in spite of histories of violence (Neilson, 2012). These undesirable custody arrangements that continue the emotional and physical harm to women and children are “often the product of settlement rather than a judicially imposed decision” (p. 128). Furthermore, Neilson’s (2012) systemic analysis of negotiation and mediation processes indicated that claims of violence and abuse are frequently abandoned during alternative dispute resolution processes prior to formal family court hearings. This finding reveals that these processes not only facilitate unsafe custody and access arrangements, but also silence women and children’s experiences of violence prior to formal judicial involvement.

In March 2013, British Columbia’s *Family Law Act (FLA)* was put into force, which implemented a key change to the mediation process province-wide. The *FLA* “requires all family dispute resolution professionals, including lawyers, mediators, parenting coordinators and arbitrators to screen for family violence to assess whether dispute resolution processes are appropriate and safe for the family” (Justice Canada, 2013, p. 49). Furthermore, these professionals (e.g., lawyers, mediators, parenting coordinators and arbitrators) are required to undergo a minimum of 14

hours of training to learn how to identify, assess, and manage cases of family violence (Justice Canada, 2013). These changes, while fairly recent, indicate that the use of mediation and alternative dispute resolution processes in British Columbia may become more sensitive to the issue of family violence.

Myth: Women are equally as responsible as men for the violence in intimate relationships.

REALITY: Some studies and advocacy groups suggest that women are equally as responsible as their male counterparts for acts of violence in intimate relationships (Watson & Ancis, 2013). These assertions are grounded in studies that utilized the Conflict Tactic Scale (CTS), which does not provide an accurate account of men and women's experiences of violence in relationships. Furthermore, these allegations are used to discredit women, and their experiences of abuse, in family law proceedings (Dragiewicz, 2008; Watson & Ancis, 2013).

The presumption that women are equally as responsible for violence in relationships ignores the reality that female-perpetrated partner violence can be a form of violent resistance, as well as the documented increases in the severity, impact, and harm associated with male-perpetrated acts of violence.

Myth: The abuse stops once the relationship ends.

REALITY: Shared parenting and joint custody arrangements, or women's loss of custody all together, hinders women's ability to separate from their abusers (Dragiewicz, 2010). According to Dragiewicz (2010), these custody arrangements coerce women "into frequent, ongoing contact with their abusers until their children at least 18 years old" (p. 201). This subjects women to continued violence and control at the hands of their ex-partners under the pretense of parenting arrangements.

Women's experiences of abuse post-separation are aggravated by family law processes, because their experiences of violence are "often marginalized" in family court proceedings (Dragiewicz, 2010). Furthermore, Watson and Ancis (2013) suggest that court personnel, like lawyers and judges, may "disbelieve or minimize" a history of abuse of family law proceedings (p. 168). This can facilitate continued violence against mothers undergoing these processes, as well as lead to fathers' contact being prioritized over women and children's safety from abuse.

Myth: There is an epidemic of false allegations of child abuse against fathers by malicious and vindictive mothers.

REALITY: In the mid-1980s, Richard Gardner “invented” Paternal Alienation Syndrome (PAS) (Adams, 2006, p. 1). During this time, PAS was used in court proceedings to discredit women’s claims of violence by suggesting that custodial parents, predominantly women, levy false allegations of violence against non-custodial partners, predominantly men, in an effort to alienate them from their children. While PAS has long since been disproven, Adams (2006) suggests that in some circumstances PAS, and similar syndromes and/or allegations used to discredit women’s legitimate claims of violence, are still believed by court personnel and present in family law proceedings.

Fathers’ rights groups often discredit or “object to the consideration of histories of violence” in family court proceedings (Dragiewicz, 2008, p. 137), and frame histories of violence and women’s experiences of abuse untruthful. This leads to accusations of women being malicious or vindictive through the use of false allegations of abuse in order to win favour in the court. Furthermore, these groups claim that women use false allegations of abuse and “misuse” protection orders to punish their ex-partners (Flood, 2010; Rosen, Dragiewicz, & Gibbs, 2009). However, the claims that mothers falsify histories of abuse to marginalise fathers in family court proceedings are unsubstantiated (Dragiewicz, 2008), and these allegations are actually used to discredit women’s experiences of violence (Flood, 2010).

Myth: Abusive husbands are good fathers.

REALITY: The notion that abusive husbands are good fathers perpetuates the assumption that contact with any father is better than the absence of a father in the lives of children. Judges who share this assumption will award custody to abusive husbands/partners under the presumption that it is “good enough” (Crowley, 2009, p. 730).

Supporters of abusive husbands being good fathers suggest that broken homes, lone-parent households run by mothers, and fatherlessness leads to delinquency (Dragiewicz, 2010), as well as “growing up in poverty and remaining poor as an adult, developmental and behaviour problems, emotional difficulties, learning difficulties, and early child-bearing” (Boyd, 2004, p. 57). These arguments, however, can be traced back to anti-feminist fathers’ rights activism, because this rhetoric focuses on the downfalls associated with the breakdown of the patriarchal family unit. Furthermore, claims like these are largely contested and minimize how continued contact with fathers in these situations means “continued fear” (Dragiewicz, 2010, p. 730), as well as the impact witnessing violence has on children.

Myth: A history of abuse prevents fathers from obtaining custody of their children.

REALITY: There has been a shift in family law that prioritizes parental contact over safety from abuse (Flood, 2012, p. 240). Furthermore, Watson and Ancis (2013) suggest that “violent fathers are just as likely as nonviolent fathers and mothers to be granted sole custody” (pp. 167-168). This indicates that violence is not a determinant factor in many custody and access/shared parenting arrangements.

While contact is prioritized over safety in many family court proceedings, British Columbia’s new *Family Law Act (FLA)* requires that “the best interest of the child is the only consideration” (Martinson, 2013, p. 5). The *FLA* is an exception to the standard of prioritizing paternal contact over safety, because this act requires the court to give consideration “to family violence and its impact on a child’s physical, psychological and emotional safety, security and well-being” (Martinson, 2013, p. 5). Mandating the consideration to a history of family violence in custody proceeding not only demonstrates an intolerance for violence, but also acknowledges that there are situations where contact with the non-custodial parent may not be in the best interest of the child(ren) (e.g., families with histories of emotional and physical abuse).

Myth: Feminists and mothers are fighting against equality for fathers.

REALITY: The treatment of fathers often centres on the issue of equality (Boyd, 2004; Boyd, 2006; Collier & Sheldon, 2006; Crowley, 2006; Dragiewicz, 2008; Flood, 2010; Rosen, Dragiewicz, & Gibbs, 2009). Collier and Sheldon (2006) suggest that the demands of the fathers’ rights movement “seem seductively simple, often involving little more than a request for formal equality with mothers or, put quite simply, ‘justice for fathers’” (p. 1). The problem with their request for equality, however, lies in the distinction between formal and substantive equality, because formal equality reinforces “a notion of formal rights without responsibilities, favouring paternal authority and maternal responsibility” (Boyd, 2004, p. 39). Insofar as formal equality for fathers relies on paternal authority and material responsibility, it reasserts a patriarchal family structure during and after separation. This highlights the tension between equality in legal status versus equality in everyday parenting (Bertoia & Drakich, 1993). Therefore, the issue that arises from fathers’ requests for equality relates to the form of equality as opposed to the request itself.

References

- Adams, M. A., (2006). Framing Contests in Child Custody Disputes: Paternal Alienation Syndrome, Child Abuse, Gender, and Fathers' Rights. *Family Law Quarterly*, 40(2), 1-17.
- Amyot, V. (2010). Batman's Battle Ideas: The Father's Rights Movement in Canada. *Canadian Family Law Quarterly*, 29(1), 25-68.
- Berman, H., Hardesty, J., & Humphreys, K. (2004). Children of Abused Women. In Humphreys, J., & Campbell, J. (Eds.). *Family Violence and Nursing Pathways*, 150-185. New York: Lippincott, Williams, and Wilkins.
- Bertoia, C. & Drakich, J. (1993). The Fathers' Rights Movement: Contradictions in Rhetoric and Practice. *Journal of Family Issues*, 592.
- Boyd, S. B. (2004). Demonizing Mothers: fathers' rights discourses in child custody law reform process. *Journal of the Association for Research on Mothering*, 6, 52-74.
- Boyd, S. B. (2006). "Robbed of their families": Fathers' rights discourse in Canadian parenting law reform process. In Collier, R., & Sheldon, S. (Eds.). *Father's rights activism and law reform in comparative perspective*, 27-52. Portland, OR: Hart.
- Boyd, S. B. (2013). Still Gender After All This Time: Care and Autonomy in Child Custody Debates. In Priaulx, N., & Wrigley, A. (Eds.). *Ethics, Law, and Society, Volume V*, 69-90. Surrey, UK: Ashgate Publishing.
- Collier, R., & Sheldon, S. (Eds.). (2006). *Fathers' Rights Activism and Law Reform in Comparative Perspective*. Portland, OR: Hart.
- Crowley, J. E. (2009a). Taking Custody of Motherhood: Fathers' Rights Activists and Political Parenting. *Women's Studies Quarterly*, 37(3/4), 223-240.
- Crowley, J. E. (2009b). Fathers' Rights Groups, Domestic Violence and Political Countermobilization. *Social Forces*, 88(2), 723-756.
- Denike, M., Huang, A., & The FREDA Centre. (1998). *Myths and Realities of Custody and Access*. Vancouver, BC: the FREDA Centre for Research on Violence Against Women and Children.
- Dragiewicz, M. (2008). Patriarchy Reasserted: Fathers' Rights and Anti-VAWA Activism. *Feminist Criminology*, 3(2), 121-144.
- Dragiewicz, M. (2010). A Left Realist Approach to Antifeminist Fathers' Rights Groups. *Crime, Law, and Social Change*, 54, 197-202.

- Evans, S., Davies, C., & DiLillo, D. (2008). Exposure to Domestic Violence: A Meta-Analysis of Child and Adolescent Outcomes. *Aggression and Violence Behaviour*, doi 10.1016/j.avb.2008.02.005.
- Flood, M. (2010). "Fathers; Rights" and the Defense of Paternal Authority. *Violence Against Women*, 16(3), 328-347.
- Flood, M. (2012). Separated fathers and the 'fathers' rights' movement. *Journal of Family Studies*, 18(2-3), 235-245.
- Johnson, H., & Dawson, M. (2011). *Violence against Women in Canada: Research and Policy Perspectives*. Toronto: University Press.
- Justice Canada. (2013, November). *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection, and Criminal Justice Systems, Volume I*. Report of the Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence.
- Martinson, D. (2013). *The Family Law Act and Family Violence: Independent and Impartial Parenting Assessments*. Retrieved from: <http://fredacentre.com/wp-content/uploads/2010/09/The-Hon.-D.-Martinson-Independent-and-Impartial-Parenting-Assessments-November-21-2013.pdf>
- Ministry of Justice. (2013, March 21). *Legislation & Policy: Family Law Act*. Retrieved from: <http://www.ag.gov.bc.ca/legislation/family-law/>
- Neilson, L. C. (2012). *Enhancing Safety: When Domestic Violence Cases are in multiple legal systems (criminal, family, child protection)*. A Family Law and Domestic Violence Perspective. London, ON: Centre for Research & Education on Violence Against Women and Children. Retrieved from: http://www.learningtoendabuse.ca/sites/default/files/Enhancing_Safety.pdf
- Rosen, L. N., Dragiewics, M., & Gibbs, J. C. (2009). Fathers' Rights Groups: Demographic Correlates and Impact on Custody Policy. *Violence Against Women*, 15(5), 513-531.
- Schwartz, J., Hage, S., Bush, I., & Burns, L. (2006). Unhealthy Parenting and Potential Mediators as Contributing Factors in Future Intimate Violence: A Review of the Literature. *Trauma, Violence, and Abuse*, 7(3), 206-211.
- Smart, C. (2004). Equal Shares: rights for fathers or recognition for children? *Critical Social Policy*, 24(4), 484-503.
- Statistics Canada. (2013). Father's Day... by the numbers. Retrieved from: http://www42.statcan.gc.ca/smr08/2013/smr08_175_2013-eng.htm
- Watson, L. B., & Ancis, J. R. (2013). Power and Control in the Legal System: From Marriage/Relationships to Divorce and Custody. *Violence Against Women*, 19, 166-186.