

INPUT TO CONSULTATION ON THE WHITE PAPER ON THE BC FAMILY RELATIONS ACT

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Goals such as growth of the GDP, growth of the maternal labour supply, increasing consumption, or increasing the educational credentials of the population are not - or should not be – explicitly or implicitly goals of laws focused on ‘the best interests of the child’. Yet these other goals are being advanced by family law at the expense of protecting ‘the best interests of the child’.

PARENTAL CHILD CARE AS A BENEFIT

Non-custodial/non-primary care parents often receive a very significant benefit in the form of child care provided by the custodial parent, worth thousands of dollars. Yet there is no financial support for child care costs unless the custodial parent uses paid non-parental child care. Only then is the non-custodial parent automatically legally required to help finance child care costs.

The BC “Financial Statement” form asks for disclosure of non-monetary ‘benefits’ to be listed with income. This should explicitly include the amount of child care provided by the other parent. To be fair, ‘expenses’ listed should include amount of parental child care provided along with paid child care expenses. Still, Child Support Guidelines instruct judges to evaluate income based on tax assessment ‘total income’ line. The often large non-monetary ‘benefit’ of child care by the custodial parent is thus made invisible (or perhaps subject to the caprices of judicial discretion.)

CHILD CARE COSTS and SPECIAL EXPENSES

Currently, ‘Special Expenses’ includes items of direct benefit to the child and in ‘the best interests of the child’ as well as expenses for non-parental child care incurred by the custodial parent while going to school, doing paid work, or during illness.

This inclusion of non-parental child care costs in Special Expenses is problematic.

Such care is not a direct benefit to the child in ‘the best interests of the child’ in the way that eg music lessons or orthodontic treatment are. The parent’s taking classes or doing paid work may or may not be in the ‘best interests of the child’. Such activity may be of benefit to the parent, but only if the parent freely chooses to do so over providing the needed child care him/herself. Such activity of the parent may not also be a benefit in “the best interests of the child”. This is very different from special expenses, like music lessons, which are only and directly for the child and ‘in the best interests of the child’.

Many custodial/primary care parents use little or no paid non-parental child care because they provide the child care themselves. This cost is over the parent’s life time as it includes the loss of possible promotions and pension benefits, other benefits, etc. Yet the very considerable expense of this - that is the opportunity cost of foregoing paid work to do the work of parental child care – is not acknowledged as a child care expense under ‘special expenses’.

The very high cost of child rearing includes the cost of parental care and related opportunity cost. The law currently undervalues or ignores these costs, thus socially/politically/economically devaluing - cheapening - the work/production of parental child care and those who do it. Such parents subsidize with their un-financed work the financed work of others. This devaluation is also recognized as the primary factor causing the undervaluing (eg. low wages) of those (daycare staff and nannies) who do non-parental child care. This devaluing of parental child care work contributes to the societal devaluing of children themselves; as a corollary, production and consumption of commodified goods and services is excessively valued and advanced. This imbalance is not in 'the best interests of children' in general or of any individual child.

Most primary care parents are women, especially for young children who must have child care at all times in one form or another. Thus this omission especially disadvantages and discriminates against women.

Judges have been known to state that doing the work of parental child care is of no consequence because "that was your choice to 'stay at home' and care for children", as if other choices were not also choices. Judges are very often people who have also made choices in this area, have their personal biases and experience in such choices, as well as their personal opinions on these much-debated policy/ideological issues. This can affect their judgement in a way that unfairly adversely impacts the custodial parent whose work is solely or mainly providing parental child care, and the children cared for by such parents.

The fact that most single mothers live below the low-income cut-off line is indicative of this discriminatory situation.

CHILD CARE COSTS, SPOUSAL SUPPORT and ECONOMIC INDEPENDENCE

Spousal support arguably goes some way to addressing this very considerable expense of child care provided by the custodial parent. Spousal support payments benefit children as they increase the resources available to their custodial parent and may decrease the economic stress of the parent. Parents who are less stressed are in a better position to provide better care for their children.

But the implicit inclusion of child care expenses when the child care is provided by a parent as a aspect of Spousal Support is also problematic.

The goal of 'economic independence' is generally interpreted to require full time, or near full time, employment. This unwritten rule/goal would virtually necessitate use of long hours of non-parental child care.

This concept of, or this interpretation of, 'economic independence' rests on assumptions about 'economic' and 'independence' that are highly problematic in the area of child rearing because it does not recognize parental child care as existing let alone as valuable economically to the society. This concept embeds in legislation a questionable social or economic goal other than, and often in conflict, with 'the best interests of the child'. It casts parents as parasites living off others if they work solely or mainly at providing child care for their own children. But unless one has inherited considerable wealth or lives 'off the land' one is economically dependent on others: legislation, employers, tax-payers, family, charity, significant others, the market. For example, many single parents who are 'economically independent' in this interpretation are highly dependent. They: live in heavily government-subsidized BC Housing, enrol in government subsidized courses/training, use heavily government subsidized non-parental child care, take jobs in the government sector, live with free or reduced room and board with their parents, get into relationships (often out of economic desperation more than choice) in order to acquire some economic assistance however minimal – even just access to a car or free/cheap child care.

The situation for everyone in the society is in reality one of mutual interdependence. The parent who works providing parental child care is not providing a lesser benefit to the members of society by doing this work. Others depend on child bearing and care work to be done. This work is unquestionably essential for the continuance of the existence of the society. The implicit understanding that such parents are parasites who must be legally required to cease their parasitical ways and become 'economically independent' has repercussions for society as it continues and legitimises the devaluing of the work of parental child care and those who do it - primarily women. It contributes to a culture of contempt

for women in general and such mothers in particular, rendering invisible or less-worthy their immense positive contribution to society, thus making them less-than-equal citizens, thus marginalized and more susceptible to violence and other abuse, as statistics demonstrate. It violates rights to equality and security of person for the women and their children.

The proposed changes to the definition of ‘spouse’ would allow unmarried parents with children to qualify for spousal support provided they have been ‘in a relationship of some permanence’ or ‘in a marriage-like relationship ‘ for 2 years. However this:

- leaves out all those who have existing court orders/agreements
- is vague
- excludes those children who were not conceived in such circumstances from the benefit of spousal support. They will not be treated equally under the law. They are treated as less equal ‘bastards’. Their mothers continue to be legally stigmatised ‘un-wed mothers’.

CHARTER AND UN PROTECTED RIGHTS

‘Unwed mothers’ and children conceived out of wedlock – ‘bastards’ – are both discrete, historically discriminated against minorities and as such should be covered by the protections of the Charter Section 15.

The UN Convention of the Rights of the Child states:

“The child has the right to ... be cared for by his or her parents.”

“the child, for the full and harmonious development of his or her personality, should grow up in a family environment.”

“States Parties shall respect the responsibilities, rights and duties of parents”.

“States Parties shall respect and ensure the rights set forth...without discrimination of any kind.”

Child care is now usually considered to be inseparable from education as in the term ‘Early Childhood Education and Care’. The UN protects the right of parents to determine their children’s education. The UN Universal Declaration on Human Rights, “Everyone has the right to education.... Parents have a **prior right** to choose the kind of education that shall be given to their children.”

Any laws that restrict these rights by directly or indirectly mandating, or by giving preferential treatment to, non-parental child care or care/education that the parents do not freely “choose” are therefore in violation of Canada’s international commitments and rights legislation.

NON-PARENTAL CHILD CARE AND THE BEST INTERESTS OF THE CHILD

Spending long hours of non-parental child care has been shown to have negative effects on child development. The US National Institute of Child Health and Human Development conducts the most rigorous long term study of this in the world.

-The NICHD study found that ‘high quality’ non-maternal child care is associated long term with somewhat better scores on some cognitive measures; however few American children are in such care - 9% by NICHD measures (p 11 www.nichd.nih.gov/publications/pubs/upload/seccyd_06.pdf) .

-In Canada the majority of licensed daycare is rated of “minimal to mediocre quality” in the only study that examined this nation-wide. **“The majority of children age 0-12 in centres do not receive adequate amounts or types of experiences to promote language and cognitive development”**

(You Bet I Care!2 <http://www.childcarecanada.org/pubs/op7/op7.pdf> p. ix-x, Gillian Doherty presentation “Quality & Predictors of Quality in Canadian Child Care” Centre for Excellence for Early Childhood Development, Regina June 2005 http://www.excellence-earlychildhood.ca/documents/Gillian_Doherty_ANG.pdf p.4))

-The NICHD study found that non-maternal care over 10 hours/week was associated with increased negative behavioural outcomes at age 4.5 regardless of quality or type of care including increased aggression, fighting, non-compliance, and cruelty. The more hours children spend in such care the greater the incidence of problems. These effects fade over time except for centre-based care alone: in centre based care these negative behavioural effects continued to grade 6 and then to age 15 at least. (Do Effects of Early Child Care Extend to Age 15 Years? Results From the NICHD Study of Early Child Care and Youth Development <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8624.2010.01431.x/abstract>)

It is argued that these negative behavioural effects are modest and do not occur in all children. However, these negative behavioural effects are consistently documented, as is the predominance of non-high quality licensed care. And there are almost unavoidable other negative health effects:

- Cortisol is a hormone secreted in situations of stress. Cortisol is involved in the development of the brain's impulse control, cognitive, and immunity systems. Research shows children in group care have elevated levels of cortisol indicating elevated levels of stress. (Children's elevated cortisol levels at daycare: A review and meta-analysis. Early Childhood Research Quarterly Volume 21, Issue 3, 3rd Quarter 2006, Pages 390-401 http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6W4B-4KGPN0H-2&_user=10&_coverDate=09%2F30%2F2006&_rdoc=1&_fmt=high&_orig=search&_origin=search&_sort=d&_docanchor=&_view=c&_searchStrId=1493888123&_rerunOrigin=google&_acct=C000050221&_version=1&_urlVersion=0&_urlserid=10&md5=cde9d46e494ed0d5f42f9b2fe6c2c72e&searchtype=a)

-Children in group care situations get sick far more often and more seriously than those not in such care. This has been documented repeatedly. See a partial listing of research at <http://www.kidsfirstcanada.org/daycare-health-research.htm>

-Children do not cease to need child care at the school entry age. Research demonstrates that having a parent home at particular times is a protective factor for adolescents, reducing health concerns such as: suicide, use of alcohol and drugs, violence, early onset of sexual intercourse, pregnancy. **“Across all the health outcomes examined, the results point to the importance of family and the home environment for protecting children from harm. What emerges most consistently is the teenager's feeling of connectedness with parents and family.”** See findings of the \$25 million National Longitudinal Study of Adolescent Health in *Journal of the American Medical Assoc.*, Sept, 1997. This it is reasonable and in the best interests of the child that parents of adolescents arrange their schedule to be present. This could mean not doing a job away from the child at certain times of the day and thus reducing income from paid work.

Given the negative effects on children's well-being, non-parental child care cannot be indirectly mandated or given preferential treatment – that is financial support - by a law which seeks to uphold the “best interests of the child”.

DISTORTION OF CHILD CARE COSTS

Family law regarding child care costs cannot by itself create a more equitable way to finance child care costs including parental child care. Child care policies of the federal and provincial government must be part of a holistic solution if the best interests of the child are to be securely advanced. This review of BC family law is an opportunity to proactively create better integration of child-related legislation; anything else will result in failure to protect ‘the best interests of the child’.

Costs distortions arise for the facts that non-parental child care is heavily government subsidized – even for high income families. Approximately 50% of the daycare centre operating costs alone are government subsidized. (Early Childhood Education and Care in Canada Table 13 <http://www.childcarecanada.org/pt98/big.html>). This heavy subsidization by government of this form of care distorts the cost evaluation of child care of all types by making it seem cheaper than it is since no one has to pay the real full cost of centre based care. Many parents - and most single parents - are eligible for

additional significant fee subsidies for this form of care. In BC other forms of non-parental child care are eligible for smaller fee subsidies.

OTHER CONSIDERATIONS

Daycare centre care most heavily subsidized but, along with other non-parental care is not always suitable because:

Many parents have paid work outside the hours of child care centre operation – ie not 9-5, Monday to Friday.

There may be no centre nearby, or no space available.

The child may be especially ill-suited to such care, over and above the negative effects aforementioned. For example, children with immunity concerns, severe allergies, disabilities, behavioural concerns, particular temperaments, autism, cultural or linguistic needs etc may be very seriously harmed by centre-based care. Many centres reasonably decline to take such children.

The very high rate of low income and long term poverty as measured in various ways among single mothers, their children, and elderly single mothers is partly a direct result of the failure to recognize their very substantial parental child care costs.

The higher incidence of negative behaviour and juvenile delinquency among the children of single mothers may be partly explained by fact that these mothers are often required to be at jobs when their children are at home unsupervised.

Children do not cease to need child care at the school entry age. Research demonstrates that having a parent home at particular times is a protective factor for adolescents, reducing health concerns such as: suicide, use of alcohol and drugs, violence, early onset of sexual intercourse, pregnancy. See National Longitudinal Study of Adolescent Health in This it is reasonable and in the best interests of the child that parents of adolescents arrange their schedule to be present. This could mean not doing a job away from the child at certain times of the day and thus reducing income from paid work.

RECOMMENDATIONS

Work with provincial and federal governments to:

eradicate the cost distortions and negative impacts to children and parents of preferential subsidization of non-parental child care.

ensure that child care is defined to include parental child care

redirect all child care-related subsidies, tax credits, tax deductions, grants etc to parents themselves regardless of the form of child care used. This equitable public funding for all children will reduce burden on parents paying child care maintenance costs as discussed below

Remove child care from Special Expenses.

Remove financial support for loss of income due to providing parental child care from Spousal Support considerations

Remove the obligation to become economically independent from Spousal Support considerations when there are dependent children present.

Make “child care” a separate category of support.

Include parental child care in the definition of child care

Create a formula to calculate the basic rate for child care costs based on

- government support direct to parents regardless of type of child care used including parental child care
- the opportunity cost of providing parental child care
- the number of children
- the age of the children – children need fewer hours of direct adult supervision as they get older, but the best interests of the child are served for older children with significant amounts of parental time.
- the hours of care – subtract from the 24/7/365 maximum the hours the child is in school, other activities, or with the non-primary care parent.
- any special considerations (for example a disabled child) would be in addition to the base rate
- the custodial parent can use the child care support payments to cover non-parental child care costs if/when chosen.