Commentaries
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Multiple Meanings of Equality: A Case Study in Custody Litigation

Jane Gordon, qui est sociologue, décrit sa propre expérience du divorce. Comme participante et observatrice, elle explique en détails comment son rôle de mère a été dévalorisé tout au cours du processus judiciaire. Elle raconte aussi comment son ex mari, impliqué de manière active dans la promotion des droits des pères, a su user de ce processus pour obtenir un droit d'accès continu et important auprès de leurs deux enfants, bien qu'il ne paie virtuellement pas de pension et qu'il ait quitté le foyer avant même la naissance du plus jeune.

Jane Gordon, a sociologist, describes her experiences of divorce and custody. As a participant-observer, she explains in detail how her role as a mother has been devalued in the legal process and how her former husband, a fathers' rights activist, was able to use legal proceedings to gain substantial access to his children. It is significant to Jane Gordon's account that the father pays virtually no support, that he left before the youngest child was even born, but that he has obtained substantial and ongoing weekend access to both children.

Introduction

In this paper, I use my experience of a divorce and custody fight to examine the ways in which judges in the province of Nova Scotia have interpreted the concept of equality. I look at the ways in which both the mother herself and the father had

made assumptions about equality, how these were argued or presumed by each party in court, and how they were interpreted in the decisions of the judges.

As a participant in the legal process I will be describing, I am working in an established perspective both in sociology and feminism.[1] I am trained as a sociologist and have taught in the area of the family, the sociology of work and professions and women, so I have the expertise with which to examine these events. It was not until I looked at the experiences described below from a feminist framework, however, that any of it made sense. Before that, it was explicable in terms of random misfortune and a stubborn ex-husband. My experience illustrates some of the ways in which a husband can attempt to maintain control and dominance over his former wife, define the issues, and use the rhetoric of equality for his own purposes. My experience has also shown me how the legal system cooperates with such men.

The History

My husband left to take a short-term job halfway across Canada when I was seven and a half months pregnant with our second child. This was in August 1979. Our first child (Jeremy) was just a bit over three years old. I was not consulted about his decision to take that job, and at the time he did not define the separation as permanent. I was left pregnant with Rachel, with a preschooler, and three months of maternity leave from a job which I saw as essential to the economic survival of the family. Eventually we agreed on a separation agreement which I thought would keep me safe from any unpleasant surprises and would protect both the children's and my interests.

I eventually filed for divorce in August 1983. My ex-husband contested the application on virtually every issue. The case was heard in September 1984. As in all the subsequent legal proceedings, he argued his case himself. After a two and a half day trial, I was awarded a divorce, custody, token child support, the distribution of matrimonial property as outlined in our separation agreement, and costs of $5000 (my lawyer estimated the bill would be $7500). He received regular access of approximately one and a half days each week.

He appealed the trial court decision in toto, including my lawyer's behaviour. He also wrote to the judge objecting to the decree nisi. The appeal was heard in March 1985. The original decision was upheld on every issue except costs, which were reduced by about $2000. He then applied for leave to appeal to the Supreme Court of Canada; that leave to appeal was denied in July, 1985.

The Supreme Court decision was not the end of the legal proceedings, however. From August 1985 until January 1986 I was in court at least once a month on alleged violations of the access order and related matters. None of these alleged violations were upheld. He also challenged the final divorce decree. The hearing of that challenge was the last time I was represented by a lawyer; deeply in debt for legal fees, I represented myself from August 1985 on. The final decree was revoked, although another one was later granted.[2] In July 1986, after

1. See, for example, C. Wright Mills, *The Sociological Imagination* (New York: Oxford, 1959).
2. I was represented on one other occasion, when a January 1986 court date conflicted with a

the proclamation of the Divorce Act of 1985, I received notice to go to court again. He was again asking for joint custody or increased access. The July hearing was adjourned until September because there were too many issues to hear in one day. By September he had retained a lawyer and modified his request to increased access. After another two and a half day trial, this was awarded.

I live in dread of the inevitable next appearance in court. I live confined to the province, and even have to take my sabbatical plans to court. I also wonder what I will have to respond to next: will it be the school principal, the local school board, the provincial health care plan, journalism students from a local university, or my former religious group this time? My ex-husband has even tried to involve our MP in the legal proceedings against me.

The details of this case illustrate how difficult it is for women to protect themselves from victimization in the legal process. I had been careful to follow the advice given to women about protecting their interests: the house was in both names, as was the mortgage; I had credit in my own name; and I had a separation agreement which defined issues of custody and property. In addition, I had been "successful" in male terms: I had a prestigious job; I was the sole breadwinner in the family; I had not abdicated domestic responsibilities or motherhood; and I was involved in church and community groups. Yet none of this protected me against the legal harassment of a vindictive ex-husband. Although I am convinced that he too felt poorly treated in the legal system, I felt the process he insisted upon prolonging was itself disillusioning and demoralizing.

I still have the primary care of my children, who are now aged eight and eleven. But the process itself has been destructive despite its outcome, and this is something that women – even feminists – do not seem to recognize. Although my women friends – many of whom describe themselves as feminists – tried to be supportive, their initial assessment that no judge would give him custody was inadequate. What they failed to grasp was that living in the grip of constant legal proceedings would change my and the children's life. And although my women friends were initially supportive, what I also came to recognize was that as events dragged on and on (and this is only an outline of the major battles, not the in-between skirmishes, which were equally devastating), there was less and less they could say in support. Indeed, some of them really became rather tired of hearing about my legal troubles. They saw the issue only as a personal one, not as part of a larger political movement.

Even before the initial divorce trial, however, my former husband had developed a keen sense of the political context. He sent out press releases, which were picked up by the local media. As a result he was contacted by other men who also felt aggrieved: they formed a local fathers group and made connections to national fathers' rights organizations. The local media followed the story avidly, providing publicity for their cause. None of the media attempted to contact me to find out my point of view, though my ex-husband publicized my name and place

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scheduled trip away; a lawyer friend got one of his friends to represent me. He managed to get me one hundred dollars in damages and a prohibition on further legal action until it was paid. Previously awarded damages and costs had not been paid, nor was the token court-ordered child support.

of employment. The fledgling fathers group provided my former husband with a reference group and activities to plan around his now common cause. Ideological reinforcement for his legal struggles was provided by this group of individuals, who would continue to support others who were fighting what they saw to be a collective battle.

From August 1983, when I first filed for divorce, until September, 1986, my last court appearance, the case has been to court at least sixteen times and judgments have been given by four different levels in the judicial system (Family Court of Nova Scotia, Trial Division of the Supreme Court of Nova Scotia, Appeal Division of the Supreme Court of Nova Scotia, and the Supreme Court of Canada). Sixteen different judges have reviewed the evidence. I have been before at least half of all the judges who sit in the family court, all but one or two of the judges in the Nova Scotia Supreme Court, three out of the eight at the appellate level, and three out of the nine at the Supreme Court of Canada.[3] Only one of these judges has been a woman. She was the initial judge in the pre-trial hearing, and she decided not to hear the case herself because too much evidence had already been disclosed.

Although a variety of legal issues were examined at each level, each new decision tended to reinforce previous decisions. Implicit in most of these decisions was a concept of "equality" which sustains the status quo. This happened by omission as well as by commission; many areas into which the notion of equality should have been introduced were ignored, and an effective double standard arose. In the remainder of this comment, I discuss in detail some of these areas: (1) responsibility for the children during the marriage and the division of domestic and wage-earner responsibilities; (2) domestic and financial responsibility for the children from the end of the marriage until the time of the divorce hearing; (3) legal responsibility for the children; (4) financial responsibility for the children; (5) the allocation of the children's time; (6) the ordinary care and responsibility for the children; and (7) the responsibility to obey court orders. In each of these areas, I found that implicit concepts of equality operated to make my contributions and work invisible at the same time that they helped overvalue his.

During the Marriage

Mine was not a marriage in which traditional roles were reversed. Quite the contrary. I had virtually total responsibility for the care of Jeremy, my oldest child, from his birth until the marriage ended. I was the only breadwinner in the family. I worked and I was responsible for the upkeep of the home while my husband concentrated on his doctoral research. Jeremy had attended six academic conferences before he was too old to travel for free on the plane. I looked after day-to-day tasks (preparation of food, laundry, baths, outdoor excursions) as well as extraordinary ones (arranging for babysitters and daycare, birthday parties, doctor's visits, and Halloween costumes).

3. The last two levels have sat in panels of three judges at each hearing.

Yet during the legal proceedings, Jeremy's father made a great deal of his attendance at the birth and his bonding with his son, as well as the care he had provided for the baby. He pointed to some of the leisure time and enriching activities he had shared with his son, arguing that this evidence of parenting should entitle him to joint custody.

In the initial trial, this relatively minor contribution to the upbringing of only one of the two children (Rachel had not yet been born when he left home) was seen as a valuable part of both of their experiences. The major share of the childrearing as well as virtually the total responsibility for all of the chores connected with both children which I assumed were never mentioned, let alone singled out as matters of importance or meaning in the children's lives. This difference was trivialized at the initial divorce trial. The trial judge made note of the father's activities in his decisions. After pointing out that the father had had irregular contact with the children for a period of years, he added "I don't doubt that he has something important to offer to the children and somewhat of what he has to offer is to be recognized in the way he presented the case.... I mean in terms of style and language." And later on, "I may not have said as clearly as I ought to have that I feel the children have much to gain from a continuing relationship with their father. Were the relationship of the parents different, I would not be averse to the proposal for joint custody."

As Nancy Polikoff points out:

> Judges, who are mostly men, often have little understanding of what is involved in taking daily primary responsibility for a child. They are therefore very impressed with the changing of a fraction of the number of diapers, preparing a fraction of the number of meals, presiding over a fraction of the number of baths, providing solace for a fraction of scraped knees and hurt feelings. Similarly mothers know that equating employment with an abdication of nurturing is an oversimplification of parenting functions and not a true reflection of contemporary family life.[4]

It is clear that the judge undervalued the work I did and overvalued the efforts of my children's father. And this distortion has had huge implications. At the beginning of the legal proceedings, it meant giving the father more access than I preferred. On appeal and at subsequent legal hearings, the trial judge's findings were used as evidence of the father's right and ability to care for his children and therefore of his right to have increased access or to prevent a reduction of his access.

The trial judge did not specify what circumstances would need to be different for him to approve joint custody. There are two possible explanations: the father's lack of extensive recent involvement with his children, and the fact

4. Nancy D. Polikoff, "Gender and Child-Custody Determinations: Exploding the Myths," in *Families, Politics and Public Policy*, ed. Irene Diamond (New York: Longman, 1982), 195.

that I opposed it. If the first is the reason, then perhaps his decision is reasonable. If it is the second, however, it is a frightening thought. The presumption of joint custody, which many fathers' groups are advocating, would mean that my opposition would not be adequate reason for denial of joint custody, and in fact might be grounds for giving the other parent custody. As Lenore Weitzman has pointed out,

> An unwilling parent is more likely to be coerced into a joint custody "agreement" in states with a "friendly parent" rule. Such rules require courts to consider which parent would be most likely to provide the other parent "with frequent and continuing access to the child" when the court makes a sole custody award. Because of their potential for duress and coercion in arriving at joint custody "agreements" friendly parent roles have been opposed by several bar associations.[5]

Lenore Weitzman points out that with the presumption of joint custody, it is up to the party who opposed such an arrangement to prove that it would be detrimental to the child.[6] If the judge who awarded me custody could, under the law, have given my former husband joint custody or even sole custody in spite of my opposition, he might well have done so. The fact that I had had almost total care of the children would not have been a factor in his decision.

During the Separation

I had virtually the total responsibility for the children for the five years between the time the marriage ended until the divorce hearing, although provisions for visitation and support payments had been made in the separation agreement. My former husband used the provision for "regular access, usually weekly" when it was convenient, and ignored it when he was busy with other activities. He made child support payments for less than a year and then ceased entirely.

Since economic circumstances are so often used to deny women custody, it is important here to point out that during those five years, I continued to work fulltime as a tenured faculty member. My former husband worked two of those four years at sessional positions in two universities and collected unemployment insurance for one year. Later, when he was living in another city, the children went to visit him. But these visits were just that. I still had to provide for the children. I took them to and from their father's, provided their clothes, and so on. If he did ever buy them anything (from clothes to Christmas presents) I never saw it. Once they came home from a week-long visit with a note: "Rachel needs new pajamas."

5. Lenore Weitzman, *The Divorce Revolution* (New York: Free Press, 1985), 246.
6. Ibid., 247.

The fact that their father had no childcare or financial responsibility for the children for five years at the end of the marriage was never noted, much less considered in the initial or subsequent judicial decisions. Both the father and the judge conveniently forgot about those five years. The father argued for joint or sole custody (since he would provide generous access) as if the marriage had just terminated. The judge accepted this interpretation of events and responded as if that were the reality. The five years when I had been sole provider for the two young children was ignored, and the work that this involved was invisible to both the children's father and to the judge.

Legal Authority over the Children

In asking for sole custody or joint custody, the father was asking to have equal partnership in making legal decisions about the children. This was not an area in which his arguments were given much weight. At one point a judge even dismissed as impractical his ideas that this was feasible and that he could have decisionmaking power over the children's schooling or religious upbringing.

This father was not willing to accept the fact that he did not have legal authority over the children. Initially during his access times he kept them from attending the Sunday school where they had been registered, in spite of the fact that this was a group to which both of us belonged. He attempted to get the support of the children's teachers, their school principal, the parents' association at the school, and the city school board for his right to be involved and consulted in decisions about the children's education. He also protested to the provincial health care system that the children were not listed under his name and would therefore, he claimed, not be able to get medical care should they need it when they were with him. He wanted the health board to change its policy to deal with this alleged problem. Although the father did not have legal authority over religious training, education, or health care, he attempted to obtain it on his own initiative, circumventing court decisions. He was able to exercise a degree of control over decisionmaking by his actions in violation of the intent of the law.

Financial Responsibility

At the initial divorce hearing I asked for and received $25 a month child support. My lawyer said there was not much chance of getting anything more than symbolic maintenance because I had an adequate income and he was unemployed. At the appeal, when my former husband continued his arguments for joint custody, I pointed out that he had not even been paying the $25 because he claimed he could not afford it – and so how could he afford to provide for half their expenses, something he argued should and would follow from a joint custody arrangement. He dismissed his arrears by saying that it was merely a cash-flow problem. Later in Family Court he continued to plead poverty and debts, and his maintenance was reduced to $1 a month. He still refused to make those payments.

One continuing problem has been the father's consistent inability (or unwillingness) to get a job. In the initial divorce hearing in 1984, he argued that

he had just moved back to Halifax and had not been able to locate work yet. In 1986, he agreed with the Family Court judge that he had financial responsibility for supporting his children, but he argued that he had been unable to locate work and was accumulating debts. He was unwilling to even make the symbolic payment of $1 per month to indicate his commitment to financial responsibility for the children. In none of the court decisions have his financial circumstances been held against him. Yet refusing to get a job, quitting or getting fired, or running through financial assets are some of the standard ways fathers have avoided their financial responsibilities for their children. Unlike many single mothers, I do have the resources to provide for my children with a reasonable standard of living. But it seems to me that the father's lack of financial resources is not held against men in the same way that it is held against many women. Certainly no judge has cited this father's lack of economic security as something which would disqualify him from obtaining custody.

In addition to this double standard, the Nova Scotia courts have perpetuated the patterns of child support described so well in the literature.[7] In this case, none of the judges have insisted that custody arguments will be evaluated in light of evidence of responsible parenting.

Another issue has been that the courts have not seen fit to deter the father from legal harassment. In fact, the resources of the state have been constantly made available to the father, who was thus rewarded for his lack of income. He received a transcript of the initial trial (average cost $4000) for free because he argued he could not afford to pay for it. The unpaid legal and other costs awarded to me were never considered when other accusations were made. Only once did the courts insist he pay before a proceeding; a judge had attempted to use this as a way of limiting his actions. My requests for security of costs were never granted, in spite of my documenting the past history of the case. What the protection of the legal rights of the father meant, in effect, was that I had to pay for his harassment with my own resources.

After receiving a legal bill of about $20,000 (more than half a year's salary for me at that time), I was still unable to qualify for legal aid. It has taken me several years to finish paying the bill. These legal bills have been a heavy tax on my finances, and they have certainly hurt the children. In addition, it also meant I had to act for myself in court during a period when I appeared in court regularly at least once a month. The psychological effect of this took its toll; the whole experience was devastating. Requests for appropriate restraints within the legal system were denied. I felt that there was no protection anywhere in the system for my interests or for those of my children; instead, judges informed me again and again that they would not interfere with my former husband's access to the judicial system. More than once I received lectures to the effect that everyone ought to have access to court, regardless of their ability to pay. One judge even admitted that the idea of my seeking security of costs was a good one, and that at

7. See generally, Louise Dulude, *Love, Marriage and Money* (Ottawa: Canadian Advisory Council on the Status of Women, 1984); Margrit Eichler, *Families in Canada Today* (Toronto: Gage, 1988); Thomas Espenshade, "The Economic Consequences of Divorce," *Journal of Marriage and the Family* (1979) 1:615-625; Phyllis Chesler, *Mothers on Trial* (Seattle, Washington: Seal Press, 1986); Weitzman, *Divorce Revolution*.

some point it might be appropriate for me to get it – but not at that time, in his courtroom. There is no protection against legal harassment. Legal aggression is rewarded by compassion; legal defence is punished by debt.

Allocation of Children's Time

The division of children's time is, I think, problematic and complex. The notion that time should be evenly divided between parents seems to me to turn children into commodities, treating them as just another piece of matrimonial property to be evenly divided. It reflects the assumption that children have no particular interest in or choices about the way in which their time is allocated; that the interest of children and their parents are identical; and that no matter what the relative involvement of each parent with the child prior to marital breakup, the children's time should be evenly split between adversarial parents.

Fathers like my ex-husband have argued that equal division of children's time between parents is fair and reflects the principal of equality. This simply is not the case. This superficial notion reduces time spent parenting to only one dimension: time spent with children. There are other dimensions to parenting. Time spent "with" children can include the number of hours the child spent with the parent, inclusive or exclusive of the activities of the child which do not involve active interaction with the parent – sleeping, voluntary activities of various sorts such as dancing or swimming lessons, nondiscretionary activities such as medical and dental appointments, school, time spent on homework and other school-related tasks, normal recreational time (regular Cub meetings), and special recreational time (Cub camping trips). Time spent *on* children includes shopping for their clothes and shoes; doing laundry; planning special events; arranging for activities, appointments, babysitters, and so on.

If the issue of access to children's time is to be one of true equality, then all dimensions of responsibility for children should be considered. On the one hand, noncustodial parents have often reported they felt like visitors in the lives of their children. On the other, custodial parents have said they felt like drudges and disciplinarians in comparison. If equality is to be an issue in the allocation of parental time with children, then dimensions other than the bare amount of time "with" the children must be considered.

None of the judges involved in this case nor the father considered the nature of the time the children spent with their father. They simply did not consider that parenthood involved more than the physical presence of the children with their father. The father consistently ignored court orders that he was to take the children to regularly scheduled activities, and several judges said there was no way to enforce these orders. The last Family Court judge I appeared before in fact refused to put any such stipulations in his order because he said they were meaningless. Judges tolerate a large number of missed activities. That these activities had been chosen by the children did not matter. My former husband consistently presented the children's extra-curricular activities as a conspiracy on my part to do him out of his legitimate time with the children. A paragraph from a letter I received from him in January illustrates this:

> I of course will not force it [dancing lessons] upon her especially because Saturday is the only full day Rachel is here during ordinary weekends, on account of the sole-custody arrangements which gives fathers an incomplete Friday and an incomplete Sunday. If a sole-custody parent then badly disrupts the only complete day of Rachel's weekend with me, by loading her with activities, then that is an abuse of privilege; which, unfortunately, is an abuse that many sole-custody mothers practice – a practice which has been brought to the attention of the Attorney General of Ontario.[8]

My children have been reluctant to insist on their activities when they know their father does not want to take them to them. Again, it appears as if judges have supported the father's right to do what he wishes with the time of the children, in spite of the children's preference.

The way the division of children's time is presented in legal argument is important. My former husband presented in court a verbal description of his time with the children which was technically accurate but badly misleading. He did this to minimize the reality of his time with the children, and he ignored the noninteractive aspects of the children's lives. He described an eight-hour weekend day as one-third of a day a week in order to demonstrate that he had only a small fraction of the total number of hours per week. This was true, in actual hours. But it distorted *what* those hours represented – sleep, school, homework, recreation, and after-school care. The purpose of this presentation was evidently to downplay his real contact with his children, minimalize the other constraints on the children's time, and make it appear as if the mother was dominating the children's time.

Ordinary Care and Responsibility for Children

This question was never addressed by the court. The various judges, my former husband, and I all assumed that the ordinary care of children was a responsibility which went exclusively with custody. Because I had custody, we all assumed I would continue to take responsibility for medical and dental appointments, the children's social life, leisure activities, the purchase of their clothes, and so on. Much of the care which goes into the ordinary raising of children was never brought to the attention of anyone. It became apparent to me that the access given the father made chores extremely difficult, particularly with young children. Saturdays with me were likely to be spent getting haircuts, buying sneakers or other necessities, having friends over, and other "maintenance" activities. My leisure time with the children and our chance to do anything as a family was curtailed.

8. Private correspondence (on file with author).

Responsibility to Obey Court Orders

This is an area in which a double standard seemed to be operating. My former husband flaunted the court procedures consistently throughout the lengthy legal action he initiated: first he refused to appear for discovery; then he violated rules of evidence (perhaps willfully, since the same corrections occurred time and time again in the initial and appeal trials); he refused to pay court-ordered legal fees, child support, and other costs ordered to me; and he disobeyed court orders about visits to the school and participation in their regular activities. He also ignored admonitions about not discussing the case with the children. As one judge put it: "I think I have to content myself with pointing out as I do, sir, that your conduct will affect your relationship with the children, and I mean to include conduct towards your wife or affecting her in the society in which she moves. I am sure that none of what I have said is any surprise to you, and I conceive that your intemperate lapses in the past have arisen out of the stresses of your situation; but nevertheless you have to realize that there can be consequences in terms of your rights to access." His disobedience was not considered serious enough to influence the judge in any of his decisions or even in his willingness to consider further action on any issue. The result was that he was never held accountable for his actions.

Stress was never considered a mitigating factor in what he characterized as my temper tantrums and abuse of access. His attempts to suggest that I suffered from PMS or had "irrational fits of anger" were never upheld because of insufficient evidence. However, my stress and anxiety was never taken into account either. I knew that any violation of anything ordered by the court would come back to haunt me with further legal action and that only strict adherence to the provisions of access made me feel reasonably safe for my next court appearance. And I have no doubt that these appearances will continue at regular intervals until Rachel, who is now eight, is of legal age.

I continue to live in apprehension about what may happen next. This past year, for example, when I have been doing a lot of travelling on business, I have traded off Thursday and longer weekends for mid-week access (partly to suit the children and partly to suit me). But this has made me feel terribly insecure. The next time I go to court I know my "denial" of his right to mid-week access will be used against me, even though he has been more than compensated by the demands of my travel schedule.

At present I am trying to get permission from the court to take the children with me on a sabbatical. I have already been cautioned by my ex-husband "not to follow through on my threats to remove our children from the country, the province or the metro Halifax area." The modifications I made in the plan I will propose to the court will not be in evidence (I wanted to go to England, the children preferred France or Finland); all the judge will see is that I am once again taking the children away. (We want to go to Quebec.) Even if I get court permission I have already lost: the stress, the legal fees, and the fact that I must justify my actions to someone else have been difficult and taxing. As well, my application will provide yet another platform for the public presentation of the rhetoric of the fathers' rights activists and a chance for them to get public sympathy.

Conclusion

Judges have shown a quite flexible attitude toward the meaning of equality when it came to the allocation of the children's time and the costs of raising the children. In those areas they appeared to consider the father's interests and situation to be of paramount importance. His expressed interest in having more time with the children, and the extent to which he was willing to make a nuisance of himself in the legal system, have had a powerful effect on the amount of time he was awarded. In addition, his willingness to use the media and to go public with the circumstances of the lives of his children was effective in mobilizing support among the general public and in creating a provincial lobby group so that his concerns were not seen as isolated ones. Even though I felt it the most appropriate course of action to follow, my unwillingness to comment in public made my contribution to the children's upbringing invisible. And, of course, this silence contributed to the effectiveness of the special interest group because there was no "public debate" on the appropriateness of the concerns of the concerns of the father's group.

Under the rhetoric of equality and fairness, so commonly argued by my former husband and other fathers' rights activists, the work of parenting has been presented in a way which downplays or hides the amount of work and nurturing women contribute to raising children. Debate has tended to focus on issues of fairness around content which is highly visible and can be dramatically presented.

The court system has cooperated with the way this particular father has set the agenda. Judges were reluctant to raise other issues or ask hard questions. They were not supportive of my arguments when I did so. I believe they felt that because "I won" (or at least because my former husband did not get all of what he wanted), there was no need to seriously address the issues I raised. It was as if they were seeking some kind of balance or compromise in their decisions. "He doesn't get what he is asking for so he can set the agenda." I also feel their tendency to compromise in the face of persistence carried through in the legal decisions handed down. They never gave him joint custody, but they did give him ever increasing amounts of access time – something between what existed before and what he was asking for – along with decreasing financial responsibility for the children. In this way, he obtained something each time he went to court.

They also ignored the effect on the other family members of the father's pursuits of his rights. (And one cannot emphasize too often that the issue is of fathers' *rights*, not of fathers' *responsibilities*.) The emotional effect on the children, their own choices about their time, the drain on my emotional and financial resources, its impact on the children, my increasing sense of victimization, frustration, and helplessness – none of these were in issue. In protecting my former husband's rights to pursue his issues, the courts never reflected on the other parties concerned.

Going beyond my particular case, it seems to me very difficult for women to take the lead in this discussion. Fathers' rights groups have succeeded in defining the agenda by using contemporary language and rhetoric to defend traditional

patriarchal rights of fathers to their children, no matter what. I have pondered how to be both reasonable and pro-active. The problem is that one must work in an arena in which the rules and the actors are not our own, and which does not even recognize the way in which its assumptions influences its decisions. I am not optimistic that family and provincial judges will ever recognize the real issues.