



# Family Law

Rosemarie Boll

## Snowflake Families

Like snowflakes, no two families are alike. The only family you can really know is your own. If you are headed to court, people who don't know your family will make decisions you may have to live with for years.

Judges want to do their best, but custody and access can baffle them. To help them, many judges turn to professionals including psychologists, social workers, or counsellors. But how do those 'experts' reach their conclusions? A recent study identified these five factors (in generally-agreed order) as the most influential when psychologists recommend a parent lose custody.

1. The parent is an alcoholic.
2. The parent tries to alienate the child from the other parent.
3. The other parent has better parenting skills.
4. The child has a stronger emotional bond with the other parent.
5. The parent is less psychologically stable than the other parent.

This analysis helps the expert decide what is in the child's best interests – in theory.

But Paul Millar, a Ph.D. graduate in Sociology at the University of Calgary, says experts aren't necessarily looking at the right factors. He studies the effects of family law on Canadian children. In his 2009 book, *The Best Interests of Children: An Evidence-based Approach*, he analysed a long-term survey of 675,000 children of divorced parents. He used a Statistics Canada report called the 'National Longitudinal Survey of Children and Youth' (NLSCY). He explored the effects of various parenting practices on three post-divorce outcomes – a child's behaviour, health, and educational success.

Not surprisingly, Millar concluded parenting is crucial to children's success. What were surprising were the details of his findings. This is his ranked list of key factors which correlate with a child's post-divorce success.

1. Physical punishment, yelling, or speaking in a raised voice ranks above all other parenting practices in its negative impact on children.
2. Positive parenting practices such as sharing positive times and setting consistent boundaries has the greatest beneficial impact.
3. Depression in a caregiver has consistently negative effects.
4. The family's parent-child ratio – fewer children means more parental supervision and improves outcomes.
5. Household income – increased income reduces caregiver depression and reduces frequency of physical punishment.
6. Caregiver education – higher education tends to create more positive outcomes.

# Family Law

Due to limited data, there were many things Millar did not address, including:

1. parental alienation and inter-parental conflict;
2. caregiver mental health other than depression;
3. the emotional bond between parent and child;
4. extended family, such as grandparents; and
5. the role of access or visitation.

Parental gender was not a good predictor. He recommends more research into this and many other areas.

He says custody evaluators and judges must focus on the right factors, and believes courts today look at the wrong ones. Without preferring one gender over the other, the question should be: 'who is the best available parent?' He says the whole legal model for deciding custody and access needs an overhaul. We shouldn't just apply the primary caregiver model and assume sole custody is best. At the same time, we shouldn't assume shared or equal parenting is best. Instead, we should maximize children's access to good-quality parenting practices. We should favour caregivers with good mental health and higher education. We should strive to connect children to a whole community of support, particularly those children at risk of child welfare intervention. We should promote beneficial family structures and take a second look at split residential custody in suitable cases. When one child lives with mom and the other with dad, it lowers the parent-child ratio. For the same reason, we should optimize children's access to resources such as grandparents, extended family, and other supportive adults. Above all, we must avoid deciding custody cases based on criteria unrelated to children's welfare.

He suggests we train all parents, not just divorcing ones, to discipline their children without physical punishment or yelling.

Litigants run a real risk when they launch into the custody quagmire. At every stage of the legal process, others will have their say into the post-separation family structure. And every one of them will have a different world view.

## Reference

Paul Millar (2009) *The Best Interests of Children: An Evidence-based Approach*. Toronto: University of Toronto Press. Dissertation topic: The Effects of Family Law on Canadian Children.

*Rosemarie Boll is Staff Counsel with the Family Law Office of Legal Aid Alberta, in Edmonton, Alberta, and the author of a young adult novel about family law and domestic violence, scheduled for publication in 2010.*