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What is a Rebuttable Presumption of Equal Shared Parenting all about?

Fathers Are Capable Too: Parenting Association

Every civil law has a default position. Don't pay if not through the court system, innocent until proven guilty, if the car is full of drugs it is seized, and so on. The *Divorce Act* does not have one, and it needs one since the family courts in Canada have implemented one that is not "in the best interests of the children".

Equal shared parenting assumes that parents should share in the responsibilities and parenting time for their children on an equal basis. This is, of course, the assumption inherent when a married couple have a child, irrespective of any deemed conflict between the. Even in Quebec's same-sex civil union law this basic tenant is recognised. It deems an equivalent set of rights and responsibilities before a separation as after. Of course, separation changes the nature of the contract of divorce. As with the pre-divorce scenario, couple may agree to share these responsibilities differently — who goes to Saturday soccer, who chauffeurs children to a birthday party, who cooks on which night, who is responsible for heating which house, which days parents work and so on. At separation with two different households the nature of the splitting of tasks there will be change, but the ability to be flexible must still be available to accommodate both parents and children. More importantly, it is the first 6-18 months after the separation that has the largest impact on the psychological well-being of the children of divorce — this is the time to implement a balanced and low conflict environment.

A presumption of equal shared parenting at divorce makes a level playing field between the parents with respect to parenting time and responsibility at the moment of separation. From that point on, parents and children have the ability to craft an agreement with which all agree. The courts and lawyers should not, and need not, be involved. Once there is an agreement between the parents covering the issues of parenting time, location and financial issues (often called a "parenting plan") the parents can move away from the default 50-50 sharing. If there is no agreement, the 50-50 sharing will be left in place. Parents gain from reasonable solutions. If pettiness and aggression is instituted by one parent then the best such fighting will obtain is a 50-50 split, and it may well limit time with the fighting parent if it is damaging to the child. By eliminating the power imbalance, the root cause of parental fights and the concept of "winning" evaporate.

Of course, the presumption must be rebuttable. If father is in jail, if mother is in an institution, if either has a history of killing children when put under stress, or of neglecting or abusing their children, it is time to look at things differently. Real and

proven reasons should change the situation. Speculation should not.

The accommodation should be for the parents and the children. It is not for the lawyers, judges, psychologists, counsellors, and other bureaucrats who may be trying to move in, take money and/or control the lives of parents and children where there is no reason to do so.

Courts should not have the ability to impose special arrangements under normal circumstances. Only in circumstances where it is proven not to be in the best interests of the child (not the best interests of either parent) may the courts intervene to move away from the equal parenting arrangement. The courts would intervene at the time of separation if there existed a proven reason in which they has already intervened. If there was not point in intervention before the separation that is no point in intervening at the separation.

Issues may develop afterwards. In cases of parental psychological dysfunction, the abusive alienation of children (inducing Parental Alienation Syndrome in the children), other child abuse or neglect, a parent refusing to comply with agreement, and the kidnapping children (i.e. refusal of the other parent's parenting time) are the types of problems where the courts should be involved. However, this will hopefully be successful.

A lowering of the conflict of divorce, a clean definition of a continuance of the pre-separation rights and benefits, and a system where attempts to fuel a battle are suppressed will benefit the children of divorce. The savings in legal costs alone will provide increased standards of living to many of these children.

Society will gain from both healthier children and a substantial ability to reduce the expensive and unnecessary institutions that currently fuel divorce conflicts. A policy should be seeking to reduce the number of family courts and family judges, the bureaucracy in place to foster conflict, and the massive attempts to patch up the collateral damage caused already.

A rebuttable presumption of equal shared parenting creates the environment to produce the stated goals of the federal and provincial legislation governing divorce and separation.