



An Annotated Bibliography of Maintenance and Custody Literature



Department of Justice
Canada
Family Law
Research

Ministère de la Justice
Canada
Recherche en droit
de la famille

Canada

AN ANNOTATED BIBLIOGRAPHY OF
MAINTENANCE AND CUSTODY LITERATURE

SUBMITTED BY ALDERSON-GILL & ASSOCIATES

TO

DEPARTMENT OF JUSTICE CANADA

NOVEMBER 16, 1987

The views expressed in this report are solely those of the author and do not necessarily represent the views or policies of the Department of Justice Canada.

Published by authority of the Minister of Justice and Attorney General of Canada

Distributed by
Communications and Public Affairs
Department of Justice Canada
Ottawa, Ontario
K1A 0H8

(613) 957-4222

Catalogue No. J2-77/1988
ISBN 0-662-55723-9

©Minister of Supply and Services Canada, 1988

Printed in Canada
JUS-P-489

TABLE OF CONTENTS

INTRODUCTION	1
Organization of the Bibliography	2
Selection of Materials	4
ANNOTATED BIBLIOGRAPHY	7
Section I - Custody Awards	7
Custody Awards - Annotations	12
Section II - Maintenance Awards	33
Maintenance Awards - Annotations	38
Section III - Award Violation and Enforcement	65
Award Violation and Enforcement - Annotations	70
AUTHOR INDEX	93

AN ANNOTATED BIBLIOGRAPHY OF
MAINTENANCE AND CUSTODY LITERATURE

INTRODUCTION

Before the Divorce Act, 1968, it required an Act of Parliament to legally dissolve a marriage in Canada. Since that time divorces have increased significantly in number, as have the problematic issues arising out of divorce such as the awarding and enforcement of maintenance and custody.

The era of reform in marriage and divorce law that began in 1968 was fueled, and has continued to be spurred on, primarily by the inequities arising out of divorce laws and their implementation, but also in recent years by the large increase in the number of women and children dependent on welfare assistance, and the perception that this is directly related to the high incidence of maintenance default.

It is not surprising, then, that the issues peripheral to the actual dissolution of marriages have received a great deal of attention both in the media and in research by policy makers and other interested groups. Although issues directly related to

marital dissolution, such as the removal of grounds for divorce and the recognition of one year of living apart as constituting marital breakdown, have been addressed in the literature, most research has been directed at the issues arising out of the marital breakdown. Much of that research has focused on maintenance and custody issues because they relate so directly to the welfare of children and the economic disparity between women and men.

This review and annotated bibliography of maintenance and custody literature was commissioned by the Department of Justice in July, 1987. Its purpose is to provide the Department of Justice, researchers in family law, and other interested readers with a review of the major policy issues regarding maintenance and custody, and an up-to-date reference to literature addressing those issues.

The bibliography is a revised and updated version of a similar work produced by the Department in 1985. Most of the entries to the 1985 version have been retained, but the annotations have been revised to allow them to conform to a new format and to ensure consistency in the treatment of all publications in the bibliography. The new version includes relevant books, articles and papers completed since 1985, and follows a revised format designed to enhance its usefulness as a reference tool.

Organization of the Bibliography

This bibliography contains annotations and bibliographic information for a wide range of books, articles and papers that provide information and analysis relevant to the development of maintenance and custody policies. In order to make it easier for

readers to find references of particular relevance to their areas of interest, the material has been organized under three separate subject headings: Custody Awards, Maintenance Awards, and Award Violation and Enforcement. While these topics are very much inter-related, their treatment in the literature and the sets of issues examined are generally discrete enough to make such a division useful and workable. Where a publication placed under one heading also contains substantial discussion relevant to one or both of the others, this is indicated in the annotation. In a small number of cases publications have been annotated under two or all three headings with the appropriate focus emphasized in each annotation.

Where applicable, notations are provided below the annotations to indicate that the article or book contains one or more of the following:

1. Empirical research

This notation means that the publication presents the results of original empirical research as a significant contribution to the work.

2. Case law review

This notation means that the publication includes a review and/or analysis of case law relevant to the topic under discussion as a significant contribution to the work. Reference to a few cases would not meet this criteria.

3. Historical review

This notation means that the publication includes a historical review and/or analysis as a significant contribution to the work.

4. Other family law issues examined

Where the publication includes significant discussion of family law issues other than the one being addressed in the annotation, this is indicated. If the publication is annotated in one or more other sections of the bibliography, the section heading and page numbers are provided.

An author index is provided at the end of the bibliography to assist readers in finding specific publications. It lists all primary and secondary authors with the name and page number of all publications included in the bibliography.

Selection of Materials

Publications in this bibliography were selected for inclusion on the basis of their primary focus being maintenance or custody, and on their relevance to the development of policy on maintenance and custody in Canada. Many articles and books that relate indirectly to maintenance and custody are not included in this selection. For example, there have been numerous studies of the psychological impact of divorce on children. Such studies

would only be considered for this bibliography if they related those psychological impacts to a discussion of policy options for custody and child support.

Emphasis for the selection was placed on Canadian literature, but publications from the U.S. and elsewhere were considered if they were based on research that could contribute to policy making in Canada. The selection process also favoured publications that reported the results of original empirical research, including analyses of relevant case law.

ANNOTATED BIBLIOGRAPHY

SECTION I - CUSTODY AWARDS

The awarding of custody establishes the legal and physical guardianship of children in families experiencing marital breakdown. Although most custody arrangements are settled out of court, the court must ratify these agreements and settle any disputes. Custody arrangements take a number of different forms-- sole custody, joint custody, split orders and the awarding of custody to a third party such as the state, or a close relative-- but most emphasis in the literature is placed on sole custody because of its prevalence, and joint custody because of its recent emergence within custody legislation.

Studies of custody examine the awarding of custody, including the judicial process and the factors contributing to the award, and the impact of custody decisions on parents and children. Behavioural scientists and social workers have generally focused on the psychological impacts of custody arrangements on the children (and less frequently the parents) of divorce, the role of mediation as an alternative to adversarial dispute settlement, and the post-divorce relationships among the parents and children. Father's rights groups speak to issues such as the negative effects of sole maternal custody on paternal access and more generally, child development, but there is as yet no scholarly literature on these issues. Research by sociologists has focused more on the economic and social welfare of divorcing parties, and the interpretation of the awarding of custody in

terms of broader social and economic structures. In particular, feminist scholars have analysed custody awards and their impact in relation to judicial and legislative assumptions about the role of women in society, and the overall economic position of women. Legal scholars have tended to contribute to this area through an emphasis on the interpretation of legislation and case law.

The main areas of attention regarding the awarding of custody are the lack of clear legislative guidelines and standards upon which to base award decisions, the courts' reliance on judicial discretion, and the factors that are considered by judges in the awarding of custody. The impacts of custody award decisions are examined primarily in the context of studies of post-divorce parenting. A third focus prevalent in the literature is the bias against women in the awarding of custody. The literature in these three areas is introduced below.

Judicial Discretion and Factors Influencing Awards

A frequent topic in the literature on custody awards is the courts' reliance on judicial discretion, and the absence of clear standards as to what constitutes the "best interests of the child" and the "fitness" of parents for custody. Reliance on judicial discretion is seen as resulting in decisions that reflect a particular judge's predispositions, rather than any legislative or general policy guidelines (Andrews, Gross). Further research is recommended with a view to developing policy guidelines that can be applied by the courts (Fraser).

Much has been written as to what factors should be considered by the courts in deciding custody disputes. Kram, Frank, Boyd,

Brophy and others examine the influence of such factors as parents' sexual practices, religious factors, conduct during marriage, the preferences of the child, separation of siblings, material advantages and other measures of parental fitness. The contribution of the behavioural sciences to decisions on the awarding of custody is the subject of some examination. In particular, some authors suggest that the psychological well-being of the child is often not taken sufficiently into account in both the awarding of custody and the process by which it is awarded, and that the courts should make better use of the behavioural sciences in determining the best interests of the child (Payne, Krell, Levine).

Some authors have also raised the issue of cultural background as a factor not taken sufficiently into account in the awarding of custody, and the importance of this factor in the application of the "best interests of the child" principle (Levine, Zemans).

Post-Divorce Parenting

The impact of custody awards is generally examined through studies of the positive and negative aspects of joint custody and sole custody. Disagreement as to the preferability of joint custody over sole custody often centres on the advisability of a presumption of joint custody in the law. Many authors agree that joint custody can have important advantages, such as providing increased contact between children and the parent who is not the primary physical custodian, and its tendency to result in less parental conflict and greater compliance with support orders than sole custody (Leonoff, Ryan, Schwartz, Folberg). However, some supporters of joint custody consider it viable only if it is agreed to by the parents without the coercion of the courts (Irving, Wallerstein and Kelly).

Those disagreeing with joint custody argue that its proponents ignore some important considerations: the increased amount of bargaining required under the arrangement, and hence the increased likelihood of parental conflict and the attendant negative impacts on childrens' post-divorce adjustment; the risk for some women and children of abuse by the former husband, particularly in cases where joint custody was accepted out of fear of losing a custody battle; the fact that child support awards are often lower under joint custody arrangements, while women still usually retain physical custody; and, the fact that the joint custody award in itself does not increase non-custodial parental contact with the child, nor control the quality of that contact (Brown, Krell, Lamb, Goldstein).

Women and Custody

Until the middle of the 19th Century fathers had undisputed legal rights to the custody of children. The subsequent application by the courts of the "tender years" doctrine and the emergence of the "best interests of the child" principle are commonly thought to have reversed the awarding of custody in favour of mothers. The tender years doctrine refers to the placement of young children (usually those under eight years of age) in the mother's guardianship because it was thought that young children were especially in need of maternal contact. The best interests of the child principle directs that consideration of the child's welfare, defined as his or her social, psychological, emotional, economic and physical needs, is to take precedence over all other factors. Some authors, however, have questioned whether mothers are favoured, pointing out that fathers are awarded custody more frequently than mothers in cases where custody is contested (Brown), and that the overall trend of awarding custody to

mothers merely ratifies the status quo of pre-divorce custody arrangements whether or not a formal agreement exists (Lamb and Weitzman).

Some studies have focused on the criteria by which mothers are judged as to their "fitness" for custody. Boyd examines custody decisions involving working mothers and concludes that they fare poorly in custody disputes because they do not meet fitness criteria of motherhood, which are based on the stereotype of the full-time mother, nor the fitness criteria of economic provider, which are based on standards suited to male wages and male job opportunities. Others have focused on the treatment of lesbian mothers in order to illustrate the criteria by which all mothers are judged as to their fitness--the degree to which they adhere to a set of stereotypes based on the traditional role of women as wives and mothers in nuclear families (Arnup, Gross). Brophy examines the application of the principle of the "best interests of the child", and concludes that it is applied with regard to the mother's lifestyle rather than the mother-child relationship, and therefore acts as a mechanism to control female sexuality. These articles on women and custody, while focused on specific aspects of custody decisions, contribute to a larger debate on the discrimination against women embodied in family law.

We have introduced the major issues raised in the literature on custody awards. These and other issues are discussed in more detail in the annotations below.

Custody Awards - Annotations

Andrews, H.T.G. and
Gelsomino, Pasquale
1983

"The Legal Representation of
Children in Custody and Protection
Proceedings: A Comparative View",
in Family Law - Dimensions of
Justice, Abella, Rosalie S. and
L'Heureux-Dubé, Claire (eds.)
Toronto: Butterworths, pp.241-268.

This article compares legislation in Canada, the United States and Australia dealing with the role of legal counsel as advocates for children in custody and protection proceedings. It is critical of the wide reliance on judicial discretion, and argues for the increased application of standards. Discussion includes the definition of childrens' rights and interests and the concept of "the best interests of the child", which the authors define in practical terms as being whatever a presiding judge decides it is. Also examined are the terms "official guardian", "amicus curiae" and "guardian ad litem".

Arnup, Kathy
1984

"Lesbian Mothers and Child Custody", Atkinson Review of Canadian Studies, Vol.1 (2),
Downsview, Ontario: Atkinson College, York University, pp.35-40.

This article considers five legal precedents regarding lesbian custody in Canada. The author concludes that lesbian mothers are denied custody because of their challenge of the structures of heterosexuality and the nuclear family, rather than their sexual orientation. Paternal custody awards in these cases exemplify the standards of "fitness" applied to all women: the adherence to and transmission of societal values through the assumption of primary responsibility for child care and unpaid domestic labour.

This analysis is used to help understand the position of all women under current family law, and more generally, the interrelationship of law and society.

*** Case law review**

Boyd, Susan B.
(forthcoming)

"Child Custody, Ideologies and
Female Employment", Canadian
Journal of Women and the Law,
Ottawa: National Association of
Women and the Law.

This paper comprises an analysis of the effects of the ideologies of motherhood and equality on child custody decisions. The interaction of these two ideologies is seen to disadvantage women in that the application of assumptions about the proper role of mothers is at odds with that regarding the equality of the sexes.

At the same time as womens' custody petitions are measured against the standard of mother as primary care giver, women are evaluated relative to their husbands in their capacity to provide a stable economic climate, regardless of their work history and the inferior job market for women. This is further complicated by the tendency to magnify past child care contributions of fathers, or to overestimate the relevance of fathers' proposals for future child care arrangements, regardless of their past performance of these duties. The ideologies of motherhood and equality work together to undervalue the child care activities and the economic capabilities of employed mothers.

The arguments presented in this paper are based on a review of articles on the ideology of motherhood and applications of the ideology of equality, and a case analysis of Canadian custody decisions regarding women working or otherwise engaged outside the home. Related arguments and additional case analyses are presented in Susan B. Boyd, "Child Custody and Working Mothers", forthcoming in Equality and Judicial Neutrality, Mahoney, K. and Martin, S. (eds.) Calgary: Carswells.

* Case law review

Brophy, Julia
1985

"Child care and the growth of power: the status of mothers in child custody disputes", Women-in-Law: explorations in law, family and sexuality, Brophy, Julia and Smart, Carol (eds.) Boston: Routledge & Kegan Paul, pp.97-116.

This article presents a theoretical discussion of what is identified as the major principle informing custody awards--the welfare of the child--and its use as a mechanism of social control over female sexuality. It is argued that emphasis on the welfare of the child is frequently operationalized by an examination of the "fitness" of mothers, which in effect places the focus not on the mother-child relationship, but on the woman's sexual behaviour, as exemplified in lesbian custody cases. The author considers that the tendency to disregard meaningful consideration of children's needs is evident as well in the application of joint custody, where fathers attain legal decision making rights regarding their children without any requirement that they take on the concomitant level of responsibility for their day-to-day care.

She points out that while it may appear desirable to enshrine the principle of equality in custody legislation as some authors suggest that joint custody does, the reality is that child-rearing is still very much rooted in the sexual division of labour in society. As long as this is the case mothers are likely to bear most of the burden of child-rearing, within or outside the marriage.

Brown, Susan
1984

**"Changes in Laws Governing
Divorce"**, Journal of Family Issues,
Vol.5 (2), Beverly Hills, Calif.:
Sage Publications, pp.200-223.

This article provides a broad examination of joint custody. It draws distinctions between joint legal custody and joint physical custody, and between voluntary and involuntary arrangements, and attempts to examine the empirical basis of claims regarding the benefits of joint custody. Its major conclusion is that there is very little evidence supporting claims regarding the joint parenting benefits to children of joint legal custody, particularly when it is not entered into voluntarily. It suggests that joint legal custody may not in fact increase the level of father-child contact, or provide the kind of contact needed by children, since in most joint legal custody arrangements physical custody resides with the mother, mirroring arrangements between most married couples. The author finds that there is very little empirical support for the contention that joint legal custody reduces the acrimony surrounding custody arrangements, and that the relitigation may be even higher than that associated with sole custody. The article concludes by proffering some recommendations regarding alternatives to joint custody.

*** Historical analysis**

Folberg, Jay
1983

"Joint Custody", in Family Law-Dimensions of Justice, Abella, Rosalie S. and L'Heureux-Dubé, Claire (eds.) Toronto: Butterworths, pp.185-198.

This article addresses a range of issues related to joint custody and concludes that, in comparison with the typical situation before divorce and to sole custody after divorce, joint custody presents real advantages. The author examines the joint custody legislation in California and Michigan, in particular the requirement to consider joint custody as an option.

He discusses the issues of physical versus legal custody, support, tax exemptions and custody enforcement procedures, and points out the need for clearer standards as to joint responsibility for decisions regarding childrens' education, religion, medical care, permission for early marriage, entry into the military, college expenses and insurance coverage. He suggests that counselling, mediation and arbitration efforts for dispute settlement are a positive approach.

*** Other family law issues examined: Custody enforcement**

Fraser, E. Murray
1983

"The Variation of Custody Orders",
in Family Law - Dimensions of
Justice, Abella, Rosalie S. and
L'Heureux-Dubé, Claire (eds.)
Toronto: Butterworths, pp.199-212.

This article focuses on the paucity of legislative direction, both federally and provincially, in the matter of variation of custody orders. The author notes that in all jurisdictions the principle of "best interests of the child" is applied, but reviews a number of cases to illustrate that judicial decisions in this area reflect the confusion resulting from the lack of direction. He points out the need for statistical data and research to evaluate the current situation and to lead toward policy development.

*** Case law review**

Furstenberg, Frank F. Jr.
and Winqvist Nord,
Christine
1984

"Parenting Apart: Patterns of
Childrearing After Marital
Disruption", Journal of Marriage
and the Family, Vol.47, Menasha,
Wis.: National Council on Family
Relations, pp.893-904.

This paper presents information on parenting practices in single parent and step-parent families in the United States in 1981. It was found that co-parenting is more myth than reality--contact between the non-resident parent and the child is infrequent, and where it does occur is primarily a social, rather than an instrumental exchange. However, relatively infrequent contact

between the child and the non-resident parent was found to engender the same degree of closeness in the relationship as frequent contact.

Three quarters of the sample population used for the study were from divorced families. Major areas of investigation were childrens' relations with the non-resident parent in relation to the number of years since the separation and the gender of the parent, child care activities and the quality of parent-child relations with resident and non-resident parents, relations between parents, and the impact of contact between the child and the non-resident parent on the newly-formed family.

*** Empirical research**

Goldstein, Joseph
1983

"In Whose Best Interest?", in
Family Law - Dimensions of Justice,
Abella, Rosalie S. and L'Heureux-
Dubé, Claire (eds.) Toronto:
Butterworths, pp.119-128.

The main argument in this article is that joint custody is not in the "best interests of the child" and that unconditional custody awards should be applied in conjunction with informed advice and mediation to assist separating parents in reaching uncoerced agreement. The article relies heavily on the book Beyond the Best Interests of the Child, which Goldstein co-authored with Anna Freud and Albert J. Solnit.

The author argues that where disagreement exists in custody and access matters, both parents become unfit for their child if they are forced to cooperate. Enforcement or the threat of enforcement become an obstacle to the new arrangement, and the child suffers the consequences.

Gross, Wendy L.
1986

"Judging the Best Interests of the Child: Child Custody and the Homosexual Parent", Canadian Journal of Women and the Law, Vol.1, Ottawa: National Association of Women and the Law, pp.505-531.

This article examines rulings on the custody applications of homosexual (primarily lesbian) parents. It is found that not only the denial, but also the awarding of custody to homosexual parents is based on the inappropriate application of prejudices to the effect that such arrangements are rarely, and indeed only in exceptional circumstances, in the best interests of the child. The focus of the analysis is on judicial failure to apply the nexus requirement--that "judges weigh all and only those factors that have been statutorily mandated or factually proven to impact on the welfare of the particular child."

The author categorizes prejudices applied in the place of evidence as falling into four main areas: homosexuality as mental illness, peer ridicule of children, improper sex role development of children, and heterosexual parents as "per se" better parents. Judicial rulings and relevant studies are examined for each category.

* Case law review

Irving, Howard H.,
Benjamin, Michael
and Trocme, Nicholas
1984

"Shared Parenting: An Empirical
Analysis Utilizing a Large Canadian
Database", Family Process, Vol.23,
New York: Nathan W. Ackerman Family
Institute, pp.561-569.

This study supplies data on a respondent-selected sample (201 respondents) of parents involved in joint-custody arrangements. Its major finding--that shared parenting is a viable custody option, but only for some parents--is supplemented by a number of related findings. Shared parenting is found to be as workable for low-income parents as for high-income parents, and an option that legal personnel should foster due to the related low relitigation rate and positive effect on compliance with financial agreements. Shared parenting is found to be dependent on the presence of other identifiable factors such as commitment to parenting.

Data is derived from a 114-item questionnaire of both open-ended and closed-ended questions on six major areas: socio-demographic information, duration of and circumstances surrounding the marital separation, the reasons for selecting shared parenting, the distribution of responsibility, the quality of the relationship between parents, and satisfaction with shared parenting. In Irving, Howard H., and Benjamin, Michael, "Shared Parenting in Canada: Questions, Answers and Implications", Canadian Family Law Quarterly, Vol.1 (1), 1986:79-103, this data is presented in less detail, and is used to refute current statements regarding the limitations of joint-custody.

* Empirical research

Joyal-Poupart, Renée
1985

"Joint Custody", in Family Law in Canada: New Directions, Sloss, Elizabeth (ed.) Ottawa: Canadian Advisory Council on the Status of Women, pp.107-126.

This paper discusses positive and negative aspects of joint custody, and concludes that legislation should not entrench joint custody as a standard custodial arrangement, but rather should leave the choice of custody open. It recommends that any new legislative provisions regarding custody should facilitate access to both parents without legalistic constraints, and that more emphasis should be placed on the overall functioning of the divorce and custody process than on specific methods.

The author examines joint custody in relation to various principles that have been applied, in the past and more recently, to custody decisions, including the early standard of awarding custody to the father, the "tender years" doctrine, the "best interests of the child", and the "split-order" arrangement. Joint custody is viewed as feasible under ideal conditions, but most likely to result in economic and other disadvantages for women.

Kram, Shirley Wohl
and **Frank, Neil A. (eds.)**
1982

The Law of Child Custody: Development of the Substantive Law,
Lexington, Mass.: Lexington Books,
176 pages.

This book presents a review and commentary on the development of U.S. law regarding child custody. It examines case law, primarily in New York State but also in other states, as a basis for

discussion of a range of child custody issues and legal principles.

The historical section traces the evolution of judicial rulings, from those in the 1800s based on the prima facie right of the father to custody of his children, through the increasing application of the "tender years" doctrine beginning in the early 1900s, to the recent trend toward the application of the "best interests of the child" doctrine.

The authors then examine current standards for custody determination, and the effect of such factors as parents' sexual practices, religious practices, conduct during marriage, preference of the child, separation of siblings, material advantages and other measures of parental fitness. Later chapters deal with illegitimacy, custody disputes between natural parents and third parties, visitation and the effect of counsel fees on custody dispute results.

*** Case law review**

*** Historical perspective**

Krell, Robert
1983

"The Emotional Impact on Children of Divorce and Custody Disputes",
in Family Law - Dimensions of Justice, Abella, Rosalie S. and L'Heureux-Dubé, Claire (eds.)
Toronto: Butterworths.

This article addresses legal issues in the awarding of child custody from the perspective of the psychiatric profession, and

concludes that the legal profession can gain much from taking into account the emotional needs of children in its custody actions. The author discusses the developmental stages of children, pointing out that what is in a child's best interests one day may not extend to the next, and that the tender years doctrine is helpful only if the mother is the primary psychological parent, as opposed to the father, grandmother or other care giver.

Krell argues for a short time frame for custody decision making to lessen any potential emotional damage of the child. He presents cases from his professional experience to illustrate the hazards of joint custody, but at the same time argues against the position taken in Beyond the Best Interest of the Child (see Goldstein, p.18) that access should be the prerogative of the custodial parent. Rather, Krell recommends a provision for access to the extent necessary to maintain for the child the maximum opportunity for an enriching relationship with the non-custodial parent.

Lamb, Louise
1984

"Involuntary Joint Custody",
Herizons, Jan./Feb., Winnipeg:
Manitoba Women's Newspaper, pp.20-
23, 31.

Citing American and Canadian data on joint custody, this article comments on relevant aspects of the new divorce act in Canada (The Divorce Act, 1985). It states that favourable arguments for joint custody are based on misconceptions, and it examines these misconceptions. It also refers to data on the negative impact of the "friendly parent" rule. It concludes that involuntary joint

custody does not serve the interests of women or children in that it decreases child maintenance and increases the exposure of women and children to abusive relationships.

The positions taken by fathers' rights groups and feminists are examined, and the empirical basis of arguments for and against involuntary joint custody is considered. This article is based on a brief presented to the Standing Committee on Justice and Legal Affairs by the author on behalf of The National Association of Women and the Law.

Leonoff, Arthur
1982

Literature Review: Issues
Concerning Custody, Ottawa:
Department of Justice, Canada.

This paper provides a broad overview of custody issues and their treatment in the courts, and concludes that custody decisions reflect old societal values that may not be relevant in the present circumstances. The author argues in favour of joint custody, and suggests measures for its implementation that would address some of the difficulties and enhance the advantages.

The paper includes a review of the various custody solutions available to the courts, and suggests that the legal goal should not be to eliminate controversy between divorced adults but to apply pressure on parents to continue to meet their obligations toward their children. Joint custody is seen as the best solution because children require a continuing closeness with both parents, rather than just one "psychological parent".

Levine, Saul V.
1983

"The Role of the Mental Health Expert Witness in Family Law Disputes", in Family Law-Dimensions of Justice, Abella, Rosalie S. and L'Heureux-Dubé, Claire (eds.) Toronto: Butterworths, pp. 129-136.

This article uses multiculturalism as a context in which to examine the role of the psychiatric specialist as expert witness in child custody disputes. It draws attention to the need to consider cultural environment and community and cultural standards in assessing the impartiality, and the value, of expert testimony.

The author reviews child custody cases involving issues such as freedom of religion, mixed marriages and community standards in child rearing and education to illustrate the need for a greater understanding by the legal fraternity as to what the expert brings to the role of witness. He discusses some approaches used for the Child Custody Project operating under the Division of Child Psychiatry of the University of Toronto.

Luepnitz, Deborah Anna
1986

"A Comparison of Maternal, Paternal and Joint Custody: Understanding the Varieties of Post-Divorce Family Life", Journal of Divorce, Vol.9 (3), New York: Haworth Press, pp.1-12.

Leupnitz has collected interview and other data on 43 families living under various custody arrangements (16 maternal custody, 16 paternal custody and 11 joint custody). The main findings are

that the proportion of children who are maladjusted as a result of divorce is low (11%), and that adjustment as measured by Piers-Harris scores and parental evaluations is found to be independent of custody type and negatively related to continuing parental conflict.

Joint custody and single-parent custody are evaluated as having mutually exclusive advantages. Those of joint custody are thought to be the increasing contact with both parents, the lesser amount of relitigation and general conflict between parents, the regularity of child support payments, and the sharing of child care. Sole custody is viewed as preferable in aiding the protection of abused wives, increasing mobility and therefore life chances, and facilitating remarriages. The findings of this study are compared with those of Wallerstein and Kelly and differences are explained in terms of sampling methods.

*** Empirical research**

Mayrand, Albert
1983

**"The Influence of Spousal Conduct
on the Custody of Children", Family
Law - Dimensions of Justice,
Abella, Rosalie S. and L'Heureux-
Dubé, Claire (eds.) Toronto:
Butterworths, pp. 159-173.**

This article focuses on judicial consideration of spousal conduct in the awarding of custody orders. It concludes that the welfare of the child is the most important factor influencing custody decisions, and that spousal conduct is one factor among many taken into account in the determination of the best interests of the child.

Most of the article is given to an analysis of the ways in which spousal conduct may be seen to influence the child's best interests. Statutes such as Quebec's civil code and the Divorce Act are reviewed, and specific cases are drawn upon to illustrate how spousal conduct influences custody decisions. The relevance of spousal conduct is explained by a review of the timing of "misconduct" (future conduct is considered more important than past action), the degree to which such conduct is directed toward the children (as opposed to that primarily concerning the spouse) and, the weight or impact of "misconduct" on the children. Some detailed discussion of adultery, concubinage, communal living and homosexuality is presented.

Payne, Julien D. and
Kallish, Kenneth L.
1981

"A Behavioural Science and Legal
Analysis of Access to the Child
in the Post-Separation/Divorce
Family", Ottawa Law Review, Vol.13
(2), University of Ottawa, p.215.

This article examines the interdependent roles of the behavioural sciences and the judiciary in determining appropriate solutions to custody disputes. Its overall conclusion is that the adversarial legal response to divorce is inadequate because it fails to resolve hostilities between parents, fostering a "winners and losers" attitude, with the child as a weapon or prize, rather than encouraging effective post-separation/divorce parenting. In particular, the authors point to the unsatisfactory use by the judiciary of the behavioural sciences in access disputes.

The article outlines some of the concerns raised and conclusions reached by behavioural scientists regarding children of divorced parents. It illustrates the limitations of attempts by the

judiciary to address these concerns adequately. The authors suggest that the nature of our legal system invites misuse or insufficient use of the expertise of behavioural scientists, and that ultimately the courts should have at their disposal a non-partisan interdisciplinary diagnostic service to promote the consideration of all relevant information, and to reduce the influence of partisan control over expert evidence.

Ryan, Judith P.
1986

"Joint Custody in Canada: Time for a Second Look", in Childrens' Rights in the Practice of Family Law, Landau, Barbara (ed.), Toronto: Carswell, pp.186-210.

This article provides a brief overview of laws and research on joint custody. It views joint custody as the preferred alternative over sole custody, suggesting that it is more in keeping with the best interests of the child.

The article reviews American and Canadian legislation and some joint custody cases. It also outlines a critique of empirical research on joint custody and, relying heavily on research results previously critiqued, discusses the benefits afforded parents and children by joint custody. Recommendations for improvements in methods currently used to study joint custody and areas in need of further research are reviewed. Legal solutions such as more interim and provisional orders for joint custody and parental referrals to mediation by lawyers and judges are encouraged.

Schwartz, Sheila F. G.
1984

"Toward a Presumption of Joint Custody", Family Law Quarterly, Vol. 18 (2), Chicago: Section of the Family Law American Bar Association, pp.225-246.

On the basis of a literature review of articles on custody and observations made in her capacity as a clinical social worker, Schwartz examines the benefits of joint custody and the dysfunctions of sole custody on both children and parents. Joint custody is fully endorsed as an arrangement which allows and encourages parents to act responsibly in their roles as parents and more generally in their divorce proceedings.

More specifically, the paper builds an argument favouring joint custody by examining the psychological demerits of sole custody and the personal developmental advantages gained by adults and children involved in joint custody. This discussion is used to set the framework for a proposal that the courts establish a presumption of joint custody.

Wallerstein, Judith S.
and Kelly, Joan B.
1980

Surviving the Breakup: How Children and Parents Cope with Divorce, New York: Basic Books, 341 pages.

This book examines the psychological effects of various custodial arrangements on children and parents in divorced families. Research on 60 divorced families over a six-year period indicates the centrality of both parents to the psychological welfare of children, and the importance to both parents of a continuing

relationship with their children. The authors take issue with the thesis presented in Beyond the Best Interests of the Child (see Goldstein, p.18), arguing that the designation of one parent as the psychological parent can be devastating to both the child and the non-custodial parent. They suggest that in cases where both parents are in agreement on child-related matters joint custody may be the preferable legal structure to employ. In any case, post-divorce custody arrangements should enable each parent to be responsible for and concerned with the well-being of their children.

*** Empirical research**

Weitzman, Lenore J.
1985

The Divorce Revolution, New
York: The Free Press, 504 pages.

This book is primarily given to an analysis of the economic aspects of divorce. Chapter 8 examines custody awards in California over three regimes: maternal preference, best interests of the child, and joint custody presumption. Weitzman concludes that little change has taken place in de facto custody arrangements--under all three types of custody law, mothers provide the majority of day-to-day child care. Analysis of judicial, attorney and divorcing parent attitudes toward custody shows this allocation of custody to be based on the preferences of divorcing men and women.

The meaning and incidence of both joint legal custody and joint physical custody are examined, as are the implications of these custody arrangements.

*** Empirical research**

- * Other family law issues examined: Maintenance awards (see page 58); Award violation and enforcement (see page 87); General family law; Property division.**

**Zemans, Frederick H.
1983**

"Cultural Diversity in Custody Disputes", in Family Law - Dimensions of Justice, Abella, Rosalie S. and L'Heureux-Dube, Claire (eds.) Toronto: Butterworths, pp.137-158.

Zemans argues in this article that stability and continuity in childrens' lifestyles are crucial to their development, and that until the principle of the "best interests of the child" is widely accepted by parents there will be a need for judicial intervention on behalf of childrens' rights. That being the case, the judiciary must be able to balance competing cultural values in the awarding of custody. He recommends that more complete cultural background information be compiled and disclosed in order to identify community standards, and that these standards be considered as relevant and important factors in custody disputes.

SECTION II - MAINTENANCE AWARDS

Maintenance awards are financial payments designated by the courts to be paid by one spouse of a marriage for the support of the other spouse and/or any dependent children. These payments are separate from any division of marital property, although maintenance award amounts may be influenced by the assets available to divorcing or separating parties. Studies of maintenance awards examine the policies, judicial practices and specific factors affecting the awards themselves, as well as the amounts awarded and the impact of the size of maintenance awards on the relative economic status of partners after separation or divorce.

The Awarding of Maintenance

In general, analysts view maintenance award policy as being vague and insufficient, providing little guidance as to the intended objectives of spousal and child support, and the appropriate factors to take into account in the setting of awards (Burtch, Pitcher-LaPrairie and Wachtel; Connell). In the absence of comprehensive policy guidelines for the awarding of maintenance, awards are set largely at the discretion of individual judges.

Although many court decisions are accompanied by explanations as to the rationales applied, these rationales are varied and strongly based on particular circumstances and individual judges' attitudes. The factors upon which a decision is based often relate to the judges' presumptions regarding the roles of men and women and are, therefore, often not useful as guidelines for subsequent cases. Judicial discretion is, by definition, the antithesis of the standardization of judgments. Authors such as Connell and Fodden point to the courts' reliance on judicial discretion as the primary cause of the lack of uniformity and objectivity in award decisions. Others look at the few standards that are currently applied, arguing that they are not sufficient to ensure consistency, and that they mask rather than diminish reliance on judicial discretion (Giampetro).

Although much attention has been focused on the variability of awards, many practitioners and researchers in the field of family law do find patterns in the awarding of maintenance through the examination of factors influencing maintenance awards. For example, cases where either or both spouses enter into new relationships (cohabitation or remarriage) have come under scrutiny. While analyses and interpretations differ in some cases, there is agreement among a number of authors that new relationships on the part of former wives usually lead to a reduction or termination by the courts of spousal support, and frequently negatively affect child support (Weisman, Wilson, Alderson). The effect of new relationships on the part of former husbands appears less uniform, often depending on mitigating circumstances such as the nature of the new relationship (marriage or cohabitation), the existence of new dependents, and the husband's ability to pay.

Examination of the factors influencing the allocation of support orders has also revealed that judicial selection and interpretation of some of those factors often conflicts with their consideration of other factors, and with articulated public policies on maintenance awards. For example, Monteith, Dobash and Wasoff's research suggests that factors used to determine custody awards often contradict or are at odds with those used to determine child support, and Alderson finds that judicial reliance on a concept of female dependency in setting spousal support orders contradicts stated policy guidelines regarding the equality of the sexes.

The Impact of the Maintenance Award

Although former spouses bear an equal obligation for each other's economic support and that of their children, maintenance awards usually take the form of income transfers from men to women and children. It has been recognized in recent years that there is an extremely high incidence of poverty among unattached women and female-headed households, and that large numbers of these people are in receipt of welfare assistance. Studies examining the attributes of impoverished divorced persons reveal that the presence of dependents, labour force history and economic status during marriage are all significant inter-related factors, and that gender is a strong determining factor independent of those others. Reflecting these findings as well as the heightened profile of feminist political action against the role stereotyping of, and economic discrimination against, women in the family and in society in general, most recent studies on the impact of maintenance awards focus on the low economic status of women who are awarded spousal and child support.

Studies on child support indicate that while at least some payment is usually awarded to the custodial parent, the amounts awarded are generally insufficient to cover the costs of raising the child, even disregarding the frequency with which awards are not honoured by former husbands, and that they certainly do not cover in-kind costs such as the provision by the mother of child care services (Weitzman, Wishik). Burtch, Pitcher-LaPrairie and Wachtel attribute the insufficiency of child support awards in part to the lack of appropriate standards, and suggest that there may be a link between the amounts of support awards and cut-off levels for reductions in welfare payments. Average spousal support awards have also been found to be inadequate to meet day-to-day needs, and inequitable in valuing a wife's past and continuing commitments to the family (Dixon and Weitzman, Zeigler).

A number of authors have attempted to contextualize data on spousal and child support awards by contrasting the economic status of the families of divorced men and women. All measures of economic status show a markedly higher standard of living for men (Corcoran, Day and Bahr, Weitzman, Wishik, Alderson).

Recommendations to address disparities through maintenance award policy generally focus on the need for higher levels of awards and improved enforcement of maintenance orders. Nichols-Casebolt notes that proposals advocating this approach must consider the potential economic impact on non-custodial families; payments made by a father to alleviate the poverty of his former wife and children may have the effect of impoverishing him. She suggests that where the reduction of state welfare costs is a goal of maintenance award policy reform, such a result would be counter productive.

Finally, some emphasis has been placed in the literature on expanding maintenance policy to complement policies such as social welfare legislation (Payne), and to cover neglected issues such as the division of pension rights between spouses, the indexing of awards to inflation rates, and the tax implications of maintenance awards (Hahlo, Cook, Schultz).

We have considered the issues raised in the maintenance literature with reference to the two general topics of the awarding of maintenance and the impacts of award judgments. It should be noted, however, that the two sets of issues are closely inter-related, and that many of the articles annotated in the following pages address issues relating to both these elements.

Maintenance Awards - Annotations

Alderson, Gina A.
1986

Rights v. Needs: Dependency and
Inequality in Divorce Policy,
Unpublished thesis - Master of
Arts, Carleton University.

This paper examines the effect of the concept of female dependency on spousal support awards. The primary focus is the effect of new relationships on maintenance awards. In an analysis of 64 cases viewed as legal precedents regarding the awarding of spousal support, where either or both spouses were involved in new relationships, the author found that new relationships were held by the courts to create new economic responsibilities for men and new sources of income for women.

Alderson concludes that the belief that women are dependent on men, rather than equal partners in marriage, undervalues women's non-financial contributions to the family and results in support awards that are discriminatory against women. Custody and child support, property division and, more generally, the development of laws governing married and divorced women, are also examined in this light. Discrimination in the awarding of the economic.

assets of marriage, together with that prevalent in the paid labour force, are viewed as major contributors to the low economic status of divorced women.

* Case law review

* Historical review

* Other family law issues examined: Custody awards; Property division; General family law

Alderson, Gina A.
1983

The Swedish System of Public Maintenance Advance: A Feasible Model for Canada?, a draft study paper for the Department of Justice, Canada.

This paper describes the Swedish approach to the awarding and enforcement of child maintenance payments, and draws comparisons with the Canadian approach. The author identifies the ideological and practical difficulties involved in adopting the Swedish system in Canada, but suggests that alternatives to the present system in Canada should be considered.

The Swedish system is based on the joint responsibility of parents for their children according to the childrens' needs and the parents' resources, and on state responsibility to set cost standards, augment parental resources where necessary to meet those standards, and ensure that appropriate payments are provided to the parents responsible for the on-going care of the children. Alderson presents the various formulae used by the system to calculate payments, and describes state programmes to

ensure consistent monthly payments and to recover defaulted payments through wage garnishment.

This is contrasted with the Canadian system which is based more heavily on judicial discretion and the belief that formulaic guidelines for maintenance awards are too inflexible, as well as an aversion to state intervention and the attendant bureaucracy.

Burtch, Brian,
Pitcher-LaPrairie, Carol
and Wachtel, Andy
1980

"Issues in the Determination and Enforcement of Child Support Arrears", Canadian Journal of Family Law, Vol.3 (1), The Carswell Company Ltd., pp.5-26.

The argument presented in this paper is that public policy in Canada is ambiguous about the functions that child support orders serve, and that as a result the courts are left without standards on which to base their support award judgments. The authors suggest that if the intent of child support orders is to ensure that the financial needs of children are met by their parents to the extent possible, one would expect the average amount of support to reflect the average cost of raising a child. They cite statistics to illustrate that support orders fall well short of the cost of child rearing, and suggest that award levels may be related to levels of earnings above which welfare recipients' benefits are reduced.

The paper notes the fact that little research has been conducted as to how courts determine support amounts, and suggests in particular that judicial discretion deserves scrutiny. It refers to the "one-third rule of thumb" guideline used by some U.S.

states, and submits that a more precise formula would be more appropriate and no more complicated than calculations used at present as a guide to division of property.

* Other family law issues examined: Maintenance enforcement (see page 70).

Carter, Mary Y.
1983

"Interim Alimony or Maintenance as Corollary Relief Under Section 10 of the Divorce Act", in Family Law - Dimensions of Justice, Abella, Rosalie S. and L'Heureux-Dubé, Claire (eds.) Toronto: Butterworths, pp. 77-89.

This article describes interim alimony, focusing primarily on its purpose and the criteria governing the awarding of alimony and amounts awarded. The author concludes that the basic principles set out in the Divorce Act direct that alimony be based on the means and needs of each spouse, and that these principles contrast with those arising out of ecclesiastical law whereby interim alimony was to provide maintenance at a modest subsistence level. The amount awarded is currently set with reference to the conduct of each spouse, the existence of a marriage or a de facto marriage, and the means and needs of both parties (viewed in terms of the standard of living enjoyed during the marriage).

Discussion of all issues is based on principles set out in the Divorce Act, with reference to judgements in case law and opinions based on the author's experience as a judge in the Unified Family Court, Saskatoon, Saskatchewan.

Connell, Mary Jane
1981-1982

"Property Division and Alimony Awards: A Survey of Statutory Limitations on Judicial Discretion", Fordham Law Review, Vol. 50 (1), New York pp.415-449.

Connell reviews legislation and judicial practice regarding property division and alimony awards in the United States, and makes recommendations as to the factors that are appropriate for consideration by the courts in making their decisions. She concludes that the judiciary should be provided with a list of factors to be considered in making awards, that complete financial disclosure should be required for both parties, and that written findings of fact and conclusions of law should be filed with every judgement. Implementation of these recommendations would result in more uniformity of decisions, more objective decisions by the lower courts, and a stronger basis for appellate courts to determine if the lower courts have abused judicial discretion.

If alimony is to be a rehabilitative tool, Connell argues, then the courts should consider only need, ability to pay, and the resultant tax consequences, with provision for unusual circumstances. Only 17 of 28 factors currently applied in the U.S. relate to these considerations.

Reliance on judicial discretion is viewed as an important reason for the variation in factors applied to alimony decisions among the U.S. states. While appellate courts can act as a check against the abuse of judicial discretion through their mandate to review the decisions of lower courts, their effectiveness in this regard is undermined by the fact that statutes generally do not specify what factors should influence decisions, and because trial records do not provide adequate information to allow for an assessment of the use of judicial discretion.

* Other family law issues examined: Property division.

Cook, Gail C.A.
1983

"Economic Issues in Marriage Break-down", in Family Law - Dimensions of Justice, Abella, Rosalie S. and L'Heureux-Dubé, Claire (eds.)
Toronto: Butterworths, pp.19-26.

The author identifies a number of economic dimensions that can affect the appropriateness of maintenance awards, and argues that these economic dimensions should be taken into account by the courts and communicated more effectively to divorcing parties.

Cook identifies the costly and inefficient procedures for upward variance of awards to compensate for inflation, and the injustices incurred by those who, for various reasons, do not apply for variance. She recommends that an inflation index be applied to maintenance awards, with a one-year lag period to adjust for a lag in wage increases. The article also includes discussion of the complexities of savings, pensions, deferred compensations and tax implications in relation to maintenance awards, and two approaches to assist lawyers and courts in working toward maintenance award decisions that are based on complete information and understood by both divorcing parties.

Corcoran, Mary
1979

"The Economic Consequences of Marital Dissolution for Women in the Middle Years", Sex Roles, Vol.5 (3), Institute of Social Research, University of Michigan, pp.343-353.

This paper presents data from a U.S. national sample of 1,050 women between the ages of 35 and 54, documenting changes in their marital and economic status between 1967 and 1975. The data show that the middle-aged women no longer married to their original

spouses had experienced a 40% drop in real income during that period. The paper also includes data on the significance of various sources of income, such as employment income, transfer payments, maintenance and help from family members, on those women's total income.

*** Empirical research**

Day, Randall D. and
Bahr, Stephen J.
1986

"Income Changes Following Divorce
and Remarriage", Journal of
Divorce, Vol.9 (3), New York:
Haworth Press, pp.75-87.

This article presents data comparing the per capita family incomes of men and women who were married, or married and divorced, during the course of the study (divorced persons who remarried were considered separately from those who did not). It was found that women experience a substantial decrease in total family income following divorce while men's income is greatly increased. This difference is shown not to be entirely explained by the presence of dependents, since it was found that dependents have a more negative effect on the per capita incomes of female-headed families than male-headed.

The data were drawn from a national sample of males and females representative of the population in every state of the U.S., with some oversampling of blacks to ensure reliable data on that group. Men and women aged 14 to 24 were selected between 1966 and 1968. They were interviewed yearly for the first five years of

the study and biannually for the remaining five years. Per capita family income was indexed for inflation and analysed over time controlling for race, education and age.

*** Empirical research**

Dixon, Ruth B. and
Weitzman, Lenore J.
1980

"Evaluating the Impact of No-Fault Divorce in California",
Family Relations, Vol.29 (3),
pp.297-307.

Dixon and Weitzman analyse samples of divorce decrees to identify changes, intended and unintended, in the patterns of requests and settlements regarding alimony, property division and child custody after the adoption of the no-fault divorce law in California in 1970. The samples are taken from 500 divorce decrees drawn from Los Angeles and San Francisco counties in 1968 and 1972 and from Los Angeles in 1977. They suggest that while the process of divorce under the no-fault law is less litigious and perhaps less acrimonious than under the previous laws, implementation of the new law raises some interesting questions about equity in spousal support and property settlement when no one is nominally at fault. The authors conclude that while the new law has potential for equity, realization of this goal has yet to occur.

*** Empirical research**

*** Other family law issues examined: Child custody; Property division.**

Erickson, Nancy S.
1978

"Spousal Support Toward the
Realization of Educational Goals:
How the Law Can Ensure
Reciprocity", Wisconsin Law Review,
Vol.4, pp.947-982.

Under current U.S. legislation maintenance awards are not a matter of entitlement; they can be reduced or terminated, even retroactively, on the basis of remarriage, conduct, ability to pay and other factors. This article examines the inequity this causes with regard to the compensation of a divorced wife who has supported her husband through his education. The author recommends that an "education expenses" entitlement remedy be authorized by a new section of the Uniform Marriage and Divorce Act and enacted by state legislatures. Also recommended is an amendment to the Bankruptcy Act that would make non-dischargeable any award for education expenses regardless of the label attached to the award by the state court.

Fodden, Simon R.
1980

"Poor Relations: The Effect of
Second Families on Child Support",
Canadian Journal of Family Law,
Vol.3, Agincourt, Ontario:
Carswell, pp.207-218.

Fodden has undertaken an analysis of 22 Canadian cases regarding child support and remarriage. Although no useful general standards guiding judicial discretion were uncovered, some factors which appear to consistently receive more weight than others were identified. Remarriage on the part of a former wife (to a greater extent than co-habitation) is viewed as an increase in the wife's means and therefore brings about a decrease in the

child support award. However, remarriage by the former husband, which may result in an increase in the husband's needs, may or may not decrease the support order. Some courts appear to emphasize the legal obligations incurred, and therefore remarriage but not co-habitation is likely to reduce the award. Other courts focus on financial obligations. In these cases only those second marriages that bring about a change in circumstances--that is to say the marriages did not de facto exist or were not even contemplated at the time of the original order--are considered relevant criteria by which to reduce the child support order. The difficulties of converting the judicial consideration of these and other factors into broad guidelines is discussed in light of an earlier discussion on judicial discretion.

*** Case law review**

*** Other family law issues examined: Judicial discretion.**

**Giampetro, Andrea
1986**

**"Mathematical Approaches to
Calculating Child Support Payments:
Stated Objectives, Practical
Results and Hidden Policies",
Family Law Quarterly, Vol.20 (3),
Chicago: Section of Family Law
American Bar Association, pp.373-
391.**

The majority of this article is given to an analysis of two mathematical formulae for calculating child support payments--a cost-sharing and an income-sharing formula. The author argues

that neither formula will achieve its primary goal--consistency in child support awards. Both formulae are thought inadequate because they do not incorporate all pertinent variables and because many variables used in the formulae are poorly defined and difficult to quantify.

Two cases are examined in which each of the two formulae discussed above were applied. These cases are examined in light of the shortcomings previously discussed. Analysis of these cases shows that mathematical formulae are written in a manner that merely masks rather than eliminates judicial discretion.

Gibson, Colin
1982

Maintenance in Britain, Conference paper, International Conference on Matrimonial and Child Support, Alberta: Institute of Law Research and Reform, pp.34-44.

This paper provides an overview of issues in spousal maintenance and child support in England and Wales. It examines the frequencies and levels of maintenance awards as reported in various earlier studies, and notes that awards are on average less than that available through government family support payments. The author concludes that the primary reason for this is that few men have the means to pay sufficient support, particularly when they have taken on the support obligations of a second household.

The paper compares statistics on divorce and maintenance in England and Wales with those in Alberta, and finds close similarities. For example, in England and Wales in 1972, 50% of all divorced women were awarded maintenance, as compared to the

48% cited for Alberta in **Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved** (See page 73). In England and Wales 72% of divorced mothers with dependent children were awarded child support (68% in Alberta), while 40% were awarded spousal support (about the same in Alberta). The paper also discusses briefly the issues of inadequate legislative guidance and the discretion applied by court registrars, and the high rate of maintenance default in England and Wales.

Hahlo, H.R.
1978

"Maintenance and Pension Rights: An Excursion", in Studies on Divorce, Law Reform Commission of Canada, Ottawa: Information Canada, pp.81-86.

The main argument in this article is that courts are ill-equipped to order comprehensive divorce settlements because of the lack of clear provisions and standards on which to base their judgments, and that until this is rectified the Divorce Act should retain provisions for the refusing of divorce. In particular, it is recommended that proposals for divorce reform include express provisions for the allocation of pension rights. The author suggests that since courts are unable to deal directly with the pension plans of divorcing couples, the Canada and Quebec pension plans and Canadian public service pension plans should incorporate the Scandinavian approach which provides for the sharing of pension rights on the basis of the length of the marriage. The courts should compensate for loss of rights to private pension plans by taking the loss into account in their award decisions.

The article also raises questions about the awarding of maintenance that is not sought and/or awarded at the granting of divorce but subsequently becomes necessary, and about the variance of maintenance orders in general, and calls for a moratorium on variance of orders while standards are decided upon.

Landes, Elisabeth M.
1978

"Economics of Alimony", Journal of Legal Studies, Vol.7 (1), The University of Chicago Law School, pp.35-63.

This article presents evidence that refutes the interpretation of alimony awards as an anachronistic manifestation of wives' dependency on their husbands. Alimony awards are presented as an implicit contract between spouses that function to compensate wives for their opportunity costs from entering and investing in marriage, and to compensate partners for their loss in expected gains from marriage. By its existence as a compensatory mechanism, alimony contributes directly to the initial formation and stability of marriage itself.

The author uses evidence derived from a sample of 195 alimony awards published in the American Law Reports to show that alimony awards are directly related to measures of wives' household specialization and measures of gains from marriage such as husband's income and the duration of marriage, and inversely related to wives' earning capacity. In states that prohibit alimony, the data shows a lower proportion of young women marrying and reduced marital fertility.

* Empirical research

Law Reform Commission
of Canada
1975

Economics Adjustment on Divorce,
Working Paper #13, Ottawa:
Information Canada, pp.51-59.

This paper makes a number of recommendations for changes in divorce legislation. With regard to maintenance awards, it recommends that conduct during and after the marriage be expressly excluded from consideration of maintenance claims, that maintenance be based on the premise that each party is responsible for his or her own maintenance and that both are responsible for the support of any children of the union, and that consideration be given to the needs and resources of the respective parties.

It suggests that there should be statutory provisions to provide some degree of finality to maintenance awards, and that modifications be permitted only when there is proof of a substantial change of circumstances which makes the operation of the original order unreasonable. In addition, periodic maintenance payments should be terminated on the death of either party or the remarriage of the party receiving support, except in extenuating circumstances. Regarding the maintenance of children, the paper recommends that there be additional statutory provisions to deal with such factors as the physical, emotional, financial and educational needs of dependent children in the setting of awards, with the aim of placing such children into the same position as if there had been no divorce.

* Other family law issues examined: Maintenance enforcement;
Property division.

Mahoney, Margaret M.
1983-84

**"Economic Sharing During Marriage:
Equal Protection, Spousal Support
and the Doctrine of Necessaries",
Journal of Family Law, Vol.22 (2),
University of Louisville School of
Law, pp.221-261.**

This article examines the problems to be addressed in the reforming of divorce laws to meet the demand for sexual equality in equal protection requirements. Its emphasis is on provisions to establish liability for debts while at the same time providing adequate support for dependent spouses with no other resources. The author rejects solutions that allocate liabilities in order of degree of responsibility because they provide insufficient protection for dependent spouses and no guarantee of a fair division of responsibility. Rather, she recommends that legislation be formulated that extends rights and limits obligations of dependent spouses in a gender-neutral fashion. She also advocates the use of judicial discretion in allocating liability based on financial and other resources.

**Monteith, Maggie,
Dobash, Rebecca Emerson
and Wasoff, Fran**
1984

**Who Pays for the Children: A
Clash of Ideologies in the Practice
of Divorce, Conference Paper,
Society for the Study of Social
Problems.**

The authors of this paper suggest that a fundamental contradiction is becoming apparent in the proposed legal provisions on financial support for children of divorce. This contradiction is that while women are still generally held to be the optimum choice for custody, the new proposals appear to

require that they be economically active. At the same time little change is proposed in the position of men from that of sole or primary breadwinner.

The paper presents an analysis of the court records of 10,500 cases of divorce in Scotland in 1980, focusing on the prevalence and level of child maintenance awards in relation to other factors such as the age and number of children involved and the relationship between spousal support and child support. The data is analysed as to the adequacy of the financial provisions made by the courts, the effect of splitting financial and custodial responsibility on the achievement of settlements and the extent to which the current legal and social provisions reflect the growing number of alternatives to the nuclear family stereotype and the concomitant support of children.

*** Empirical Research**

Nichols-Casebolt, Ann
1986

"The Economic Impact of Child Support Reform on the Poverty Status of Custodial and Non-Custodial Families", Journal of Marriage and the Family, Vol.48, Menasha, Wis.: National Council on Family Relations, pp.875-880.

This paper analyses the impact of one proposal for the sharing of non-custodial parents' income on the economic status of both custodial and non-custodial families. It is found that by implementing that proposal the economic status of custodial families would rise above that status created by current laws and

practices, but that the economic position of non-custodial families would worsen. A breakdown shows a net decrease of 6.9% in the number of white and 8.2% in non-white custodial families living below the poverty line, with an improvement in the relative poverty of those whose incomes remained below the poverty line. Non-custodial families experienced an increase in numbers living below the poverty line--1.5% for white and 8.9% for non-white families.

Detailed information on the sample and the research methods used is provided in the text. It is cautioned that all reform proposals consider their impact on non-custodial families, as this may influence the projected success of the proposal. In the case of the proposal under study, the burden of social welfare costs may be shifted to non-custodial families, rather than eliminated.

*** Empirical research**

Payne, Julien D.
1983

**"Approaches to Economic
Consequences of Marriage Breakdown,
Family Law - Dimensions of Justice,
Abella, Rosalie S. and L'Heureux-
Dubé, Claire (eds.) Toronto:
Butterworths, pp.27-34.**

This article examines a range of issues related to the awarding of spousal maintenance by the courts, and compares the law as it appears on the statutes and in books with the law as interpreted and implemented by the courts. The author suggests that in general judges often encroach on social policy in their award decisions.

The article includes a number of specific proposals for reform in the handling of maintenance awards. Payne suggests that periodic payments should have a short, fixed term to encourage spousal independence. He proposes that where medical or mental capacity is a factor in the assessment of earning potential that the courts make use of an impartial, independent medical opinion, and that a similar approach could be applied to defaulters. He deplores any tendency to treat child support as a collateral issue, preferring the assumption that both parents have the obligation to support their children to the same standard of living that they would have expected to enjoy had their been no dissolution. He suggests that this assumption should take preference over the continued standard of living of either parent.

Payne, Julien D.
1982

**Income Support Systems for Family
Dependants on Marriage Breakdown:
An Examination of Fundamental
Policy Questions**, Research Study,
Institute of Law Research and
Reform, Alberta.

The objective of this study was to review available information on income support mechanisms for family dependants in order to identify a set of policy issues that should be addressed. The paper argues that since the economic crisis of marriage breakdown is a social problem that can never be fully resolved by the

courts, reform of the system of spousal and child support should be promoted in conjunction with reforms to social welfare legislation. It suggests further research into the cost-effectiveness of public guaranteed maintenance and the impact of the present social security system(s) in marriage with a view to reforms in that area.

Other recommendations arising from the analysis include: that the courts be empowered to index periodic support payments for cost-of-living factors; that conciliation services be provided by the courts; that a pilot project be set up in Edmonton's family court for a computerized automatic maintenance enforcement system; and that courts be empowered to submit disputes to binding arbitration.

Schultz, Clayton
1983

"An Overview of the Income Tax Implications of Matrimonial Dissolution", Family Law-Dimensions of Justice, Abella, Rosalie S. and L'Heureux-Dubé, Claire (eds.) Toronto: Butterworths, pp.91-97.

At present a number of provisions of Canada's Income Tax Act serve to frustrate the intent of the courts in their awarding of maintenance orders. This article examines some of these provisions and their consequences, and recommends that certain unwanted tax consequences be avoided. The issues raised include the legal criteria for tax reporting of maintenance, the

eligibility of deduction of payments to a third party (for example, a mortgage company), the non-deductibility of lump sum payments, the ineligibility of payments made before the date of a court order, and Revenue Canada's preference for tax cost provisions being included in ambiguous agreements.

*** Other family law issues examined: Property division.**

Van Houtte, Jean
1981-82

**"The Obligation to Provide
Maintenance Between Divorced
Husband and Wife in Belgium", Law
and Society Review, Vol.16 (2),
pp.321-334.**

An increase in divorce rates in Belgium has sparked controversy concerning the roles of fault and need in determining the awarding of spousal support. This article presents data collected from observations of divorce proceedings (62 cases), a public opinion survey (1,569 respondents) and interviews with participants in divorce proceedings (49 cases). The data points to the fact that support payments are inadequate, that a majority of Belgians believe fault should be the predominant basis for support awards, and that broad public opinion reflects traditional values concerning marriage more closely than does current law.

*** Empirical Research**

Weisman, Norris
1983

"The Second Family in the Law of Support", Reports of Family Law, Vol.37, 2nd Edition, Toronto: Carswell, pp.245-272.

This is a study of jurisprudence regarding spousal and child support decisions in cases where either or both spouses have entered a second family. Weisman concludes that a new relationship on the part of a former wife often terminates the spousal support award, and that in cases where the former husband is of limited means, child support may be reduced or suspended as well, provided that the child is adequately supported in the new relationship and that the new relationship remains intact.

He found that the effect of new relationships of former husbands on their obligation to pay support varies greatly. Where there are sufficient means there is a higher probability of continued support. Where there are not, decisions on continuation or termination of the award, and the rationales for those decisions, vary.

The author compares cases settled under separation and under divorce law. He evaluates judicial decisions as to their adherence to the intent of legislation and their reasonableness, and explains them in terms of broad principles or guidelines.

*** Case law review**

Weitzman, Lenore J.
1985

The Divorce Revolution, New
York: The Free Press, 504 pages.

This book is given to a comprehensive analysis of the social, economic and legal consequences of divorce under California's no-fault divorce law. As such, an analysis of maintenance awards plays an important part. Primarily in Chapters 6, 7 and 9 spousal and child support are analysed in terms of the amounts of the awards, their basis in law and their financial adequacy. Spousal support is judged inadequate and inequitable. Since alimony awards are founded on the equality of the sexes despite an absence of such equality in society, women are increasingly impoverished. Furthermore, it was found that the groups of women identified in the law as in need of special consideration--women with custody of young children, women in need of transitional support and older homemakers incapable of self-sufficiency--are also rarely awarded support. Based on an analysis of the cost of raising a child, the fathers' ability to pay and the equitable sharing of child support costs between parents, child support awards were also found to be tragically insufficient.

*** Empirical research**

- * Other family law issues examined: Custody awards (see page 30); Award violation and enforcement (see page 87); General family law; Property division.**

Weitzman, Lenore J.
1982

The Economics of Divorce: Social and Economical Consequences of Property, Alimony and Child Support Awards, Conference Paper, International Invitational Conference on Matrimonial and Child Support, Institute of Law Research and Reform, Alberta, pp.46-133.

This examination of property and support awards at divorce argues for the need to recognize that divorced women and their children need greater economic protection than they are currently afforded. The conclusions are based on research in California between 1968 and 1978 to analyse the impact of that state's no-fault divorce legislation. The research included an analysis of random samples of court records in 1968, 1972 and 1977 and extensive interviewing with family law judges, attorneys and divorced men and women.

Separate sections on marital property division, spousal support and child support examine the economic outcomes of divorce through the period under study, and identify the ways in which divorce settlements have resulted in considerable disparity in economic outcomes between divorced men and divorced women and their children. Regarding maintenance awards, the author recommends: a legislative presumption in favour of maintaining the family residence for minor children and their custodian; child support schedules that reflect the actual costs of raising children at the same standard of living as the wealthier parent, and that more equitably apportion the costs between the two parents; support rules that enable younger divorced women to develop a satisfactory earning capacity, and that equalize the

net income available to spouses; and, a general increase in social and economic supports for custodial parents.

*** Empirical research**

*** Other family law issues examined: Maintenance enforcement;
Property division.**

**Wilson, Bertha
1983**

**"The Variation of Support Orders",
Family Law - Dimensions of Justice,
Abella, Rosalie S. and L'Heureux-
Dubé, Claire (eds.) Toronto:
Butterworths, pp.35-67.**

This article reviews Canadian case law on the variation of support orders, and comments on the influence that certain factors have had, and should have, on court decisions involving support order variation. These factors include separation agreements, remarriage of either spouse, new common-law relationships, and implications for social welfare programmes.

The author reviews a number of exceptional cases in which circumstances warranted the variation of support orders based on separation agreements, but in general concludes that when parties, independently advised, have settled their own affairs, the courts should be loathe to interfere. She also concludes that the courts are correct in taking into consideration new relationships in making variation decisions, and that they should be encouraged to take into account welfare implications in the same way that they currently consider tax implications.

*** Case law review**

Wishik, Heather Ruth
1986

**"Economics of Divorce: An
Exploratory Study", Family Law
Quarterly, Vol.20 (1), Chicago:
Section of Family Law American Bar
Association, pp.79-103.**

In a study designed to replicate and further Lenore Weitzman's work on divorce (see page 55), Wishik has collected data from a sample of divorces in Vermont Superior Court districts. She found that the proportion of wives awarded spousal support in Vermont (7%) is lower than that awarded nationally (15%). This disparity is attributed to Vermont legislation which places an emphasis on spouses meeting their own economic needs, and attorney and judicial practice of discouraging the application for and awarding of maintenance. The percentage of custodial parents receiving child support awards (82.3%) and the mean child support award per family resembled the national incidences. Child support is deemed inadequate as it does not take into account "in-kind" costs such as child care, and even assuming no default is less than half the cost of raising a child.

Data from this sample also provided information on the use of the legal process (contested issues, use of counsel, petitioners), property settlements, custody, and overall standard of living. Analysis of this data is used to recommend directions for changes in legislation governing family law. Although there are slight variations from the results of Weitzman's research, the overall economic picture is remarkably similar.

*** Empirical research**

*** Other family law issues examined: Property division; Custody awards.**

Ziegler, Albert
1979

"Sociologie de l'abandon", Revue
Française des affaires sociales,
Vol. 33 (3), pp.145-165.

This article discusses the material situation of divorced women in France and outlines the severe limitations to legal recourse available to them. The author points to studies showing that alimonies in France are generally insufficient and are either paid irregularly or not at all, and that this has led to economic hardship for many divorced women and their children. Women deserted by their husbands are particularly badly off, since virtually no legal recourse is available to them. The article includes a discussion of several bills that have been introduced in Parliament, and compares the situation in France with that of other European countries.

SECTION III - AWARD VIOLATION AND ENFORCEMENT

Most research on award violation addresses the issue of defaults in the payment of court orders for child or spousal support, with an emphasis on rates of default and its causes. Custody violations occur when the noncustodial parent abducts a child from the custodial parent, or when the custodial parent prevents access to the child provided for in the custody order. Although such violations have received some attention by policy makers, they have not engendered a great deal of policy-related research.

Research on enforcement is restricted for the most part to examinations of legal remedies designed to address the non-payment of maintenance orders. Most studies have focused on problems in the application of enforcement mechanisms and the relative success of various enforcement techniques.

Custody Violations

Custody violations have rarely been the focus of investigation in research. Parental abductions are generally thought to be infrequent, although at least one study on child abductions in the U.S. estimates the yearly rate of abduction to greatly exceed the upward end of popular estimates (Gelles). Child abductions

are an important concern due to the potential magnitude of the trauma inflicted on the child and the custodial parent, and some articles do examine the nature and force of provincial, federal and international laws and sanctions enforcing custody orders. However, most studies focus on procedural matters, with little direct consideration of related policy concerns.

Maintenance Default

Maintenance order default has received a great deal of attention in recent years. Most emphasis has been placed on the rates of default and the reasons for compliance and noncompliance. The rate of default of support orders in Canada is difficult to determine given the lack of data collection by the courts, but estimates suggest a rate of between 50% and 85% (Finnbogason and Townson, Ryan). These national estimates of the high level of noncompliance are similar to default rates indicated in studies of Canadian jurisdictions (Institute of Law Research and Reform, Baar and Moore), and to trends documented in other countries such as England, Sweden and the United States (Gibson, Agell, Weitzman).

Studies measuring the rate of default over time suggest that more than three-quarters of all maintenance debtors have defaulted on their maintenance payments within the first six months of receiving that order (Baar and Moore), and that by the time they have been separated ten years, more than 75% will not make any payments (Nagel and Weitzman).

The perception held by the courts and much of the public, and reinforced by the statements of maintenance debtors, appears to be that orders are defaulted on because debtors have insufficient

means. However, several studies focusing on the standards of living of divorced and separated men and women and the relative success of various enforcement techniques indicate that inability to pay is rarely the sole cause of default (Chambers, Weitzman). One Canadian study revealed that low income is related to irregular payments but not to non-payment (Institute of Law Research and Reform). Other studies based on interview data indicate that default is related to a lack of interest on the part of the debtor spouse engendered by an absence from the day-to-day life of the former family, a lack of understanding as to the purpose of maintenance payments, anger over the adversarial process of divorce, animosity toward former spouses, or dissatisfaction regarding custody access arrangements (Institute of Law Research and Reform; Burtch, Pitcher-LaPrairie and Wachtel).

Enforcement of Maintenance Orders

Enforcement has become an important issue in family law because the high rate of default combined with the high rate of marital breakdown has left many women and their dependents without an important source of income. Because maintenance payments reduce welfare costs for those families dependent on social assistance, enforcement has also come to be seen as a cost-saving measure by government. Research on the enforcement of maintenance orders examines mechanisms or procedures designed to collect payment on defaulted orders, and issues related to efforts in this regard.

By far the most effective enforcement technique has been found to be pro-active enforcement, commonly referred to as state-initiated, or automatic enforcement. Much of the enforcement literature is given to an analysis of the success and the reasons

for the success of this system of enforcement. Of related interest are techniques to ensure compliance, such as jailing, garnishment and the diversion of funds. Research has also focused on the difficulties experienced by creditors attempting to enforce their maintenance awards, and on the state's interest in enforcement.

Studies of pro-active enforcement have unanimously endorsed the effectiveness of this system. Most emphasis has been placed on what are viewed as the important elements of this system: that it be maintained by the government; that payment of orders be routinely monitored; that enforcement be initiated as soon as default occurs without the involvement of the maintenance creditor; and, that penalties for non-payment be enforced (Steel; Agell; Finnbogason and Townson; Department of Justice, Canada; Ross, Grant and Wyse; Schmeiser and Macknak; Maurice and Byles).

Studies measuring the relative success of pro-active enforcement systems over other systems indicate that in addition to collecting more money, pro-active enforcement creates an environment where spouses expect to meet their maintenance debts. At the same time it reduces court costs because it is primarily a bureaucratic solution.

Of considerable importance in pro-active systems are measures by which compliance is ensured. Jailing has been found to be very effective in the U.S. in conjunction with pro-active enforcement systems, but some studies indicate that this measure is disproportionately applied to low-income and black men (Chambers, Lempert). Some authors argue that jailing would not be favoured by the Canadian public or the judiciary (Burtch, LaPrairie and Wachtel).

The tracing of maintenance debtors between provinces, states and countries is a major issue because of the costs for women of locating these debtors and the frequent lack of mechanisms to locate debtors and enforce orders in the new jurisdictions (Anderson, Steel). Finnbogason and Townson put forward a strong case for federal involvement in the tracing of maintenance debtors. Royal assent has recently been given to the Family Orders and Agreements Enforcement Assistance Act which will facilitate the tracing of debtors and the garnishment of federal payments.

The use of state-initiated enforcement is especially prevalent in cases where creditors rely on welfare for support, since in many jurisdictions pro-active enforcement is provided by social service officers for creditors in receipt of social assistance. Research suggests that the money recovered in reduced welfare payments far exceeds the cost of enforcing orders (Fogel, Maurice and Byles, Steel, Finnbogason and Townson). Fleece argues that regardless of the net cost-benefit, such an approach is worthwhile in that it counters welfare dependency.

As was the case in the custody and maintenance award sections of the bibliography, the issues we have discussed in this introductory review are closely inter-related, as will be apparent in a reading of the following annotations.

Award Violation and Enforcement - Annotations

Agell, Anders
1982

Paying of Maintenance in Sweden,
Conference paper, International
Invitational Conference on
Matrimonial and Child Support,
Alberta: Institute of Law Research
and Reform, pp.2-19.

Data from Swedish divorce cases in 1971, followed up in 1975, are the basis for this study of maintenance payment, default and enforcement. The paper compares and contrasts the Swedish situation with that of Alberta. In both places the majority of support payers were found to be in default. The major difference is that in Sweden enforcement is systematic and automatic, and includes the attachment of earnings. A central registry is kept, and local insurance agencies pay dependents a set proportion of the award and take on the duty of collection from the defaulter. Thus, Swedish dependents can rely on a set income irrespective of whether default occurs.

*** Empirical research**

Anderson, Carol E.
1971

"Using Long-arm Jurisdiction to Enforce Marital Obligations",
Journal of Family Law, Vol.2 (1),
University of Louisville School of
Law, pp.67-80.

This article examines the problems that arise from inter-state jurisdictional restrictions on the enforcement of marital obligations, and the prohibitive cost, especially to those women most in need, of litigation across state lines. The author proposes two statutes to supplement the existing marital long-arm statutes that would help eliminate some of the motivation for husbands to flee a state's jurisdiction to avoid fulfilling his support obligations.

**Baar, Ellen and
Moore, Dorothy**
1981

**"Ineffective Enforcement: The
Growth of Child Support Arrears",**
Windsor Yearbook of Access to
Justice, I, pp.94-120.

This article reports the findings of a study on the effectiveness of the automatic maintenance enforcement program instituted in Ontario in 1974. The major conclusion is that court-initiated enforcement in Ontario has not improved payment rates, and that further reforms are needed to reduce the high percentage of orders in arrears.

The study involved a comparative empirical analysis of data on maintenance orders subject to automatic enforcement and orders

for which responsibility for initiating enforcement rested with the recipients. Similar studies carried out in Wisconsin and Michigan also contributed to the conclusions drawn.

*** Empirical research**

Burtch, Brian,
Pitcher-LaPrairie, Carol
and Wachtel, Andy
1980

"Issues in the Determination and Enforcement of Child Support Arrears", Canadian Journal of Family Law, Vol.3 (1), The Carswell Company Ltd., pp.5-26.

This paper examines various theories about the nature of maintenance default, and concludes that default is a social problem the resolution of which is left to the courts, which are without standards to judge by, or the means to enforce, their decisions. The authors point to the failure of various enforcement methods in use, and outline the advantages of a proactive state administrative enforcement approach involving accessing government records for garnishment purposes.

The paper points to evidence from several studies that shows that while the courts tend to assume that inability to pay is the primary cause of default, in many cases the reasons are actually psychological, and rooted in defiance caused by adversarial divorce processes or incorrect perceptions of the purpose of support orders.

*** Other family law issues examined: Maintenance awards
(see page 39)**

Cassetty, Judith
1982

Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved, A Commentary, Conference Paper, International Invitational Conference on Matrimonial and Child Support, Alberta: Institute of Law Research and Reform, pp.26-32.

The purpose of this paper is to discuss the results presented in an Alberta report (see page 73) on matrimonial support failure. It notes the similarity between those results and results of studies in the U.S. despite the variations that exist in law, form and procedure between the U.S. and Canadian support systems. The author suggests that economic factors cannot alone explain variations in degrees of compliance. The key to fostering compliance, she suggests, lies in discovering ways to enhance the "culture of support", such as non-punitive, equitable and universal standards for support which can be applied in a non-adversarial setting.

Chambers, David L.
1979

Making Fathers Pay - The Enforcement of Child Support, Chicago: University of Chicago Press, 365 pages.

This study makes use of extensive data from court and enforcement agency records in Michigan to analyse the phenomenon of child support default and efforts to enforce child support orders. It examines alternative enforcement techniques and recommends a

mandatory wage assignment system, but concludes that even if support orders were all paid in full the economic prospects for divorced women with children would be bleak because of the poor employment opportunities available and the difficulties associated with working and raising children.

Data from case files, records of enforcement efforts and payments, and transcripts of court hearings provide the basis for the study, which was conducted from 1972 through 1975. Chambers first presents some background on the families under study, and establishes the economic basis for the support orders and the limitations of the orders as economic solutions. The primary focus is an examination of why fathers don't pay support, why collection rates vary among the counties under study, and what the advantages and disadvantages are of various enforcement efforts. A major section is devoted to the efficacy and impacts of, and the justifications for, jail sentences as an enforcement tool.

*** Empirical research**

**Department of Justice,
Canada
1983**

**Final Report of the Federal-
Provincial Committee on Enforcement
of Maintenance and Custody Orders
in Canada.**

This report identifies preferred means for improving the enforcement of maintenance and custody orders, based on studies of the various enforcement techniques in use or under consideration by the provinces. Special attention is given to the state-initiated automatic system in use in Manitoba. The report

examines the proposals for reform received from the Law Reform Commission of Canada, provincial law reform commissions, the Alberta Institute of Law Research and Reform, the Canadian Advisory Council on the Status of Women, the Canadian Bar Association and numerous private associations and individuals. It lists fifteen recommendations for the provinces and ten for the federal government, each with a brief background note and explanation.

Department of Justice,
Canada
1986

Report of the Federal-Provincial
Committee on Enforcement of
Maintenance and Custody Orders in
Canada, With Respect to the Issue
of Inter-Provincial Parental Child
Abduction.

This paper presents the recommendations of the federal-provincial committee on Enforcement of Maintenance and Custody Orders in Canada for the development of protocol and guidelines for the inter-provincial application of Criminal Code provisions for parental child abductions.

Each recommendation and an explanation of the basis for the recommendation (where this is provided) is located in one of seven sections of this paper. Sections are ordered according to the chronology of problems associated with parental child abduction, moving from those associated with the prevention of parental child abduction to those aimed at facilitating the location and return of abducted children.

The report's recommendations are supplemented by two appendices providing proposals regarding: the suggested protocol of police and social workers in cases of parental child abductions; and, a Canadian/United States committee to establish a Canadian/United States parental child abduction network.

**Finnbogason, Eve and
Townson, Monica
1985**

**The Benefits and Cost-Effectiveness
of a Central Registry of
Maintenance and Custody Orders,
Mimeo. Communications Unit, Ottawa,
Status of Women Canada.**

This paper presents a rationale for the development of a central registry of maintenance and custody orders. It argues that such a registry would reduce the rate of maintenance and custody default, provide important statistical information to assist in the development of support guidelines, and reduce the burden to taxpayers brought on by the state having to assume support obligations through the welfare system in cases of default.

The paper provides an extensive discussion of maintenance default rates and the causes of default, and the enforcement systems currently in use in the various provinces. It presents a proposal for a central registry modeled on the Canadian Divorce Registry, and includes a cost-benefit analysis for both maintenance and custody elements of the registry.

*** Other family law issues examined: Maintenance awards.**

Fleece, Steven M.
1981-82

"A Review of the Child Support Enforcement Program", Journal of Family Law, Vol.20 (3), University of Louisville School of Law, pp.489-520.

The Child Support Enforcement Program was implemented in the United States in 1975. This article examines the conditions leading to the program, which were primarily the high maintenance default rates and the growing trend toward welfare dependency associated with default. Fleece concludes that the program yields benefits and should be retained even if it is found to have an unfavourable cost-benefit ratio, because it emphasizes parental responsibility and counters welfare dependency.

The article includes a review of cases that have tested various areas of controversy related to the program, such as the cooperation demanded of welfare mothers to name putative fathers of their children, and the assignation of support rights to the state and the state's participation in securing support. Fleece contends that requiring cooperation to obtain support is not repression, but rather the self-defense of society.

*** Case law review**

Fogel, Richard L.
1984

U.S. Child Support: Needed Efforts Underway to Increase Collection from Absent Parents, Report by the U.S. General Accounting Office.

This study was conducted at the request of the U.S. Senate Budget Committee to provide input to the development of the Child

Support Enforcement Amendments that were adopted in 1984 to improve the collection of child support payments. The study reveals that in 1983 the enforcement program recovered \$174 million, or about 1.4% of the amount paid out in assistance to families under the Aid to Families with Dependent Children (AFDC) program.

The report supports the contemplated amendments, which provide for wage-withholding mechanisms applicable to defaulting wage earners and federal incentive payments to the states for non-AFDC families. It points out the difficulties in implementing the initial program due to limited staff, and expresses concern about any added burden.

In an additional report associated with this one, Fogel uses data from this study to show that availability of services to collect support from non-AFDC families varies among states, partly because of a lack of standards and procedures, partly due to insufficient staff, and partly because of the lack of federal incentives to the states. (**Child Support Collection Efforts For Non-AFDC Families**, GAO, 1984.)

*** Empirical research**

Gelles, Richard J.
1984

"Parental Child-Snatching: A Preliminary Estimate of the National Incidence", Journal of Marriage and the Family, Vol.46 (3-4), Menasa, Wis.: National Council on Family Relations, pp.735-739.

This article presents data from a national survey of 3,745 telephone interviews on the incidence of parental child

snatching. Popular estimates of child abduction in the U.S. range between 25,000 and 100,000 cases per year. This data suggests that parental abduction occurs at a much greater rate, perhaps as high as 626,000 cases per year.

The data refer to child abductions for the period of June 1981 to May 1982. The author discusses the limited data collected to corroborate positive responses, the methods of interpreting the data and the effect of various interpretations on the estimate of child snatching. Potential non-sampling errors which may have greatly skewed the data are also discussed.

*** Empirical research**

**Institute of Law
Research and Reform
1981**

**Matrimonial Support Failures:
Reasons, Profiles and Perceptions
of Individuals Involved, Vols.1 and
2, Alberta: Canadian Institute for
Research, 390 pages.**

In two volumes, a summary report and a set of technical reports, this work presents the results of an investigation into the reasons for the deficiencies in the existing system of matrimonial and child support in Alberta. The purpose of the study was to develop profiles of the individuals involved in maintenance payments, to document their perceptions and to investigate the reasons for payment of, and default against, maintenance orders.

The study included research at the Alberta Supreme Court (now called the Court of Queen's Bench), an analysis of court records in Edmonton, Calgary, Lethbridge and Grande Prairie, door-to-door

surveys of men and women involved in maintenance orders, and a study of defaulters. Among its findings were that: in Calgary about 50% of maintenance orders were paid up at the time of the study, about one third were paid in full every month, and about 30% of those under order had paid nothing in the past year; in Edmonton and Lethbridge 38% of former husbands had made all payments throughout the duration of the order, and 23% of Edmonton and 7% of Lethbridge husbands had made no payment at all; 70% of a random sample of defaulters were traceable without extensive tracing procedures; poor record keeping by the courts may have negatively affected enforcement of orders; and, a lack of faith among women in the efficiency of enforcement procedures meant that some former wives would not bother to file a complaint.

*** Empirical research**

Lempert, Richard
1981-82

"Organizing for Deterrence: Lessons From a Study of Child Support", Law & Society Review, Vol.16 (4), Ann Arbor: Law and Society Association, pp.513-568.

Lempert has re-analysed data on child support enforcement first presented by David Chambers (see page 71) with a particular focus on the deterrent aspects of sanctions imposed on support order violators. He applies information drawn from the data to support a number of propositions concerning deterrence in general. He finds that the experience of being jailed for failing to pay support, as distinguished from the threat of imprisonment, is an effective deterrent against further default, and that

organizational factors work in combination with sanctions to influence deterrence levels.

He compares data from three Michigan counties that have different systems in place for administering support enforcement. In one of those counties a highly pro-active system supervised the collection of child support payments and used jail as an important coercive tool. In another, the system required initiatives by the recipients and threatened but rarely invoked jail sentences. In the third no enforcement agency was in place, but support order violators who did end up in court through actions initiated privately or through the local welfare agency, were sentenced to jail in many cases. Through statistical analysis of data from these three counties, this report concludes that the combination of jail sentences and pro-active administration was responsible for the significantly higher overall payment rate in the first county described above.

Maurice, Andrea D.
and Byles, John A.
1980

Report (Third Year) on the Unified
Family Court Pilot Project at
Hamilton-Wentworth.

A section of this review of the Unified Family Court (UFC) Pilot Project reports on the UFC involvement in the enforcement of maintenance orders. It reports that because of staff cutbacks and increased workload, payments assigned by order to the court because the recipient was collecting welfare were all being enforced by a social worker from the Ministry of Social Services. Remaining payment defaults were being enforced only at the request of the recipient.

The report notes that of all proceedings conducted by the court in which the UFC project was involved, clients appeared most dissatisfied with enforcement. It recommends that the UFC be given primary responsibility for the enforcement of maintenance orders, and that more efficient techniques be sought to relieve clients of the aggravation and financial burden of having to take responsibility for the enforcement themselves.

Nagel, Stuart and
Weitzman, Lenore J.
1972

"Double Standard of American
Justice", Transaction, Vol.9 (5),
pp.18-25, pp.62-63.

This study of the influence of sexism on the treatment of female defendants and litigants presents comparative statistics on the outcome of various types of court cases between men and women. In divorce cases, awards may appear to be in women's favour on the basis of a simple analysis of divorce decrees, but based on support collection records it is apparent that few women actually collect alimony or child support money. By the tenth year after the decree in the cases examined, only 13% of fathers were fully complying with support orders and 79% were in total non-compliance. Despite this, legal action is seldom taken against the non-paying fathers. The authors suggest that more equal treatment could be achieved through increasing public awareness and greater representation of females as jury and judicial decision makers.

Pelletier, Sylvie
1987

Pensions alimentaires 1981 à 1986,
Attribution et perception (Support
Payments 1981 to 1986, Awarding and
Collection), Montreal: Ministère de
la Justice, Quebec, Direction des
Communications, 365 pages.

In the late 1970s a task force study by the Quebec Departments of Social Services and Justice reported that only 40% of support payment awards in that province were being complied with. The Quebec government, in 1981, instituted a support payment collection system with 55 offices throughout the province to deal with the problem. This study was conducted to evaluate the impact of the collection system through an examination of compliance with support orders after the system's implementation. It was comprised of a review of 1,093 court files involving divorce and separation cases between 1981 and 1983, and a survey of 2,759 people that had been awarded support payments.

The study finds in its sample of cases between 1981 and 1983 that of those that resulted in divorce, separation or child custody rulings (about 75% of cases), 44% involved support payment awards. Of these, the collection system had intervened in 20% of cases. In 65% of the cases taken on by the system, the collection process led to at least some level of payment. The study reports that more than 80% of support order beneficiaries surveyed were very satisfied or fairly satisfied with the collection system. The one point of dissatisfaction was with the length of time the collection system took to process claims. Overall, 91% of those surveyed thought that the government should adopt more stringent enforcement regulations, including the garnishment of payments at the revenue source of the ex-spouse.

* **Empirical research**

**Ross, Abrahams,
Grant, Malcolm
and Wyse, Carmel
1979-1980**

**Annual Report (First Year) on the
Unified Family Court Pilot Project,
St. John's, Nfld.**

This report notes that the Maintenance Collection and Enforcement Service occupied a substantial portion of staff time during the first year of operation of the Unified Family Court project in St. John's. It describes the procedures leading to enforcement action, from the default complaint, or in the case of monitored accounts the accumulation of arrears, through informal contact with payers and recipients to show cause hearings. It stresses the project's conscious effort to deal in a non-antagonistic manner with defaulters. The report concludes that there is a clear need for closer monitoring of the payment of support orders and for automatic enforcement.

**Ryan, Edward F.
1976**

**Enforcement of Maintenance
Obligations. Family law study
paper, Ottawa: Law Reform
Commission of Canada.**

This report provides a broad examination of issues related to the enforcement of maintenance orders. It begins with the assertion that the rules, practices and procedures in Canada for ensuring that support obligations are met following a marriage breakdown are the weakest link in the legal chain that comprises family law. It suggests that as many as 75% of spouses ordered to pay

support default at least to some degree, and that the traditional methods of enforcement are ineffective and inordinately costly to the injured party. It argues for a single unified family court in each province to have jurisdiction over all family law matters, and for that court to be able to trace defaulting spouses, attach wages for an indefinite period, and have access to tax and social insurance records, at least to the extent of ascertaining whether, where and by whom a defaulting spouse is employed.

The report includes discussion of the nature of maintenance and the legal enforceability of the obligation, the role of the state and the relationship between maintenance enforcement and welfare and family benefits, methods of enforcement, interprovincial enforcement, the extent and causes of default, and possible solutions.

Schmeiser, Ellen C.
and Macknak, David
1981

**Proposal for a System of Automatic
Enforcement of Maintenance Orders
in Saskatchewan.**

The authors of this paper propose that a pilot project be implemented in Saskatoon under the auspices of the Unified Family Court to provide for the automatic enforcement of maintenance orders upon default. Its proposed services include legal services for enforcement actions, legal service for welfare recipients, collection and disbursement of maintenance payments, monitoring of maintenance order accounts, tracing of missing spouses and budget counselling. The proposal details the staff requirements and other costs of such a project.

Steel, F.M.
1985

"The Role of the State in the Enforcement of Maintenance", in Women, the Law and the Economy, Pask, E. Diane, Mahoney, Kathleen E. and Brown, Catherine A. (eds.) Toronto: Butterworths, pp.197-231.

The intention of this paper is to show that separation and divorce result in an economic crisis for women, and that the systems currently in use in Canada for enforcing maintenance orders are inadequate to deal with this crisis. The author concludes that an automatic system of enforcement, enhanced by appropriate monitoring and tracing abilities and a range of sanctions backed by the threat of imprisonment, would appear to be an effective solution to the wide-spread problem of non-support. She cautions, however, that improving the system of maintenance enforcement can only be viewed as an interim measure. She argues that the issues associated with maintenance must be analysed as part of a larger social network, and that social reform involving divorce, single-parent families and womens' poverty deserve an increased and active problem-solving approach by government.

The article presents an historical sketch of the role of the state in divorce and maintenance, and the changes over time in the economic circumstances facing women who were contemplating leaving their husbands. Steel distinguishes between the private and public law spheres as they relate to divorce and maintenance, and suggests that the public law system, through the increased reliance by divorced mothers and their dependent children on social assistance, has been increasingly strained in an area that was until recently a predominantly private law concern.

Steel examines the economic consequences of divorce for women and the reasons for the inadequacy of current enforcement systems in Canada. She then discusses the role of the state in maintenance enforcement, comparing systems in various Western countries and suggesting an automatic enforcement model that would be compatible with the apparent public preference for retaining family matters within the private law sphere.

This material is also discussed, with a greater emphasis on substantive legal remedies currently available to spouses affected by maintenance default, in Steel's article "**Maintenance Enforcement in Canada**", Ottawa Law Review, Vol.17, p.491.

*** Historical review**

Wachtel, Andy
1983

What Works? An Exploratory Examination of Court Enforcement Efforts and Payment Levels of Maintenance Orders, Vancouver: United Way of the Lower Mainland and the Policy Planning Branch of the Attorney General, British Columbia.

By analyzing data from Vancouver Family Court records over a one-year period, this study evaluates the effect of maintenance enforcement measures on maintenance payments. The author concludes that orders to pay resulting from show cause hearings had the effect of increasing payment levels significantly.

Recommendations include: the country-wide standardizing of record forms and accounts, and their computerization; the requirement by the court that both parties of a separation or divorce keep the

court informed of their addresses; communication by the court to both parties of the procedures and their rights and responsibilities, in some sort of information booklet; the setting of maintenance awards based on more realistic estimates of the cost of raising children and on ability to pay; and, automatic monitoring of orders, with payments made to the court unless specified by the recipient. It also recommends further research on: the efficacy of garnishment and attachment orders and the threat of jail; higher initial awards, closely monitored, compared to increases obtained at variation; and, repeated court intervention on payments.

*** Empirical research**

Wachtel, A. and
Burtch, B.E.
1981

**Excuses: An Analysis of Court
Interaction in Show Cause
Enforcement of Maintenance Orders,**
Vancouver: United Way of the Lower
Mainland, British Columbia.

Research for this paper involved an analysis of the process and results of hearings for maintenance defaulters at the Vancouver Family Court. It reports that 44% of the cases examined resulted in an order to pay, and that on average 20% of arrears were recovered. The authors contend that family court is being asked to enforce orders without a clear public consensus on what constitutes the continuing responsibilities of divorcing parents. They recommend that maintenance be unaffected by marital relationships or custodial arrangements, that first families be the preferred creditors, that quantum of orders be based on gross income, that garnishment, attachment or recourse to bankruptcy be applied instead of contempt of court orders, that child support

awards be more realistic, and that support orders be based on constant dollars. They also suggest that orders to pay should not be for only token amounts of outstanding arrears, and that default terms should be specified by the court.

*** Empirical research**

Weitzman, Lenore J.
1985

The Divorce Revolution, New
York: The Free Press, 504 pages.

This analysis of the social, economic and legal consequences of divorce under California's no-fault divorce law includes a section on non-compliance with child support orders. Using data collected from California court records and data from previous research in the area, it documents the high degree of child support default in the U.S. and Canada. Court records and information collected in interviews with judges, attorneys and divorced men and women are used to examine the reasons for non-compliance and the burden it places on divorced women. The author concludes that non-supporting fathers have the economic means to pay even more support than their orders demand, that the current legal system places the economic burden of child support on mothers and in effect allows fathers the choice as to whether to contribute, and that children of divorced parents almost always experience a decline in living standard as a result.

Weitzman's research pointed to five major problems experienced by mothers in their attempts to collect support payments that had been ordered by the courts: they are left with the responsibility to locate their ex-husbands, some of whom actively avoid detection by moving frequently; lawyers who represented women in their divorce and custody proceedings are often unwilling to

assist with enforcement problems; District Attorney's offices are often either uncooperative in themselves or reflect, in the assistance they give, the fact that the courts are unlikely to adequately enforce a support order that is in default; few divorced mothers can afford the costly process of fighting for compliance in the courts; and, judicial practices and attitudes are contrary to the effective enforcement of support orders.

In considering why fathers don't pay support, Weitzman refutes the arguments that they cannot afford to pay, that they consider the child support laws unreasonable, and that they are retaliating for visitation problems. Rather, she points to the absence of, or the failure of judges to use, effective enforcement procedures.

*** Empirical research**

- * Other family law issues examined: Maintenance awards (see page 58); Custody awards (see page 30); Property division; General family law**

**Wright, David W. and
Price, Sharon J.
1986**

**"Court-Ordered Child Support,
Payment: The Effect of the Former-
Spouse Relationship on Compliance",
Journal of Marriage and the Family,
Vol.48, Menasha, Wis.: National
Council on Family Relations,
pp.869-874.**

This article reports the findings of empirical research on the effects of former-spouse relationships on compliance with child support orders. The authors conclude that when there is a greater

level of attachment between former spouses and they have a good relationship, child support orders are more likely to be complied with in a timely manner. They suggest that adequate attention to these issues early in the divorce process might eliminate the need for costly and potentially ineffective enforcement in many cases.

The data collection for the study consisted of structured interviews and questionnaires with 58 well-educated, middle-class divorced parents. Variables were developed and tested as measures of "attachment to former spouse" and "quality of former-spouse relationship", and a strong positive correlation was found between higher levels of attachment and higher quality relationships, and timely payment of child support orders.

*** Empirical research**

AUTHOR INDEX

Page

Agell, Anders, Paying of Maintenance in Sweden	68
Alderson, Gina A., The Swedish System of Public Maintenance Advance: A Feasible Model for Canada?	38
Alderson, Gina A., <u>Rights v. Needs: Dependency and Inequality In Divorce Policy</u>	37
Anderson, Carol E., "Using Long-arm Jurisdiction to Enforce Marital Obligations"	69
Andrews, H.T.G. and Gelsomino, Pasquale, "The Legal Representation of Children in Custody and Protection Proceedings: A Comparative View"	11
Arnup, Kathy, "Lesbian Mothers and Child Custody"	12
Baar, Ellen and Moore, Dorothy, "Ineffective Enforcement: The Growth of Child Support Arrears"	69
* Bahr, Stephen J. and Day, Randall D., "Income Changes Following Divorce and Remarriage"	42
* Benjamin, Michael, Irving, Howard H. and Trocme, Nicholas, "Shared Parenting: An Empirical Analysis Utilizing a Large Canadian Database"	20
Boyd, Susan B., "Child Custody, Ideologies and Female Employment"	13
Brophy, Julia, "Child care and the growth of power: the status of mothers in child custody"	14
Brown, Susan, "Changes in Laws Governing Divorce"	15
Burtch, Brian, Pitcher-LaPrairie, Carol and Wachtel, Andy, "Issues in the Determination and Enforcement of Child Support Orders"	39, 70

* Burtch, B.E. and Wachtel, A., Excuses: An Analysis of Court Interaction in Show Cause Enforcement of Maintenance Orders	86
* Byles, John A. and Maurice, Andrea D., Report (Third Year) on the Unified Family Court Pilot Project at Hamilton-Wentworth	79
Cassetty, Judith, Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved, A Commentary	71
Carter, Mary, "Interim Alimony or Maintenance as Corollary Relief Under Section 10 of the Divorce Act"	40
Chambers, David L., <u>Making Fathers Pay - The Enforcement of Child Support</u>	71
Connell, Mary Jane, "Property Division and Alimony Awards: A Survey of Statutory Limitations on Judicial Discretion"	41
Cook, Gail C.A., "The Economic Issues in Marriage Breakdown"	42
Corcoran, Mary, "The Economic Consequences of Marital Dissolution for Women in the Middle Years"	42
Day, Randall D. and Bahr, Stephen J., "Income Change Following Divorce and Remarriage"	43
Department of Justice, Canada, Final Report of the Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada	72
Department of Justice, Canada, Report of the Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, With Respect to the Issue of Inter-Provincial Child Abduction	73
Dixon, Ruth B. and Weitzman, Lenore J., "Evaluating the Impact of No-Fault Divorce in California"	44
* Dobash, Rebecca Emerson, Monteith, Maggie and Wasoff, Fran, Who Pays for the Children: A Clash of Ideologies in the Practice of Divorce	51
Erickson, Nancy S., "Spousal Support Toward the Realization of Educational Goals: How the Law Can Ensure Reciprocity".	45

Finnbogason, Eve and Townson, Monica, The Benefits and Cost-Effectiveness of a Central Registry of Maintenance a Custody Orders	74
Fleece, Steven M., "A Review of the Child Support Enforcement Program"	75
Fodden, Simon R., "Poor Relations: The Effect of Second Families on Child Support"	45
Fogel, Richard L., U.S. Child Support: Needed Efforts Underway to Increase Collection from Absent Parents . .	75
Folberg, Jay, "Joint Custody"	16
* Frank, Neil A. and Kram, Shirley Wohl, <u>The Law of Child Custody: Development of the Substantive Law</u>	21
Fraser, E. Murray, "The Variation of Custody Orders" . . .	17
Furstenberg, Frank F. Jr. and Winquist Nord, Christine, "Parenting Apart: Patterns of Childrearing After Marital Disruption"	17
Gelles, Richard J., "Parental Child-Snatching: A Preliminary Estimate of the National Incidence"	76
* Gelsomino, Pasquale and Andrews, H.T.G., "The Legal Representation of Children in Custody and Protection Proceedings: A Comparative View"	11
Giampetro, Andrea, "Mathematical Approaches to Calculating Child Support Payments: Stated Objectives, Practical Results and Hidden Policies"	46
Gibson, Colin, Maintenance in Britain	47
Goldstein, Joseph, "In Whose Best Interest?"	18
* Grant, Malcolm, Ross, Abrahams and Wyse, Carmel, Annual Report (First Year) on the Unified Family Court Pilot Project	82
Gross, Wendy L., "Judging the Best Interests of the Child: Child Custody and the Homosexual Parent"	19
Hahlo, H.R., "Maintenance and Pension Rights: An Excursion" .	48

Institute of Law Research and Reform, Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved	77
Irving, Howard H., Benjamin, Michael and Trocme, Nicholas, "Shared Parenting: An Empirical Analysis Utilizing a Large Canadian Database"	20
Joyal-Poupart, Renee, "Joint Custody"	21
* Kallish, Kenneth L. and Payne, Julien D., "A Behavioural Science and Legal Analysis of Access to the Child in the Post-Separation/Divorce Family"	27
* Kelly, J. and Wallerstein, J., <u>Surviving the Breakup: How Children and Parents Cope with Divorce</u>	29
Kram, Shirley Wohl and Frank, Neil A., <u>The Law of Child Custody: Development of the Substantive Law</u>	21
Krell, Robert, "The Emotional Impact on Children of Divorce and Custody Disputes"	22
Lamb, Louise, "Involuntary Joint Custody"	23
Landes, Elisabeth M., "Economics of Alimony"	49
Law Reform Commission of Canada, Economics Adjustment on Divorce	50
Lempert, Richard, "Organizing for Deterrence: Lessons From a Study of Child Support"	78
Leonoff, Arthur, Literature Review: Issues Concerning Custody,	24
Levine, Saul V., "The Role of the Mental Health Expert Witness in Family Law Disputes"	25
Luepnitz, Deborah Anna, "A Comparison of Maternal, Paternal and Joint Custody: Understanding the Varieties of Post-Divorce Family Life"	25
* Macknak, David and Schmeiser, Ellen C., Proposal for a System of Automatic Enforcement of Maintenance Orders.	83

Mahoney, Margaret M., "Economic Sharing During Marriage: Equal Protection, Spousal Support and the Doctrine of Necessities"	51
Maurice, Andrea D. and Byles, John A., Report (Third Year) on the Unified Family Court Pilot Project at Hamilton-Wentworth	79
Mayrand, Albert, "The Influence of Spousal Conduct on the Custody of Children"	26
Monteith, Maggie, Dobash, Rebecca Emerson and Wasoff, Fran, Who Pays for the Children: A Clash of Ideologies in the Practice of Divorce	51
* Moore, Dorothy and Baar, Ellen, "Ineffective Enforcement: The Growth of Child Support Arrears"	69
Nagel, Stuart and Weitzman, Lenore J., "Double Standard of American Justice"	80
Nichols-Casebolt, Ann, "The Economic Impact of Child Support Reform on the Poverty Status of Custodial and Non-Custodial Families"	52
Payne, Julien D., Income Support Systems for Family Dependents on Marriage Breakdown: An Examination of Fundamental Policy Questions	54
Payne, Julien D., "Approaches to Economic Consequences of Marriage Breakdown"	53
Payne, Julien D. and Kallish, Kenneth L., "A Behavioural Science and Legal Analysis of Access to the Child in the Post-Separation/Divorce Family"	27
Pelletier, Sylvie, <u>Pensions alimentaires 1981 à 1986, Attribution et perception</u>	81
* Pitcher-LaPrairie, Carol, Burtch, Brian and Wachtel, Andy, "Issues in the Determination and Enforcement of Child Support Orders"	39, 70
* Price, Sharon J. and Wright, David W., "Court-Ordered Child Support Payment: The Effect of the Former-Spouse Relationship on Compliance"	88

Ross, Abrahams, Grant, Malcolm and Wyse, Carmel, Annual Report (First Year) on the Unified Family Court Pilot Project	82
Ryan, Judith P., "Joint Custody in Canada: Time for a Second Look"	28
Ryan, Edward F., Enforcement of Maintenance Obligations . .	82
Schmeiser, Ellen C. and Macknak, David, Proposal for a System of Automatic Enforcement of Maintenance Orders .	83
Schwartz, Sheila F. G., "Toward a Presumption of Joint Custody"	29
Shultz, Clayton, "An Overview of the Income Tax Implications of Matrimonial Dissolution"	55
Steel, F.M., "The Role of the State in the Enforcement of Maintenance"	84
* Townson, Monica and Finnbogason, Eve, The Benefits and Cost-Effectiveness of a Central Registry of Maintenance and Custody Orders	74
* Trocme, Nicholas, Irving, Howard H. and Benjamin, Michael, "Shared Parenting: An Empirical Analysis Utilizing a Large Canadian Database".	20
Van Houtte, Jean, "The Obligation to Provide Maintenance Between Divorced Husband and Wife in Belgium"	56
Wachtel, Andy, What Works? An Exploratory Examination of Court Enforcement Efforts and Payment Levels of Maintenance Orders	85
Wachtel, A. and Burtch, B.E., Excuses: An Analysis of Court Interaction in Show Cause Enforcement of Maintenance Orders	86
* Wachtel, Andy, Burtch, Brian and Pitcher-LaPrairie, Carol, "Issues in the Determination and Enforcement of Child Support Orders"	39, 70
Wallerstein, J. and Kelly, J., <u>Surviving the Breakup: How Children and Parents Cope with Divorce</u>	29

* Wasoff, Fran, Monteith, Maggie and Dobash, Rebecca Emerson, Who pays for the Children: A Clash of Ideologies in the Practice of Divorce	51
Weisman, Norris, "The Second Family in the Law of Support" .	57
Weitzman, Lenore J., The Economics of Divorce: Social and Economical Consequences of Property, Alimony and Child Support Awards	59
Weitzman, Lenore J., <u>The Divorce Revolution</u> . . .	30, 58 and 87
* Weitzman, Lenore J. and Nagel, Stuart, "Double Standard of American Justice"	80
* Weitzman, Lenore J. and Dixon, Ruth B., "Evaluating the Impact of No-Fault Divorce in California"	44
Wilson, Bertha, "The Variation of Support Orders"	60
* Winquist Nord, Christine and Furstenberg, Frank F. Jr., "Parenting Apart: Patterns of Childrearing After Marital Disruption"	17
Wishik, Heather Ruth, "Economics of Divorce: An Exploratory Study"	61
Wright, David W. and Price, Sharon J., "Court-Ordered Child Support Payment: The Effect of the Former-Spouse Relationship on Compliance"	88
* Wyse, Carmel, Ross, Abrahams and Grant, Malcolm, Annual Report (First Year) on the Unified Family Court Pilot Project	82
Zemans, Frederick H., "Cultural Diversity in Custody Disputes"	31
Ziegler, Albert, "Sociologie de l'abandon"	62

* Publications written by two or more authors are listed separately under each author's name. The asterisk denotes that the author listed is not the first author of the work.