

Dialogues

Contemporary Challenges to Feminist Advocacy

Jenéa Tallentire

I was privileged to be an invited panellist for the University of Victoria Association for Women and the Law (UAWL) conference in March 2007 in Victoria, British Columbia. UAWL is “an association of law students promoting awareness, study, and understanding of the issues that women face both as professionals in and as subjects of the law.” Their focus embraces community activism, which includes opening dialogues between law students, legal professionals, and academics. This year’s conference was titled “Branching Out: Contemporary Challenges to Feminist Advocacy” with the aim of discussing different forms of feminist advocacy in the community and academia, and the challenges that feminist advocates currently face.

The one-day event was an extremely successful one, with many excellent discussions from a wide spectrum of advocates – from feminist legal professors to First Nations community activists to students. My own presentation was on *Thirdspace* – how we were founded, what we offer for feminist advocacy, and what our challenges are. I can’t say enough about how well run the conference was, and I must admit I was quite floored by the wonderful present of special tea and a lovely mug from a woman-owned local business (Silk Road – [Hhttp://www.silkroadtea.com/](http://www.silkroadtea.com/)) – it’s my new favourite mug.

Coming out of the conference, I was inspired to add a new section to our journal: 'Dialogues' – a non-peer-reviewed section that is selected by invitation only, bringing in discussions from a variety of scholars and activists on feminist theory and feminist culture.

I put out a call for papers for this section to the participants of the conference and was very pleased with the excellent and warm response I received. In this issue we will offer the first two of these papers: Susan Boyd on current challenges in family law, and Gerry Kilgannon’s look at the activities of Women Elders in Action (WE*ACT).

In the Winter 2008 issue we will offer the second half of this round of Dialogues: Habiba Zaman on immigrant accreditation, and barabara findlay’s excellent keynote to the conference.

Dialogues

Contradictions and Challenges in Canadian Family Law

Susan B. Boyd

I want to talk about some contradictions and challenges that I see arising for women – and for feminist strategy – in the field of family law in Canada.

Most of my feminist work has been focused on the ways in which familial ideology – often a very traditional, culturally specific, heterosexual, middle-class familial ideology – has infused judicial decision-making in various fields, such as child custody law (Boyd 2003). I've examined how some mothers can fare reasonably well in child custody disputes while others can be treated incredibly badly. I have concluded that all too often a mother's class, race, sexuality, or labour force status – or simply her expression of independence of spirit – can play a big role in determining how she fares in any dispute regarding her children. That is, if a mother departs from expected norms of maternal behaviour by, for instance, resisting expectations that she nurture her child's relationship with a father, her claim may be prejudiced.

Based on the phone calls that I receive regularly from desperate mothers – which is somewhat surprising, given that I am an academic rather than a practising lawyer – I am guessing that the problems that many women face are not going away. Indeed, they are exacerbated in a climate where obtaining legal advice is beyond the reach of many women due to legal aid cutbacks, or it is impeded by the challenges of language and cultural barriers, as is the case for some immigrant women.

Most recently, I have been looking at the impact of our increasingly mean-spirited state – and neo-liberal ideology – on family law (Young and Boyd) and also at shifting definitions of who is a legal family and who is a legal parent (Boyd 2007).

I think we are at a point where incredibly complex contradictions are arising in family law. These contradictions also pose difficult challenges for feminists in terms of strategies.

I've been concerned that an increasing focus on neutrality, including gender neutrality, has made it virtually impossible to find a framework within which to capture the ongoing, highly gendered experiences that many women have, specifically as mothers.

In a climate where we are all expected to compete equally in the labour force, and when hours of work appear to be increasing rather than decreasing for those of us who actually have full-time jobs, the worker has become a neutral construct. It has become harder and harder to claim that women may experience difficulty in competing in the labour force due to caregiving responsibilities for children and, increasingly, elderly parents – and maybe even male partners. In spousal support decisions, for instance, judges often expect women to work full time, even if they have responsibility for children at home.

Now that employed men can take parental leave (and seem increasingly to do so, in my workplace at least), employers no longer see caregiving as being gendered female. And while encouraging men to do caregiving work is something that feminists have fought for, this gender neutrality can mask a downside for women. Just as men tend to have better jobs than women, so too will they now qualify for parental leave more easily (and with better financial compensation) than women.

Is that equality?

Moreover, in the name of equality, the fathers' rights movement has had an impact on family law, with biological fathers increasingly gaining rights based on a genetic tie alone, e.g., to be named on the birth registry.¹ This right, in turn, enables genetic fathers to play a role in determining children's surnames, and it will potentially allow them to dictate how a child should be raised or to claim time with that child – regardless of whether a father has a positive relationship with the mother, and regardless of whether he shares responsibilities for that child's care. How we are to reconcile this trend with the ability of lesbian co-mothers to register as 'co-parents' is somewhat of a mystery.²

The ability of mothers to parent autonomously from the biological fathers of their children has been seriously compromised due to this genetic fundamentalism.

The dominant discourse now is CHILDREN NEED FATHERS. Mothers have become increasingly invisible in legal discourse, albeit they are still pretty visible in the daily lives of children. It's not a new thought to say that Mothers have Responsibilities, whereas Fathers have Rights. But this slogan does (still) seem to accurately describe where we are at.

On a more positive note, we *have* witnessed a liberalization of family law over the past couple of decades, with increased recognition of unmarried cohabitants – including same-sex cohabitants – and this has culminated in the legalization of same-sex marriage and considerable legal recognition of same-sex parents. Women can now choose to live married or unmarried

(although some rights, notably to property sharing, still vary depending on that choice). And women can also choose to live with either a man or a woman and still be legally recognized. Choice rules! We should be happy, right?

What is not so positive is that the victory of legalized same-sex marriage has proceeded on the basis of a reassertion of socially conservative discourses on marriage – and these discourses are generally bad for women. As various Canadian feminists have pointed out, the same-sex marriage campaign has proceeded without a critique of gendered inequalities within the family and with a seemingly shared understanding among litigants, supporters, and judges that marriage is a fundamental social institution. Professor Hester Lessard of the University of Victoria Faculty of Law has referred to this as ‘marriage fundamentalism’ (Lessard, “Charter Gridlock” 292). Shelley Gavigan has pointed out that many of the arguments in favour of same-sex marriage were premised on a notion that marriage would give the children of lesbian couples ‘legitimacy’ (Gavigan 336). This notion re-invokes what we all probably thought was an obsolete notion of marriage and legitimacy as important signifiers for the status of children. In other words, we thought we’d rejected the idea that children need two married parents in order to be treated properly in society, but, bizarrely, this idea seems to have been reasserted in the context of same-sex marriage!

There are, then, ways in which the victories in relation to recognition of same-sex relationships – which must of course be applauded – have simultaneously reinforced exclusionary practices in relation to other marginalized groups, such as single mothers.

And what of same-sex parenting? You might say to me: Look at that amazing court decision in Ontario in which two lesbian co-mothers and the biological father/sperm donor were all three recognized as parents.³ And I agree, it’s a most interesting decision, and it seems to suit the needs and wishes of that particular family – all to the good.

However, when we consider that decision through a lens that seeks to correct the relative invisibility of mothers and the increased visibility of fathers’ rights, what happens next? Most provinces have laws on parenting that are grossly out of date and premised on the idea of two parents of the opposite sex. Partly for this reason, my own province of British Columbia is in the process of reforming its Family Relations Act, which regulates such matters. (And we should, by the way, be getting comments and submissions into the government in order to try to influence the process!)⁴

But what will law reformers do? Will they follow this progressive decision out of Ontario, legally recognizing three parents on the assumption that, for most children, it will be a

good thing to recognize a biological father, even if a child is being raised primarily by two mothers? If so, will we be able to have situations where two women can be sole heads of a household with a child in it?

Or do we need a father figure in most cases? What does that say about single mothers, and lesbian mothers, and their ability to parent autonomously from men if they so desire? If a biological father **CHOOSES** to express an interest in being involved with a child, does a mother have any capacity whatsoever to determine what her family form will look like?

So the problem is this: traditional discourses of motherhood and fatherhood, and of gender, now co-exist with equal-rights discourses invoked by fathers and by same-sex partners. I worry that neo-liberal discourses of choice, neutrality, and equality will make it increasingly difficult for women to point to the ongoing gendered nature of their lives and the fact that many women struggle on their own to provide a decent home for their children; that they will make it increasingly difficult for women to escape violent relationships with men; and that they will make it difficult for women to legally define their own chosen family units.

It's pretty hard to come up with one strategy that will work for all scenarios. We want, on the one hand, to recognize ongoing gendered inequalities in the family; on the other, we want to facilitate the creation and recognition of families that are not premised on traditional norms of male and female behaviour, or heterosexuality.

Overall, I am worried that in a political climate that expects women to be extremely responsible and, often, self-sacrificing citizens – good mothers, good workers, good spouses – women's capacity to be autonomous has diminished. Which is deeply ironic! Because it has not been so long since we were expected to be self-sacrificing wives and mothers without much autonomous choice over our destinies, reproductive or otherwise! That, in part, is what the second-wave women's movement fought against.

And I am now wondering whether some of those same problems have been reconfigured within a different language or framework. Even as we make 'progress,' then, we must be vigilant about the terms on which progress proceeds and make sure that the success of one group does not result in marginalization for another.

As Diana Majury has told us, equality is a process, not an end in itself.⁵ As such, it is an ongoing project, one that must be considered in relation to family law as well as other fields.

Notes

¹ *Trociuk v. British Columbia (Attorney General)*, [2003] 1 S.C.R. 835; 2003 SCC 34 (June 6, 2003), [<http://scc.lexum.umontreal.ca/en/2003/2003scc34/2003scc34.html>]. For just one of many critical, feminist analyses of this Supreme Court of Canada decision, see Hester Lessard, “Mothers, Fathers, and Naming: Reflections on the Law Equality Framework and *Trociuk v. British Columbia (Attorney General)*,” 16/1 *Canadian Journal of Women and the Law* (2006): 165-211.

² For the BC form, see: http://www.vs.gov.bc.ca/forms/vsa430b_fill.pdf.

³ *A.A. v. B.B.*, 2007 ONCA 2

[<http://www.ontariocourts.on.ca/decisions/2007/january/2007ONCA0002.htm>].

⁴ Consultation papers and instructions for submissions can be found at:

<http://www.ag.gov.bc.ca/legislation/index.htm#fra>.

⁵ Diana Majury, “Strategizing in Equality” *Wisconsin Women’s Law Journal* 3 (1987): 169-87.

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Dialogues

Women Elders in Action (WE*ACT): Giving Senior Women a Voice in British Columbia

Gerry Kilgannon

WE*ACT members have spoken up on a variety of issues over the past eight years, and our outspokenness stems from the organization's focus on the economic insecurity of senior women. This common concern was determined by women who came together in the Income and Poverty Working Group, which was established at the 1999 Senior Summit in Vancouver. At that time, we were surprised to learn how much better off men were than women when it came to retirement income. During the summit, the women in this working group wrote the "Vancouver Declaration of Older Women's Rights," which was presented at the 2000 World March of Women Tribunal to give visibility to the concerns of older women.

Energized by our experiences at the tribunal and intrigued by the income discrepancies discovered at the summit, we formalized our existence as Women Elders in Action (WE*ACT). We continued to meet after the summit and, over the following years, attracted women to the organization who were likewise interested in understanding this persistent inequity.

As a fledgling group, WE*ACT studied Canada's public pension system, which is the largest source of women's retirement income. In the fall of 2001 we hosted a Women and Pensions Conference with feminist economist Monica Townson as the keynote speaker. Recommendations from the conference were distributed widely to gain provincial support for a pension lobby. This provincial support has been stabilized into a network of senior women who monitor all levels of government for policy developments.

In the intervening years, WE*ACT has utilized diverse outreach tools to raise awareness about the impact of public policy on senior women. Street theatre that highlighted the negative effect of cutbacks to provincial programs in 2002 and frequent outreach tours around BC have helped to disseminate information and increase our understanding of senior women's shared experiences.

Research and discussion culminated in the 2005 publication of our position paper on pension reform, *Pensions in Canada: Policy Reform Because Women Matter*. This paper was and continues to be a tool for public outreach and education that reaches women in British Columbia and across the nation.

WE*ACT maintains a vital connection to our network through our member listserv and a monthly electronic bulletin. We are a clearing house for information to and from rural BC. We also encourage pension advocates across the country to circulate information regarding current pension policy developments.

Our members spread our research findings further afield by frequently presenting at conferences and gatherings focused on income security for women. We also organize electoral forums so that we can educate candidates about our concerns. A monthly, hour-long program on CJSF FM, which is broadcast from Simon Fraser University's Burnaby campus, is another recently developed channel for our urban members to raise the profile of senior women and their issues.

Multi-year funding from Status of Women Canada and generous support from 411 Seniors Centre in downtown Vancouver has allowed WE*ACT to maintain a part-time staff member who has organized the volunteer contributions of approximately one hundred active members province-wide and helped members meet a range of objectives:

The visibility of our activities has raised the profile of elder women's issues in communities across BC.

Women of diverse ages, ethnicities, races, classes, sexual orientations, gender identities, and abilities are mobilizing around senior women's issues.

Women elders now have a place to develop their leadership skills.

Women elders are empowered to work together, as well as with younger women, in collaborative activities.

WE*ACT contributes to the work of other social action groups, including the BC Women's Coalition, the Bus Riders Union, the Coalition of HandiDART Users, the Inner-City Housing Coalition, and the Raise the Rates Campaign.

Underlying Challenges

Confusion about real poverty rates in Canada Currently, there are three main tools used to measure rates of poverty in the country: the pre-tax low income cut-offs (LICOs), post-tax

LICOs, and the market basket measure (MBM). These measures consistently produce huge discrepancies in poverty estimates. For example, depending on which of these measures was used to assess poverty among single senior women in Ontario in 2000, the estimates were 10%, 16%, and 38% (Mitchell, Shillington, and Mohamoud). The federal government has used all three measures at some point, but it is leaning toward the measure that shows the least number of poor.

Whether this is really an accurate measure depends upon one's point of view. The fact that different factions of society use these different tools to support their own viewpoints means that there can be no real understanding of the numbers of single senior women living in poverty in this country.

The lack of reliable numbers to support our arguments has been a challenge, which is partially why we've compiled research that describes women's earnings, time spent in the workforce, ability to save, and access to pensions. This research gives us a handle on whether senior women could conceivably save enough for retirement, which they are expected to do.

Ageism exists This is particularly true for women because there is a double standard when it comes to aging. In fact, ageism exists in our own networks and neighbourhoods. This may come as no surprise in a society that is as youth-oriented as ours is today. While the swell of boomers moving toward retirement will tilt the population balance firmly on the side of elders, at this time, the needs of seniors are considered to be of real interest only to those who benefit in some way from servicing them. Or those, mostly female, unpaid caregivers who fill the gaps that exist in public policy.

Through our discussions with women from a variety of backgrounds, we are hearing that even elders that hail from cultures that traditionally revered the elderly are losing status as immigrant groups become entrenched in Canadian society. People tend to fear, rather than appreciate or welcome, the inevitability of aging. Thus, it is difficult to get an adequate review of seniors' issues from the younger generation. Even the feminist movement appears to be slow to embrace the concerns of their older members.

Affluent seniors are highly visible There are many affluent seniors in the country as the gap between the wealthy and the poor widens. Part of this gap is exacerbated by the fact that educated people with higher earning potential are attracted to one another and have formed family units with substantial dual-income streams, both before and after retirement. The media

and marketers seeking to tap into this group's potential create advertisements pitched at those with substantial incomes. Thus, these well-heeled individuals tend to dominate the media's portrayal of people of retirement age. If one's sole source of information about seniors' well-being is the mainstream media, one would imagine most of them to be quite well off, as seniors are portrayed playing golf, looking for recreational properties or second homes abroad, and taking vacations.

In truth, there are many affluent seniors in this country. Many began their working lives soon after the Second World War ended and the country entered a time of high industrialism. They enjoyed job security and rising real wages over most of their lives. Thanks to the labour movement, many ended their working careers with generous pensions and the ability to accumulate substantial savings and other resources. Most of these individuals, and there are no surprises here, were male.

Most women married young, and few worked outside of the home. Their job was to raise the children and look after the home and its inhabitants, while the male breadwinner worked to support the family financially, usually with just one job. This set-up came to be called the nuclear family, and it was the most prevalent way of life when our present pension system was established. (Obviously, women are disadvantaged within this system, which is based on lifetime earnings.)

The nuclear family is not the 'norm' today. Things started to change in the 1970s, and they have continued to change since then. Because these changes included the privatization of services and programs, our present pension system no longer fits present realities, particularly the experiences of approximately 40% of single senior women. These are the people that WE*ACT has advocated for over the last several years, these women plus immigrant and Aboriginal women. They are the ones most in need of pension reform.

Our recent research findings, compiled under the title *Myths About Canadian Women and Pensions*, describe why conditions won't necessarily be better for many younger women when they leave the workforce. We have been speaking out for them, and to them, as well.

To receive further information about WE*ACT or request a copy of *Myths About Canadian Women and Pensions*, please contact:

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