

November 7, 2011

Dear Honourable Shirley Bond, Attorney General

On behalf of ARPA Canada, including its six BC chapters, thank you for taking the time to hear our perspective on the *White Paper on Family Relations Act Reform*.

There is much that needs to be done to modernize the Family Relations Act, and we commend the office of the Attorney General for initiating the reforms in an atmosphere of consultation and collaboration. We strongly hope that this is only the beginning of a productive dialog.

We would like to present you with two fundamental problems with the White Paper, both of which stem from an underlying ideology that is reactive and not proactive. This ideology seeks to reinforce popular social agendas rather than to genuinely consider the well-being of BC families and children.

In numerous places the White Paper premises the need for reform on the changing social reality of families in BC. Understanding our times is important. But recent social trends do not determine what *ought* to be the direction of family law in BC. A government must bring leadership, at times in the face of social change, rather than constantly changing law to reflect and reinforce the latest social fashion. This is recognized in the White Paper's chapter devoted to seeking the best interests of children, yet sadly many of the other proposals contradict that very goal.

### ***Problem 1: Subjectively Defining Parenthood***

For time immemorial, biology, not social convention, has been the basis for parenthood. Chapter Three of the White Paper follows a very recent social trend to define parenthood subjectively, for the sake of adult self-interest rather than the well-being of everyone involved, including children. Rather than affirming the biological and psychological reality of marriage and parenthood, the state is defining parenthood according to its own social conventions.<sup>1</sup>

When parenthood is defined subjectively, "children are stripped from the core meaning of marriage and instead shuffled into another category of close personal relationships known as 'intergenerational relationships that involved the rearing of children.'"<sup>2</sup> Parenthood itself loses meaning as any person, and any number of persons, can demand claim to the title. Sadly, the ones most affected by this ideological game are the children. Instead of normalizing and promoting long-term and stable opposite-sex care for the child, which the social sciences affirm time and again to be in their best-interest, state-defined parenthood is much more likely to be short-term, broken, and harmful to the children. For example, a "large body of social scientific evidence now shows that the risk of physical or sexual abuse rises dramatically when children

are cared for in the home by adults unrelated to them, with children being especially at risk when left alone with their mother's boyfriends."<sup>3</sup> Furthermore "children raised by divorced or never-married parents face an increased risk of living in poverty, failing in school, suffering psychological distress and mental illness, and getting involved in crime."<sup>4</sup> Problems are inevitable when policy revolves around the rights-infatuated adults rather than the vulnerable children.

Our concern with Chapter Three of the White Paper is that it uses reproductive technology as an excuse to define parenthood around the right *to* children rather than a the children's need *for* a mom and a dad.<sup>5</sup>

The White Paper's proposal allows for more than two legal parents. It has little choice, given the subjective definition. Yet one need not be a social scientist to realize that two parents already have to invest a lot of time into communication so that they can make decisions that advance their children's well-being. It is clearly not for the child's benefit that as many as five adults (who do not share a committed marriage relationship, may live in different areas, and may not even know each other) are permitted to make decision for the child or children.

The first generation of donor conceived children have a lot to tell us in this regard. They "often say they were denied the birthright of being raised by or at least knowing about their biological fathers. They say that this intentional denial profoundly shapes their quest to understand who they are."<sup>6</sup> This will only compound when parents are defined as the White Paper proposes.

The answer is simple. As has always been the case, the state must understand that its role in family law is to recognize, protect, and uphold the biological basis of parenthood as best it can under the given circumstances, rather than redefine and remake parenthood into a reflection of adult-centered social norms. The law does not need to be "modernized." It needs to focus on what is best for families in light of the times. Fortunately, what is best does not change.

## **Problem 2: Eroding the Uniqueness of Marriage**

Chapter 9 of the White Paper proposes to apply statutory property division rules to common-law spouses who have cohabited in a "marriage-like" state for at least two years, or less if they have children together.<sup>7</sup> This would "treat two institutions similarly when social science data show that, when it comes to the well-being of children, cohabitation is on average much less stable and safe."<sup>8</sup> In addition, this would be another step by the state to redefine the meaning and erode the uniqueness of marriage by equating it with any close relationship.

It has only been in the last decade that the state has taken it upon itself to redefine marriage to seek the interests of adults. Opening it up to same-sex couples was one step. Equating it with common-law relationships for the sake of property division is another step. On the one hand, when common-law relationships are equated with marriage, the state is declaring that cohabiting individuals no longer have a choice if they want to combine their property. But much more importantly, the state is reducing marriage to just another relationship category, on par with cohabitation. As has been mentioned already, the social sciences resoundingly affirm that marriage is not just another type of relationship. It provides the stable and loving climate that is so

important for the health of children, the family, and indirectly all of society. “[R]esearch shows that children living in families with married parents have better outcomes than children in all other living arrangements on a broad range of measures, including economic well-being, behavioural and emotional health, and educational attainment, even when researchers control for differences in income and other characteristics.”<sup>9</sup>

Whether the state recognizes it or not, the conjugal understanding of marriage that has been the basis of the family unit for the entire world, serves some very important purposes that cohabitation cannot replicate:

It addresses the fact of sexual difference between men and women, including the unique vulnerabilities that women face in pregnancy and childbirth. It promotes a public form of life and culture that integrates the goods of sexual attraction, interpersonal love and commitment, childbirth, child care and socialization, and mutual economic and psychological assistance. It provides a social frame for procreativity. It fosters and maintains connections between children and their natural parents. It sustains a complex form of social interdependency between men and women. It supports an integrated form of parenthood, uniting the biological (or adoptive), gestational, and social roles that parents play.<sup>10</sup>

Yet simply because Section 120.1 of the Family Relations Act has been criticized for discouraging common-law couples “from making agreements to deal with their property”<sup>11</sup> the authors of the White Paper deem it necessary to equate common-law couples with married when it comes to their property. Marriage is a sacred institution that is to be recognized and honoured by the state.

## **Conclusion**

There are two possible but mutually exclusive foundational principles to family law: the best interests of rights-conscious adults, or the best interests of children. If we agree that it is the former, there would be very little opposition from us to the redefinition of the family that is taking place with alarming speed in the laws of our nation. However, since we strongly believe that family law must have first and foremost the best interests of the child at heart, we strongly encourage lawmakers to promote the ideal environment for children – within the context of a low-conflict, heterosexual, committed relationship. Instead, many changes in this white paper erroneously reduce this ideal to simply a choice among equals.

British Columbia and Canada are built on a Judeo-Christian heritage. That is a fact. The changes in family law reflect a desire by segment in society to leave that heritage and make our decisions based on a new set of standards. We may well be a secular and multicultural province. But by no means does that mean that the new foundation being promoted in family law is not itself religious. It is grounded in secular humanism and consequently is built around an infatuation with individual rights. We respectfully ask you to reconsider this direction, for the sake of the children. Brian Lee Crowley says it best: while “family breakdown is a calamity for society, it is first and foremost a tragedy for the children, who are thereby deprived of those acquired

character traits, or 'second nature' that along make full human happiness possible. All other possible arrangements for raising children are, on average, inferior in the preparation they give children to face the rigours of adult life, including the openness, trust, cooperativeness, and perseverance necessary to succeed at work and to create a family for themselves able to confer the same benefits on their own children. So having sound families and encouraging marriage means that the young Canadians who are shaped by such families enter the labour force better equipped to succeed there, raising their own standard of living and that of all Canadians.”<sup>12</sup>

Respectfully submitted,

Mark Penninga  
Executive Director,  
ARPA Canada

Neil Dykstra  
Board Secretary, ARPA Canada  
Chair, ARPA Langley

#### End Notes

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<sup>1</sup> See White Paper Chapter 3: Legal Parentage, available at <http://www.ag.gov.bc.ca/legislation/family-relations-act/pdf/Family-Law-White-Paper.pdf>.

<sup>2</sup> Dan Cere, *The Future of Family Law and the Marriage Crisis in North America*. New York: Institute of American Values, 2005. p 34.

<sup>3</sup> Ibid, 39.

<sup>4</sup> Elizabeth Marquardt, *The Revolution in Parenthood: The Emerging Global Clash Between Adult Rights and Children's Needs*. New York: Institute for American Values, 2006. p 20.

<sup>5</sup> Marquardt, p 15-16.

<sup>6</sup> Ibid, 17.

<sup>7</sup> White Paper, page 83.

<sup>8</sup> Cere, 6.

<sup>9</sup> Brian Lee Crowley, "Fearful Symmetry: The Fall and Rise of Canada's Founding Values", 2009 p 148.

<sup>10</sup> Cere, 20.

<sup>11</sup> White Paper, 82.

<sup>12</sup> Lee Crowley, 151.