

REGARDING BILL C-560

(Amending Canada's Divorce Act to provide for a rebuttable presumption in favour of equal shared parenting after divorce)



Lawyers for Shared Parenting

CANADIAN EQUAL PARENTING COUNCIL
CONSEIL DE L'ÉGALITÉ PARENTALE DU CANADA



Leading Women for Shared Parenting

INTRODUCTION AND BACKGROUND TO BILL C-560

An Act to Amend Canada's Divorce Act to Support Equal Shared Parenting

From the 1998 Canadian Senate special joint committee on child custody and access recommendations, to the present, numerous reports and statements concerning the family law system as it relates to contested custody cases have recognized the need for fundamental reform. Former Ontario Chief Justice Warren Winkler has in the past expressed the concern that the current system needs to be rebuilt from the bottom up using new concepts and fresh ideas.

Bill C-560, a private member's bill proposed by Conservative MP Maurice Vellacott (Saskatoon-Wanuskewin) is a reasonable and balanced proposal to address the current broken system.

The principal change to the legislation, with the goal of reducing incentives for litigation over children, is the proposal for a rebuttable presumption that the best interests of children would be supported by equal shared parenting unless it can be established that those interests would be substantially enhanced by some other parenting plan.

Since the first reading in December 2013, Bill C-560 has been subject to a first hour debate in the House of Commons in March 2014 with additional debate scheduled for May 7, 2014, to be followed by a second reading vote.

This "Myths and Facts" document has been prepared to demystify the rhetoric put forward in a very active debate in the media and amongst stakeholders in relation to the proposal for equal shared parenting. It is hoped that this document will serve to cut through rhetoric and enable a focus on the substantial benefits to children from the proposed amendments to Canada's *Divorce Act*.

This document is sponsored by the following three organizations seeking to foster children's interests and protect children from the effects of bitter custody disputes.

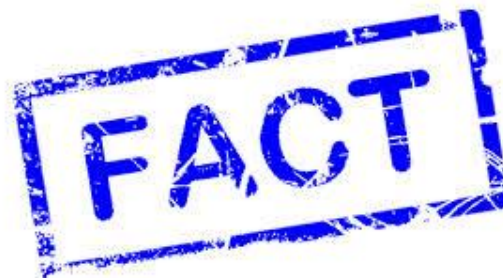
For further information, contact the following:

Lawyers for Shared Parenting (www.l4sp.com): Brian Ludmer (www.ludmerlaw.com; 416-781-0334)
and Gene C. Colman (www.complexfamilylaw.com; 416-635-9264)

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Leading Women for Shared Parenting (www.lw4sp.org): Paulette MacDonald (289-240-0665; kidsneed2parents@gmail.com)
and Georgiale Lang (www.georgialeelang.com)

EXECUTIVE SUMMARY



Bill C-560 is focused on the rights of parents as opposed to the current law, which is focused on the best interests of children.


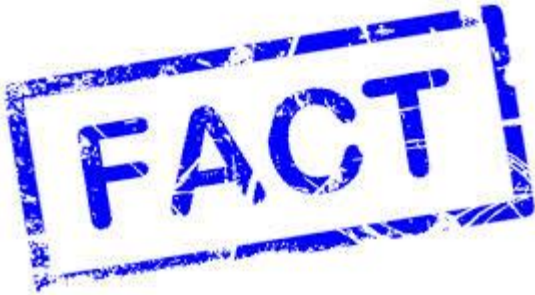
Bill C-560 attempts to impose a “one size fits all” solution, ignoring the uniqueness of each family, which should be left to Judicial discretion.

Imposing a presumption is too radical a change to the existing law and other approaches to enhancing maximum contact for the children to both parents should be pursued instead.


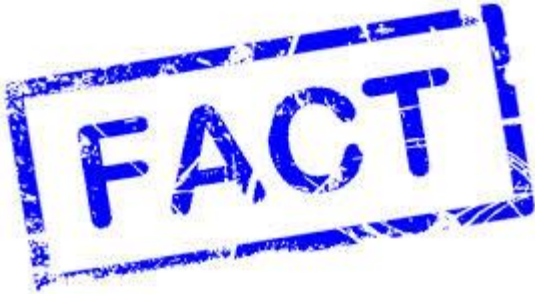
Children benefit from having one primary parent and one home after separation.

- The current adversarial litigation system of settling child-related disputes is focused on parental rights and is irreparably broken, with Courts clogged with bitter, divisive and financially devastating custody litigation between parents fighting over children like property. Previous initiatives such as mandatory mediation, parenting education, collaborative law and costs awards have failed to solve the problem
- Bill C-560 will foster settlements and reduce litigation due to the requirement that a parent seeking primary parent status must establish that the best interests of the children (which remains the focus under Bill C-560) are substantially enhanced by disproportionate parenting time. Studies have consistently shown that it is the very existence of the custody litigation itself that causes most harm to children, parents and taxpayers
- Bill C-560 focuses on the right of the child to know and love two primary parents in accordance with the UN Convention on the Rights of the Child. Custom solutions are available under Bill C-560 where there is demonstrable merit in light of the unique aspects of the particular family
- The latest definitive social science understanding is that children need to continue to have two primary parents after separation. See the list at the end of this document
- The Canadian public strongly supports this initiative, with support ranging between 70% and 80% of the public measured across all demographics, regions and political affiliations. Judicial decisions under the existing legislation have failed to progress in line with the social sciences understanding of children’s needs and the voice of the Canadian public



Myths and Facts Concerning Bill C-560

		
1.	<p>Bill C-560 is focused on the rights of parents as opposed to the current law, which is focused on the best interests of children.</p>	<ul style="list-style-type: none">• The current adversarial litigation system of settling child-related disputes is focused on parental rights. Parents are represented by counsel and are the parties in the dispute. Each parent asserts that they are the better parent (often not objectively grounded or driven by emotion) and better able to meet the child's needs and each parent defends against unfair or mistaken attacks on their parenting from the other parent• Bill C-560 focuses on the right of the child to know and love two primary parents in accordance with the UN Convention on the Rights of the Child• Adversarial litigation with parents as parties pitting one parent against the other will be limited under Bill C-560 to those situations where there is no consensual agreement and where it can be established that the best interests of the children (which remains the focus under Bill C-560) are substantially enhanced by disproportionate parenting time


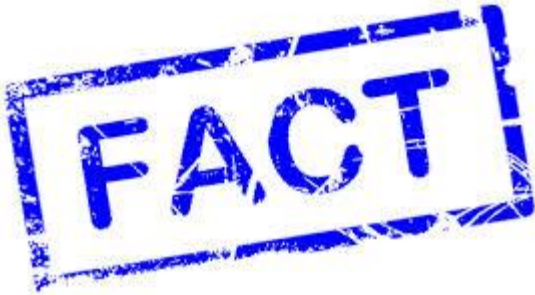
Myths and Facts Concerning Bill C-560

		
2.	Bill C-560 attempts to impose a “one size fits all” solution, ignoring the uniqueness of each family.	<ul style="list-style-type: none">• Bill C-560 continues to focus on the best interests of the child, with an examination of the particular family• The new rebuttable presumption simply means that the starting point for the analysis is equal shared parenting. From that starting point, the unique factors in each family are assessed for whether a different parenting plan can substantially enhance the best interests of the children• Customizable solutions are still available under Bill C-560 where there is demonstrable merit in light of the unique aspects of the particular family• Conversely, litigation related to splitting hairs over which of two normative parents is better, will be curtailed in the best interests of children and taxpayers



Myths and Facts Concerning Bill C-560

		
<p>3.</p>	<p>Parenting arrangements after divorce should just be left to the Court to determine in its discretion. There are too many particular factors for any default position to be prescribed, even just as a starting point.</p>	<ul style="list-style-type: none"> • There is no widely accepted social science literature that supports the ability of anyone (whether a psychologist or Judge) to determine, as a precise percentage of time, the optimal arrangements for a particular family’s children in terms of time-share between their parents • The only social science understanding that has any merit is that children need to continue to have two primary parents after separation. See the list at the end of this document • Bill C-560 recognizes that the current effort to specify with precision a specific timeshare between a primary and secondary parent, or the application of historical secondary parent “visitation” timeshare models, are not logically or empirically justified. Custody litigation seeking to marginalize one parent has no discernible benefit when measured against the financial and emotional cost and the impact on the children of litigation • Studies have consistently shown that it is the very existence of the custody litigation itself that causes most harm to children • Accordingly, Bill C-560 creates a rebuttable presumption that equal shared parenting is the starting point for the analysis and that it is in the best interests of the children unless it can be established that the particular children’s needs can be substantially enhanced by some other parenting plan


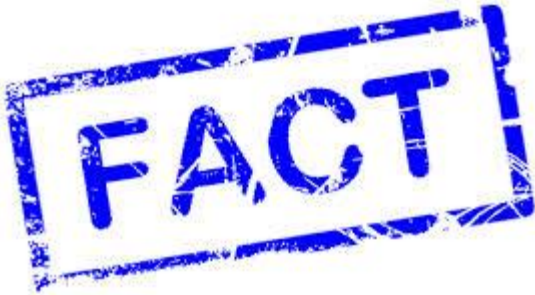
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4.	<p>Imposing a presumption is too radical a change to the existing law and other approaches to enhancing maximum contact for the children to both parents should be pursued instead.</p>	<ul style="list-style-type: none"> • The current system of adversarial litigation is irreparably broken and, consequently, disincentives to pursue custody litigation seeking primary parent status, except where demonstrably justified, must be implemented • Despite the developments of both permissive and mandatory mediation in many jurisdictions and the rise of collaborative law organizations and parent education programs, the family law courts remain overburdened with substantial backlogs due to child-related disputes • The discipline of costs awards has also not solved the problem • This problem, together with the associated costs to taxpayers and parents, has only gotten worse over the years • Further, the cost of litigation has led to significant advantages for wealthier parents or for those more capably equipped to self-represent themselves • The only practical solution to emotion-driven litigation is to raise the bar in terms of the legal burden litigants must bear if they wish to demonstrate that the best interests of the children are enhanced by their being the primary parent and the other parent relegated to secondary parent status



Myths and Facts Concerning Bill C-560

		
5.	<p>Bill C-560 proposes an overly simplistic idea of equality rather than considering a result best for the children in a particular family.</p>	<ul style="list-style-type: none"> • Children need to be protected from parental conflict based on self-perceptions of litigants as a primary or better parent • A starting point for families where both parents are normative (average) parents must be prescribed to prevent excessive litigation • Children need to continue to enjoy fully bonded relationships with both parents. There is no substitute for time spent and experience shared between parent and child • The best alternative for most children is equal shared parenting. Bill C-560 does not impose this solution, but rather requires compelling reasons to depart from equal shared parenting in order to curb bitter, high-conflict custody litigation where children are used as the spoils of war • Children are used to seeing both parents every day regardless of the roles undertaken during the marriage. The next best alternative to an intact family is equal shared parenting. Bill C-560 still allows for custom-designed parenting plans where there is demonstrable evidence of poor parenting, mental health issues, substance abuse and family violence


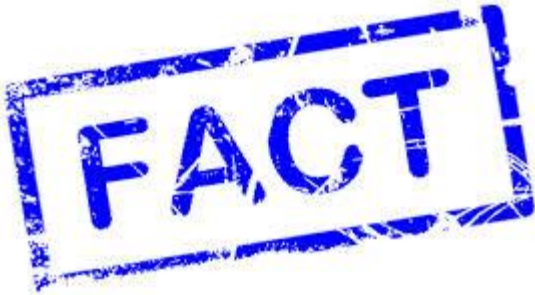
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6.	<p>Bill C-560 does not give parties tools to resolve differences, minimize conflicts and maximize children's benefits.</p>	<ul style="list-style-type: none"> • Bill C-560 is a response to the overwhelming volume of today's expensive and divisive custody litigation that is harming children's emotional and financial futures • By requiring demonstrable and compelling evidence that the particular children's needs can be substantially enhanced by a solution other than equal shared parenting, Bill C-560 will create strong incentives for parents to settle their own parenting plans and avoid litigation that will not likely elevate them to primary parent status • Accordingly, Bill C-560 will minimize conflict and protect children from the effects of custody litigation and reduce the devastating cost to families and taxpayers
7.	<p>Bill C-560 will encourage families to engage in lengthy and costly legal battles.</p>	<ul style="list-style-type: none"> • The current legal environment fosters the overwhelming extent of custody litigation now clogging the courts • One of the primary benefits of Bill C-560 is the new requirement for demonstrable and compelling evidence that the needs of children will be substantially enhanced by an unequal parenting time schedule. This will of necessity reduce the current plague of high-conflict, expensive and stressful custody disputes



Myths and Facts Concerning Bill C-560

		
8.	<p>The retroactivity clause of Bill C-560 will foster litigation in families with currently settled court orders.</p>	<ul style="list-style-type: none">• Bill C-560 maintains as the primary paradigm the best interests of children• If a better outcome for the children in a particular family can be achieved by an evolution toward more balanced parenting times, the needs of children will, of necessity, be enhanced• Only those situations where, despite a stable status quo, the children's needs would justify a re-examination are likely to be pursued• Courts will still take into account a stable status quo• Parents would still be able to meet and work out consensual amended arrangements, whether equal parenting or something close to equal parenting


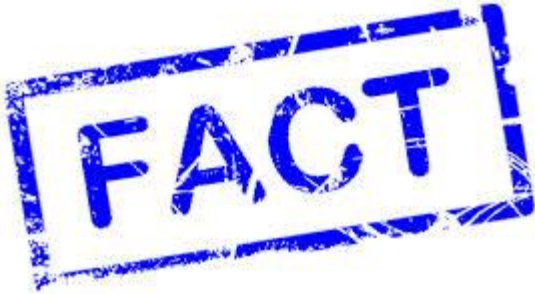
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9.	<p>Bill C-560 fails to protect the rights of stay-at-home parents who occupied a primary parent role prior to separation.</p>	<ul style="list-style-type: none"> • Bill C-560 allows for a healthier reconstitution of a family into two homes. Separation usually requires adjustments on the part of both parents, including adjustments to work and home care schedules • The employment rate of women with children substantially increased between 1976 and 2012, especially among women with children under six years old. In 2012, the employment rate for women with children under six years old was 67.8% (up from 31.4% in 1976) and 79.0% for women with children from 6 to 15 years old (up from 46.4% in 1976). (<i>Statistics Canada</i>) • Further, parents in intact families who work during the day often are heavily involved with their children’s homework and activities on evenings and weekends. An undue focus on the roles undertaken prior to separation is too restrictive and inflexible to assist families reconstituting after separation. However, assertions of prior parenting roles can still be made and considered by courts where appropriate • Bill C-560 maintains its primary focus on the right of children to know and experience both of their parents after separation. Assertions of prior primary status are about parents’ rights and not focused on the best interests of children


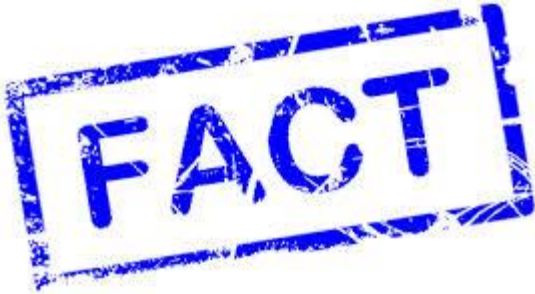
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10.	Equal shared parenting is not advisable in high conflict cases.	<ul style="list-style-type: none">• Sharing parenting time reduces conflict over inadequate parenting time• Bill C-560 still allows a court in appropriate circumstances to allocate parental responsibilities/decision-making in a manner different than the allocation of parenting time• For appropriate cases where the use of parental coordinators and mediators is not sufficient to assist the separated family in cooperating, major decision-making powers can be allocated to one parent even though parenting time is equal• Parenting time is the private time that each parent gets to continue their bonded attachment with the children and is a distinct issue, unrelated to decision making on major issues such as healthcare and education. Private parenting time disengages the parents and reduces conflict• The leading social sciences literature refutes the assertion that equal shared parenting time is somehow not advisable in high conflict cases. See the list at the end of this document


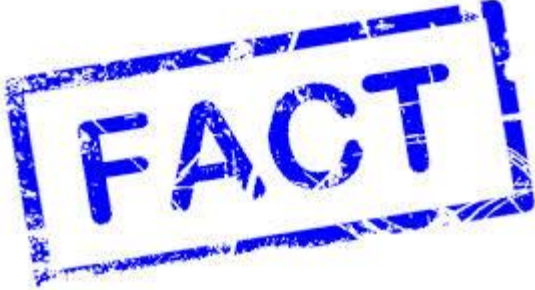
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11.	<p>Equal shared parenting will significantly reduce the amount of child support received by support recipients.</p>	<ul style="list-style-type: none"> • The cost to support children is already shared between both parents under the current legislation • Today, special and extraordinary expenses (such as camps, private school, childcare, tutoring and extra-curricular and sports activities) are already shared proportional to income • Under the current child support legislation, basic support items such as food, shelter and clothing will also generally be shared pro-rata to income where equal shared parenting is in place • Accordingly, the needs of children will continue to be met based on a fair allocation of the separated family's aggregate resources, as is the case prior to separation • Bill C-560 does not alter the current child support laws and its application will not result in unfair or disproportionate childcare expense allocation • There will generally not be any material reduction in aggregate child support received by a support recipient


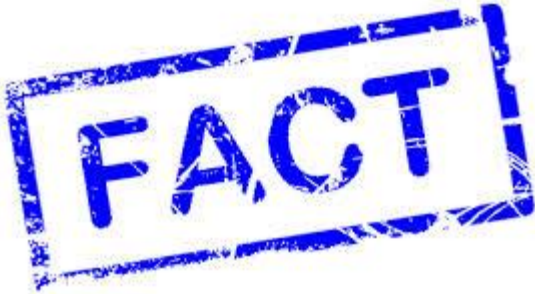
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12.	<p>A version of shared parenting was tried in Australia and was cut back after unfavourable results.</p>	<ul style="list-style-type: none">• After the passage of the 2006 shared parenting amendments in Australia, the Australian Government commissioned a study by the Australian Institute of Family Studies to evaluate the impact of the 2006 changes. Amongst the findings were that an increased number of parents were able to sort out their post separation arrangements with minimal engagement of the formal family law system and that the majority of parents in shared care time arrangements reported that the arrangements worked well for them and their children• The 2012 changes (primarily focused on domestic abuse cases) were the result of a politically-driven process and were not based on the actual experience of the public with family law dispute resolution during the period of time between 2006 and 2012• Prior to the implementation of the 2006 Australian reforms, 77% of Australians supported shared parenting. Five years after implementation, the figure had risen to 81%. As in other jurisdictions, passage of shared parenting legislation was accompanied by a substantial drop in litigation


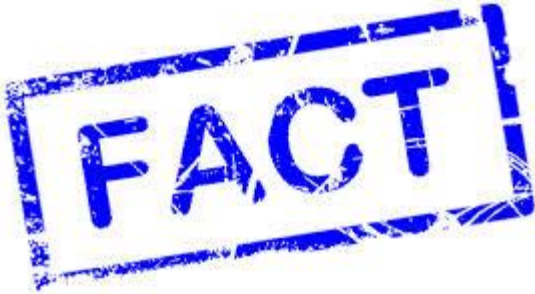
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13.	<p>Variations of equal shared parenting are also an option under the current legislation, so Bill C-560 is not needed.</p>	<ul style="list-style-type: none"> • Bill C-560 recognizes that despite the current federal legislation having taken effect in 1985, the evolving views of the Canadian public and a more up-to-date understanding of children’s needs have progressed far beyond the actual decisions being made by courts under the current legislation • Bill C-560 is a response to ensure that the needs of children to maintain two primary parental relationships are protected
14.	<p>Children benefit from having one primary parent and one home.</p>	<ul style="list-style-type: none"> • The leading social science literature overwhelmingly supports the view that children of divorce do better when they have two primary parents and two homes, as opposed to one home and a place they go to “visit” from time to time • Children quickly adjust to the logistical issues of homework, activities, clothing, sports equipment and toys at two homes and often benefit from the experience. • Children have two primary parents during their parents’ marriage and have the right to have those primary relationships continue after separation • The leading social sciences literature on shared parenting is referenced at the end of this document


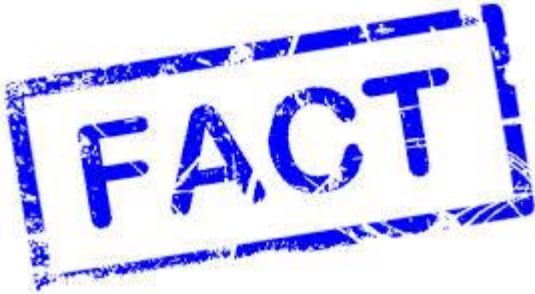
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15.	<p>The quality of parenting time is more important than the quantity of parenting time.</p>	<ul style="list-style-type: none"> • The leading social science research listed at the end of this document clearly concludes that the amount of time spent is crucial in fostering and maintaining parent-child relationships • There is no substitute for actual time spent together and sharing life's experiences together in supporting parent-child bonding • Children experience both parents 100% of the time before separation. Time does matter. Children should not be marginalized from either parent • Surveys of children and of parents who have experienced separation refute this myth
16.	<p>Bill C-560 is put forward by special interest groups.</p>	<ul style="list-style-type: none"> • Equal shared parenting is supported by the vast majority of Canadians of all regions and demographics. Public opinion polls over many years have consistently indicated that between 70% and 80% of Canadians, whether tested by gender, age, region or political affiliation, support equal shared parenting. • Bill C-560 is opposed by special interest groups and vested interests, such as some family law lawyers, certain academics and others who make their living from custody litigation and disputes • Equal shared parenting legislation sponsors include national parenting organizations representing Moms and Dads

Myths and Facts Concerning Bill C-560

		
17.	<p>The federal government should wait and coordinate any changes with the provinces.</p>	<ul style="list-style-type: none"> • The Divorce Act is federal legislation and the applicable rules for married couples (comprising the vast majority of affected children) are governed by federal legislation • There is an urgent need for leadership from the federal government and attempting to coordinate amendments with Provinces and territories will create significant delay in resolving the current broken family law system • The 1985 Divorce Act changes, and modern child support laws, were federal government initiatives that the Provinces followed • The Provinces, whose legislation governs unmarried couples' children, will inevitably fall in line and follow the federal government's lead
18.	<p>It matters that many family lawyers and their associations oppose Bill C-560.</p>	<ul style="list-style-type: none"> • The Canadian public and taxpayers overwhelmingly want equal shared parenting as a means to end the custody wars clogging our courts and damaging children • Parliament should be responsive to the overwhelming position of the Canadian public and not the desires of special interest groups. Many family lawyers do, in fact, support Bill C-560 • The concerns expressed by these groups have been fully addressed in Bill C-560 and in this document, as well as in the leading social sciences literature

Myths and Facts Concerning Bill C-560

		
19.	Bill C-560 is too innovative.	<ul style="list-style-type: none"> • There are a substantial number of jurisdictions around the world where variations of shared parenting have been in place with very favourable results for quite some time, including France, Sweden, the Netherlands, Belgium, Denmark, Italy and Luxemburg, with the UK, Norway, Germany and other countries in various stages of shared parenting deliberations • In the United States 36 states now explicitly authorize joint custody (i.e. some variant of joint legal and residential custody) with 14 having a presumption variably defined in favour of joint custody and 6 having the equivalent of a rebuttable presumption of substantive shared parenting. Shared parenting initiatives have been reported in Minnesota, Florida, South Dakota, Arkansas, Massachusetts and South Carolina

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Myths and Facts Concerning Bill C-560

For examples of the leading social sciences literature supporting shared parenting, see the following:

1. *The Equal Parent Presumption, Social Justice in the Legal Determination of Parenting After Divorce*, Edward Kruk, McGill-Queen's University Press, Montreal and Kingston, 2013; ISBN - 10: 0773542914 and ISBN - 13: 9780773542914
2. "Shared physical custody: Outcomes for children. Review of research", Dr. Linda Nielsen, (2013) *American Journal of Family Law*, 27, pp. 61-72 & 123-137
3. *Social Science and Parenting Plans for Young Children: A Consensus Report*, Richard A. Warshak, (with the endorsement of the more than 100 researchers and practitioners listed in the Appendix), *Psychology, Public Policy and the Law*, American Psychological Association, (2014), Vol. 20, No.1, 46 – 67
4. *Arguments for an Equal Parental Responsibility Presumption in Contested Child Custody*, Edward Kruk, *The American Journal of Family Therapy*, (2012), 40:1, 33-55
5. *Parenting Time & Shared Residential Custody: Ten Common Myths*, Dr. Linda Nielsen, *The Nebraska Lawyer*, Jan-Feb 2013
6. *Custody and parenting time: Links to family relationships and well-being after divorce*. Fabricius W. V., Braver, S. L., Diaz, P., & Velez, C.E. (2010). in M.E. Lamb (Ed.), *The Role Of The Father In Child Development* (5th ed., pp. 201 - 240). N.Y., Wiley. ISBN - 10: 047040549X and ISBN - 13: 9780470405499
7. *Parenting time, parent conflict, parent-child relationships, and children's physical health*. Fabricius, W. V., Sokol, K. R., Diaz, P., & Braver, S. L. (2012). in Kuehnle, K. & Drozd, L. (Eds.) *Parenting Plan Evaluations: Applied Research for the Family Court*. Oxford University Press (2012) ISBN - 10: 0199754020 and ISBN - 13: 9780199754021
8. *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, Robert Bauserman, *Journal of Family Psychology*, (2002), Vol. 16, No. 1, 91–102
9. *Children's Living Arrangements Following Separation and Divorce: Insights From Empirical and Clinical Research*, Joan B. Kelly, *Family Process*, (2006), Vol. 46, No. 1,
10. For relevant social sciences research see Canadian Equal Parenting Council at <http://canadianepc.org/resources/epp-bibliography/> and Leading Women for Shared Parenting at <http://lw4sp.org/research/>
11. For further research, visit the websites of the U.S. National Parents Organization (www.nationalparentsorganization.org) and that of the International Council on Shared Parenting:(www.twohomes.org)