

The **eReview** provides analysis on public policy relating to Canadian families and marriage. Below please find new information about the Irish High Court's decision on same sex marriage, included as part of an assessment of the Three Parent Case.

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The marriage debate: We've moved on. But to what?

The same sex marriage debate is firmly behind us. We've all moved on... to legally recognizing multiple parents.

By Andrea Mrozek, Manager of Research and Communications, Institute of Marriage and Family Canada

Ah yes. The new year, a perfect time to move on from the divisive marriage debate of late 2006. And how. If the debate is over on same sex marriage; we must now welcome a new debate over the legal recognition of multiple parents. When the Ontario Court of Appeal granted three adults legal parent status on January 2, 2007 it was not social conservative activists who opened up the marriage debate--it was the judges at the Ontario Court of Appeal. And why? They did so for the benefit of the adults involved.

There is evidence to suggest the best child outcomes occur in low conflict, biological married parent settings. [1] But there is no research to show that three parents, or even that same sex parents are good, bad, or irrelevant for child outcomes. [2] There is a definitive need for better comparative studies. In spite of what Maggie Gallagher, president of the Institute for Marriage and Public Policy, calls an emerging consensus on the success of traditional family structure, there are related but competing fields of study, which challenge those assertions, without offering direct comparisons. "Thus the powerful new consensus on family structure is on a collision course with a separate emerging consensus from a related field: the social science literature on sexual orientation and parenting," writes Gallagher. [3]

In order to say "yea" or "nay" to further attempts at family re-engineering, there should be some evidence upon which to base the decision. This would be a major undertaking, says Dan Cere, Assistant Professor of Religion, Ethics and Public Policy, McGill University. "Sociologists and psychologists acknowledge it would take a major interdisciplinary, collaborative research effort over the course of a few years to really get the high quality reliable data that is needed to answer the kinds of questions that need to be

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**“THE MONEY
SPENT ON
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~DAN CERE,
ASSISTANT PROFESSOR OF
RELIGION, ETHICS AND
PUBLIC POLICY, MCGILL
UNIVERSITY

”

asked," says Cere. "[Questions] like: is bio-genetic parental attachment really significant for the development of children—the biological development, psychological development, and social development of children? Are there significant differences comparing outcomes for children from intact families with other family forms whether they are donor conceived children, step families or children in same sex unions? What types of studies could provide reliable measurements?"[4] These questions are not being asked or debated in the public square: in the legislature, in the courts, or in the media.

Around the globe, other countries are facing similar issues as Canada, yet with different outcomes. [5] In December in Ireland, the Irish High Court decided against the recognition of same sex marriage, for a number of reasons: Neither the Irish Constitution, nor the European Convention recognize same sex marriage as a right and the Irish High Court also ruled this was a matter for the legislature. [6] Finally, that decision was in part due to the expert testimony of renowned scholar Linda Waite, Lucy Flower Professor in Urban Sociology in the University of Chicago, who testified there was simply not enough evidence to justify such a policy shift. [7]

Waite told the court of the solid evidence of good child outcomes in intact, biological parent homes. [8] She spoke of a dearth of good research on homosexual parenting. The decision reads: "None of [the research on gay and lesbian parents] to the best of her knowledge was based on survey research but rather was based on interviews or on very much smaller scale non random samples, therefore such research provides a much weaker basis for drawing scientific conclusions." [9] Waite also referenced what we now know about the effects of divorce on children; where previously it was believed that divorce would have little effect on children, the reality today is much different. Divorce does affect "the emotional well-being" and "career and personal accomplishments" of adults. [10]

Waite's comments are typically met with howls of derision from anti-traditional marriage activists, and given ample airing by the media. But reasonable activists on both sides would be wiser to concede that in very concrete terms we have little idea how substantial changes to marriage affect children. What could the Ontario Court of Appeal possibly know that the rest of the world does not? Given the lack of evidence, what is the proper course of action? Do we barrel ahead with changes in favour of adult equality today, or do we wait in order to justify the change in terms of children's rights for tomorrow? The Irish High Court decided they needed to wait for more evidence.

Yet there is an enormity to the task of getting more evidence: it will come only from a major longitudinal, non-partisan study, done by highly specialized, credible researchers in various disciplines.

Cere estimates such a study would require a substantial financial investment. Still he says, "the money spent on Gomery would be more than enough to get the job done." [11] A Royal Commission on the future of the family is one option; another might be to finance a non-partisan group of high calibre researchers to do the hard data collection and assessment, on child outcomes in different family forms.

But finally—the Three Parent Case means merely bleating that election promises have been kept and that marriage and the family are no longer the Parliament's business is already passé—the words of a bygone era when all Canada had done was legalize same sex marriage. We certainly have moved on.

[1] A sampling of studies on what Maggie Gallagher calls an emerging consensus on marriage and child outcomes can be found in M. Gallagher and J.K. Baker. (2004). *Do Mothers and Fathers Matter?* Institute for Marriage and Public Policy. Manassas, VA. The brief reads: "The weight of social science evidence strongly supports the idea that family structure matters and that the family structure that is most protective of child well-being is the intact, biological, married family." But these studies do not compare with children "raised from birth by same sex couples."

"[c]hildren in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes." K. Anderson Moore, et al., (2002). *Marriage from a Child's Perspective: How does family structure affect children and what can we do about it?* Child Trends Research Brief (Washington, D.C.: Child Trends).

"[r]esearch indicates that, on average, children who grow up in families with both their biological parents in a low-conflict marriage are better off in a number of ways than children who grow up in single-, step-, or cohabiting-parent households." M. Parke. (2003). *Are married parents really better for children? What research says about the effects of family structure on child well-being.* CLASP Policy Brief no. 3 (Washington, D.C.: Center for Law and Social Policy).

[2] Linda Waite testifying before the Irish High Court in Katherine Zappone and Ann Louise Gilligan versus Revenue Commissioners, Ireland and the Attorney General, a decision delivered December 14, 2006. Retrieved January 9, 2007, from http://www.kalcase.org/KAL%20Zappone_v_Rev_Commrs_Judgement.doc

"[Waite] explained that in fact her approach to the topic was that she was neutral and her reason for being neutral was that at this stage there simply was no evidence one way or another as to the consequences of same sex marriage."

[3] M. Gallagher and J.K. Baker. *Do Mothers and Fathers Matter?* (2004) Institute for Marriage and Public Policy. Manassas, VA.

[4] Conversation with Dan Cere, January 8, 2007.

[5] The Netherlands, Belgium, Spain and South Africa and the state of Maine have legalized same sex marriage. The Czech Republic and Slovenia offer civil partnerships. France, after initiating an Information Mission, at the request of the President of the National Assembly, chose not to legalize same sex marriage. Ireland faced a court challenge, after which they also decided not to legally recognize same sex marriages, even those done in other countries. The plaintiffs in the case were married in British Columbia, Canada.

French report in full retrieved January 9, 2007 from http://www.assemblee-nationale.fr/12/dossiers/mission_famille_enfants.asp

English summary retrieved January 9, 2007 from <http://www.marriageinstitute.ca/images/PARLIAMENTARY%20REPORT%20ON%20THE%20FAMILY%20AND%20THE%20RIGHTS%20OF%20CHILDREN.pdf>

[6] Katherine Zappone and Ann Louise Gilligan versus Revenue Commissioners, Ireland and the Attorney General (2006).

[7] The Irish court case is not about legalizing three parents, but rather about recognizing same sex marriage. But this case is nonetheless relevant because the legalization of three parents is a direct result of the legalization of same sex marriage. While not every marriage involves children, offering the institution of marriage to couples entirely without access to procreation offers a new right devoid of any meaning. (This is something scholars like Margaret Somerville, McGill ethicist and Douglas Farrow, McGill professor of religion, among others, have written about, and provides part of the basis for their opposition to legal recognition of same sex marriage.) Same sex marriages in order to be truly equal, must involve procreation, and this by default means the involvement of at least three parties. Douglas Farrow, Project Director for Pluralism, Religion & Public Policy at McGill University, spoke to this issue and about the process of achieving equality in marriage for same sex couples at the March4Marriage rally on Parliament Hill on April 9, 2005. He said, "In order to make homosexual unions more nearly equivalent to

heterosexual unions it is necessary either to find a way for the former to produce babies by technological means or to deprive the latter, that is heterosexual couples, of any special relationship to their babies. It is necessary, in other words, for the state to take control of human reproduction." Speech audio retrieved online January 8, 2007 from <http://www.catholic-legate.com/audio/farrow.mp3>

[8] Katherine Zappone and Ann Louise Gilligan versus Revenue Commissioners, Ireland and the Attorney General (2006). "[Waite] has concluded that the evidence overwhelmingly supports the conclusion that the social institution of marriage changes the choices and behaviour of individuals... In relation to the benefits that accrue to children, she said that those involved emotional well-being and involved physical health; children raised in a two parent family are less likely to become ill when aged and less likely to die when they are post retirement age. She noted that children on average do better in school, they have fewer behaviour problems, they have higher academic achievement and are more likely to graduate from college and to have good occupations. She noted that they are more likely to form married families themselves and are less likely to have children while unmarried."

[9] Katherine Zappone and Ann Louise Gilligan versus Revenue Commissioners, Ireland and the Attorney General (2006).

[10] The court found Waite's evidence convincing for a number of reasons, not least of which are her academic credentials. However, they appeared to appreciate her restraint. The decision reads, "[Waite] said that it was extremely important to have a full picture of the methodology used for a particular study and the controls used to exclude confounding or biased factors. Her comment was as follows: 'No one should pay any attention to studies that are poorly done. They are just some stories, they really are not science.'" Waite's testimony was bolstered by the fact that ideologically, she is not against same sex marriage, but rather, is waiting for research to lead her direction.

[11] Conversation with Dan Cere, January 8, 2007.

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