

## The good divorce

October 04, 2009

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Living Reporter

Shawn Margison was just 7 when the strain of his parents' separation played itself out centre stage as he sang with his Grade 1 class at what's normally a happy family event, spring concert.

"The minute he caught sight of his dad in the gym, he just started bawling," says Newcastle resident

Kristin Titus, who had had sole custody of Shawn and his younger brother, Joshua, since separating from her husband two years earlier.

"He just kept singing and crying with this smile on his face. People were looking at me, trying to figure out what was wrong."

Titus knew immediately. She had seen this coming for months.

"It was just destroying my kids not having their dad around," she says.

After the concert, Titus urged her ex, Leonard Margison, to take the boys out for an ice cream and some time at a park. Later that night, over coffee at Titus's kitchen table, the couple mapped out a radically new life for their sons.

For the past nine years, Titus and Margison have shared equally in raising Shawn and Joshua under two separate roofs.

One week, the children are at their mother's well-worn bungalow on the semi-rural outskirts of Newcastle, east of Oshawa. There they have friends, two dogs and a sprawling property where they can roast marshmallows over a bonfire.

The next week, they have a different set of friends, a big extended family and the latest high-tech gadgets – from PlayStation 3 to a 42-inch flat-screen TV – in a subdivision in nearby Courtice, where they



RICHARD LAUTENS/TORONTO STAR

Ex-spouses Leonard Margison and Kristin Titus worked out an arrangement to share equally in raising sons Joshua, left, and Shawn.

live with their dad in a neat, split-level house where Shawn likes to blast out heavy metal on his guitar.

"At first it took a little getting used to," Shawn says. "Sometimes I would forget my bag or my guitar or skateboard, but my parents would drive me to pick them up. It's actually a lot simpler than it looks."

The ex-spouses now have new partners, but they confer regularly on issues affecting the kids. And it's a quick commute to school from both houses – although Shawn, 16, recently decided to live with his father full-time while Joshua, 14, continues to come and go.

"Living like this doesn't really affect me," says Joshua. "I have friends in both places and my parents will drive us anywhere we want to go. I get to see both my parents. I can't say it has a down side at all."

In Australia, where drastic divorce reforms in 2006 are aimed at making shared parenting the new norm, Shawn and Joshua might be considered "shuttle" or "ping-pong" kids. There debate is raging over whether the state has actually done more harm than good by, in essence, outlawing the age-old notion that Mom should get sole custody and Dad every second weekend with the kids.

The notion of "shared parenting" has been on the back burner in Canada since it was recommended in 1998 as part of Ottawa's landmark "For the Sake of the Children" report.

But things have been heating up recently thanks to Bill C-422, a private member's bill which stands almost no chance of becoming law yet has unleashed new debate about what should take precedence after a relationship fails – the best interests of the children or the rights of their parents.

What shocked Titus, 36, and her ex, 44, was how difficult it was to get a lawyer to help redraft their custody and support-payment agreement – and a judge to okay it.

"I went to six different lawyers who basically all told me if I had the kids, I could take Len for all he was worth," recalls Titus. "I just kept asking them, 'How is that going to be good for my kids?'"

What she saw as a "bias" in family law toward mothers so frustrated Titus, she joined the advocacy groups Fathers-4-Justice and the Canadian Equal Parenting Council to fight for change and now sits on their executives.

"Most of the men I know start out searching for shared custody," she says. "They give up that fight somewhere along the way either because their money has been exhausted (on lawyers), they're seeing what the court fight is doing to their children, or it's just killing them. Their lawyers tell them, 'Don't even bother. You won't get it.'"

Ontario family court judge Harvey Brownstone says it's imperative that he and his colleagues – whom he describes as "strangers" asked to decide a child's future because the parents can't – try to "maximize each parent's time with the child.

"But it has to be practical," he continues.

"Children have to be able to endure the toing and froing that can be disruptive if they go to school. I often see parents who say, 'I want the child every second day,' but one lives in Oshawa and one lives in Mississauga."

Entrenching the notion of shared parenting in law is dangerous because it doesn't take into account each

family's unique circumstances and makes it more difficult for abused women to move on from controlling or violent ex-partners, says Pamela Cross, director of the National Association of Women and the Law.

It can also be harmful to children, she says. "More and more research is showing that kids actually need the stability and security of saying, 'This is my home,' as opposed to 'These are my homes,'" Cross says.

Australia began reviewing its laws around divorce and separation after a 2003 national survey showed 36 per cent of the 1,000 separated men in the study hadn't seen their children in the last year. Eighty per cent of those estranged fathers indicated they wanted to see their kids but couldn't because of factors ranging from conflict with their ex, to distance, lack of money or the remarriage of one or both partners, says Patrick Parkinson, a University of Sydney law professor and one of the architects of Australia's reforms.

Before the reforms, less than 5 per cent of Australian men shared custody with their ex-partners. In the last three years, shared parenting arrangements have virtually doubled, and mid-week overnight visits have become the new norm in Australia, Parkinson said.

There's no doubt the reforms are working: There's already been an 18 per cent drop in family court filings, especially around custody and access issues, says Parkinson. But there have also been a handful of "manic" decisions from judges, he acknowledges.

One of the most extreme cases is *Rosa v. Rosa*. It involves a couple who had moved to an Outback mining town with their 5-year-old daughter so the husband could take a job as a mining engineer. Six months later, after the husband declared the marriage over, the wife moved back to Sydney with the child. Last May a family court judge ordered her to return to the remote town and share custody with her ex, even though she protested that she would be cut off from family and only be able to afford a trailer.

There have also been a couple of "horrific" shared custody judgments involving young children, such as the 4-year-old girl who was being forced to fly 1,200 kilometres every three weeks between her mother and father's house. While the child's father said his daughter was weathering the unusual commute fine, it was costing her parents about \$20,000 a year.

"I thought everyone would use their common sense," says Parkinson, who says the legislation, which is now undergoing a major review, clearly needs amending to exclude preschoolers from shared custody and long commutes.

Michael Green is an Australian criminal lawyer and divorced dad who pushed for shared parenting in that country – except where abuse, addictions or other factors make one parent unfit.

"I hear good reports from lots of people that their kids are happier and the fighting (in family court) has settled down between the parents," says Green, former president of the Shared Parenting Council of Australia.

Green expects to see shared parenting climb over time, although acknowledges there are many men who are more comfortable having their ex-wives as the primary caregivers.

While few statistics exist on family law issues in Canada, lawyers in Ontario say they have seen a

significant jump in shared parenting arrangements among ex-partners.

Ontario's family court judges – sensitive to fathers' protests of unfair treatment – appear to have made significant strides in granting joint custody, but the term is really a misnomer. It gives dads some say in key issues like their children's education and medical treatment, but the kids tend to live with Mom and "visit" Dad every second weekend and one night during the week.

Shawn and Joshua's father acknowledges that his sons would be doing just that if it hadn't been for that tearful school concert.

"It was devastating for me not to have a family life anymore," says Margison. "Having them every second weekend almost felt worse. I had to cram everything I possibly could into that two days, and it was just too much – or not enough.

"This has added a lot to my life. I really feel complete now watching my children grow up."