

Canadian Journal of Family Law

Volume 31
Number 1 *Remembering Professor Judith Mosoff*

2018

Remembering Professor Judith Mosoff

Isabel Grant

Susan B. Boyd

Follow this and additional works at: <https://commons.allard.ubc.ca/can-j-fam-l>



Part of the [Family Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Isabel Grant and Susan B. Boyd, "Remembering Professor Judith Mosoff" (2018) 31:1 Can J Fam L 1.

The University of British Columbia (UBC) grants you a license to use this article under the [Creative Commons Attribution- NonCommercial-NoDerivatives 4.0 International \(CC BY-NC-ND 4.0\) licence](#). If you wish to use this article or excerpts of the article for other purposes such as commercial republication, contact UBC via the Canadian Journal of Family Law at cdnjfl@interchange.ubc.ca

REMEMBERING PROFESSOR JUDITH MOSOFF

**Professor Isabel Grant & Professor Emerita
Susan B. Boyd**

“I see you no longer
but I see what you see
quiet, the lake’s quiet answer, quiet, the lake answers.”¹

This volume is a tribute to our friend and colleague, Professor Judith Mosoff, whose untimely death in December 2015 was a loss to the legal community, both nationally and internationally. Professor Mosoff would not have seen herself as a “family lawyer”; rather, her work focused on the rights of marginalized persons, particularly, but not only, those with disabilities.

However, at the heart of Professor Mosoff’s work was the centrality of the family. Her groundbreaking work on mothers with mental health histories² challenged the authority of the state to remove children from their mothers because of a mental health diagnosis. Her work on corporal punishment took the Supreme Court of Canada to task for upholding the right of parents to use force in disciplining

¹ From a poem by Jonas-Sébastien Beaudry.

² Judith Mosoff, “Motherhood, Madness and Law” (1995) 45:2 UTLJ 107.

their children.³ In her work on immigration, she challenged the federal government policy of excluding families from Canada if a family member with a disability would put excessive demands on the health or social welfare systems. Instead she argued for a human rights model informed by concerns about justice and Charter values.⁴ Her interest in the “best interests of the child” principle that guides most legal decisions in relation to children led to her penultimate publication, which examined whether a mature minor should be able to refuse treatment in a context where her life may be at stake.⁵ Finally, although it was not published until after her death, Professor Mosoff, with her colleagues Isabel Grant and Susan B. Boyd and her research assistant, Ruben Lindy, returned to the subject of mothers who lose custody through the child protection system, with a focus on mothers with mental disabilities and those living in poverty.⁶

Professor Mosoff was a faculty advisor to the *Canadian Journal of Family Law* from April 2013 to May 2015. This special issue aspires to commemorate her work as an academic and as an activist, and seeks to shed light on her many insights in considering the relationship between disability and family, as well as her concern with

³ Judith Mosoff & Isabel Grant, “Upholding Corporal Punishment: For Whose Benefit?” (2005) 31:1 Man LJ 177.

⁴ Judith Mosoff, “Excessive Demand on the Canadian Conscience: Disability, Family, and Immigration” (1998–99) 26:2 Man LJ 149.

⁵ Judith Mosoff, “‘Why Not Tell It Like It Is?’: The Example of *PH v Eastern Regional Integrated Health Authority*, a Minor in a Life-Threatening Context” (2012) 63 UNBLJ 238.

⁶ Judith Mosoff et al, “Intersecting Challenges: Mothers and Child Protection Law in BC” (2017) 50:2 UBC L Rev 435.

children's rights and interests. There were many dimensions to Professor Mosoff's work: she was a scholar, she was an activist, and she worked hard for law reform and social change. We are particularly delighted that this volume celebrates all aspects of that work.

Our first article by **Jonas Beaudry** illustrates the ongoing impact of Professor Mosoff's scholarship in the work of a junior scholar working on the consequences of particular conceptualizations of disability and impairment for law and legal scholarship. Beaudry uses two examples from Professor Mosoff's work on disability and her work on motherhood, madness, and law as an inspiration to explore the social construction of both impairment and disability.

Suzanne Zaccour's article also draws directly on Professor Mosoff's work and updates Professor Mosoff's earlier case law studies on the impact of mental health labels in parental disputes over child custody, especially when mothers are cast as having mental health issues.⁷ Zaccour points, as Professor Mosoff did, to the gendered nature of many mental health related labels and shows how legal decisions that rely upon them can reinforce gender biases and false assumptions about domestic violence. At the same time, she finds some nuance in the cases, and notes that fathers' efforts to discredit mothers using such labels can sometimes backfire. Overall, Zaccour's research

⁷ Judith Mosoff, "A Jury Dressed in Medical White and Judicial Black": Mothers with Mental Health Histories in Child Welfare and Custody" in Susan B. Boyd, ed, *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997) 227; Mosoff, *supra* note 1.

challenges assumptions about the neutrality of decision-making concerning the best interests of children.

Natasha Bakht and Lynda Collins offer an innovative combination of personal story-telling and legal analysis in their treatment of a groundbreaking case that they initiated on legal parenthood and the best interests of a child. Their article addresses disability by telling their story of a child with significant disabilities and his mothers. They also analyze the failure of the family law system, including Ontario's new *All Families are Equal Act*, to adequately recognize the possibilities and benefits of non-conjugal parenting. This work goes to the heart of what it means to constitute a "family", socially and legally. It also highlights the work that families do in supporting family members with disabilities—issues that animated much of Professor Mosoff's activism.

Taking up Professor Mosoff's interest in children's rights, **Donna Martinson and Caterina Tempesta** address the serious need for legal representation of children in difficult family law disputes that concern them. The authors draw on a child rights approach that, they argue, is required by the United Nations Convention on the Rights of the Child. Much of Professor Mosoff's concern about the "best interests of the child" sought to reconcile that principle with the notion that children are independent rights bearers. It was only in very limited circumstances where a child's life was at stake that she conceded that best interests could take precedence over children's rights to autonomy.⁸ In the quite different context of family law disputes involving children, Martinson and Tempesta

⁸ Mosoff, "Why Not Tell It Like It Is?", *supra* note 4.

argue that legal representation is a fundamental component of ensuring that children's rights are honoured, given the history in this field of problematically paternalistic applications of the best interests principle.

Finally, also addressing law reform in relation to children, **Régine Tremblay** offers an analysis of family law reform proposals in Quebec; notably, proposals about the filiation rules in that province's Civil Code and the role of the "child's interest" in this field of law. Professor Mosoff struggled with the role that the best interests of the child principle plays in making decisions about the lives of children, and the ways that assumptions about gender and disability inform our understanding of the best interests principle. Tremblay's article offers a rare English language treatment of recent debates in Quebec filiation law with various insights, including that the "child's interest" may not be identical to the principle of the "best interests of the child".

This special issue features a mix of junior and senior scholars working in the fields of disability law and family law. Their multi-faceted scholarship points to the insights that Professor Mosoff offered in her own research and indicates the importance of analyzing these questions into the future.

