

# Canadian Journal of Family Law

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Volume 32  
Number 2 *Shifting Normativities*

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2019

## Introduction to the Special Issue: Shifting Normativities

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### Recommended Citation

Régine Tremblay and Erez Aloni, "Introduction to the Special Issue: Shifting Normativities" (2019) 32:2 Can J Fam L 229.

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## **INTRODUCTION TO THE SPECIAL ISSUE: SHIFTING NORMATIVITIES**

**Régine Tremblay & Erez Aloni**

On May 9 and 10, 2019, we held an international and interdisciplinary conference entitled *Shifting Normativities: Families, Feminisms, Laws—Celebrating the Work of Professor Susan B. Boyd*. This event, cohosted by the Centre for Feminist Legal Studies and the *Canadian Journal of Family Law*, brought together to the Peter A. Allard School of Law at the University of British Columbia scholars from different countries and disciplines. It had three principal goals. First, celebrating the work of Professor Susan B. Boyd; second, producing cutting-edge scholarship in under-researched fields, namely, family studies and feminist theory; and third, creating new networks of scholars and new possibilities for future research collaborations, particularly interdisciplinary and comparative collaborations. This special issue continues our engagement in achieving these three goals.

This special issue is a tribute to the work of Professor Boyd. Although Professor Boyd hardly needs an introduction—especially in a journal in which she has had immense influence—we briefly describe her achievements, which are exceptional. In 1992, Professor Boyd joined the then University of British Columbia Faculty of Law and held an endowed chair in Feminist Legal Studies. Instrumental in the creation of the Centre for Feminist Legal Studies in 1997, she was its director from the Centre's inception until 2012. She was a member of the advisory board of the *Canadian Journal of Family Law*

from 1996 to 1999. She then became the Journal's faculty advisor in 1999 and held the position until her retirement in 2015. She is a fellow of the Royal Society of Canada, the highest honour a scholar can achieve in Arts, Humanities, and Sciences in Canada. She has an international reputation as a leader in socio-legal studies, and she has made—and continues to make—exceptional contributions to family law and feminist legal studies. Professor Boyd has published five books and over ninety articles, and she has built hundreds of mentoring relationships and research collaborations. As she beautifully highlighted in her closing remarks for the conference, she has structured her work around core themes: the public/private divide, autonomy, ideology, privatization, empirical work, and family law reform. Professor Boyd is also recognized for her contributions to the fields of child custody, and motherhood or gender-based differentiated treatment.

The title of this special issue, *Shifting Normativities: Families, Feminisms, Laws*, aims to capture the richness and complexities of Professor Boyd's work and situate it in the area of law and society. Her point of departure has inevitably been interdisciplinary, as the law cannot be understood separately from the societal norms and political structures that shape it. As she once wrote, "the boundaries between law and society, law and morality, law and politics and law and other disciplines are not always discernible."<sup>1</sup> While Professor Boyd's concept of the law as political might lead one to a localized

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<sup>1</sup> Susan B Boyd, "Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law" (2001) 20 Windsor YB Access Just 141 at 141–42 [notes omitted].

exploration of the law (because politics and societal norms vary among different societies), that would be the opposite approach from Professor Boyd's scholarly project. A champion of comparative perspectives, she has had the rare ability to engage with effective comparative law without losing the unique idiosyncrasies of each society and legal system. This special issue reflects these two themes: the intersection of law, politics, and culture; and a careful comparative project as a fruitful and inspiring, if not a mandatory, aspect of the law.

This special issue cannot possibly touch upon all of the themes Professor Boyd investigated during her career. However, it contains articles, and uses perspectives and methods, that align with her intellectual legacy—by scholars who participated in the conference, scholars whose work she influenced, scholars at different stages of their careers, and people she mentored. All contributions connect with her interests and advance our knowledge in the fields of family studies and feminist legal theory.

First, **Emmanuelle Bernheim** and **Marilyn Coupienne**'s piece addresses access to justice in the youth protection system in Quebec, a topic where scholarship is scarce. Their article explores the access to justice barriers from parents' standpoint in law and in practice. While their contribution focuses on parents in general, they rightly point out that, when it comes to youth protection, vulnerable mothers (race, class, ethnicity, etcetera) are overrepresented in the system. A lack of access to justice is overburdening vulnerable mothers. This focus on mothers and motherhood, albeit in a different context, aligns with Professor Boyd's scholarly contributions on

motherhood, discourse, ideology, and vulnerability.<sup>2</sup> As a testimony to her influence on the topic of motherhood generally, Professor Boyd's scholarship features in the *Encyclopedia of Motherhood*.<sup>3</sup>

Second, **Nola Cammu**'s article opens on Professor Boyd's influential piece "Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility"<sup>4</sup> in which she problematizes, amongst other things, the meaning of intent and biogenetics in parent-child relationships and highlights how these concepts are mitigated through gender. In her piece, Cammu explores parent-child relationships in what she labels intentional multiple-parent families in Belgium and the Netherlands, and the solutions that have been implemented in other jurisdictions to regulate these forms of parent-child relationships. She suggests law should accommodate multiple parenthood on the basis of intent. Cammu's article is interesting in the Canadian context since the challenges of implementing rules to recognize multiple-parent families have yet to be figured out in our civil law jurisdiction. A recent case from the Quebec Court of

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<sup>2</sup> See Susan B Boyd, "Demonizing Mothers: Fathers' Rights Discourses in Child Custody Law Reform Processes" (2004) 6:1 J Assoc for Research on Mothering 52; Susan B Boyd, "Is There an Ideology of Motherhood in (Post)Modern Child Custody Law?" (1996) 5:4 Soc & Leg Stud 495.

<sup>3</sup> Susan B Boyd, "Child Custody and the Law" in Andrea O'Reilly, ed, *Encyclopedia of Motherhood*, vol 1 (Los Angeles: Sage Publications, 2010) 193-97.

<sup>4</sup> Susan B Boyd, "Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility" (2007) 25:1 Windsor YB Access Just 63.

Appeal reminds us that it will be the task of the legislature.<sup>5</sup> In the Canadian context, civil law's resistance to include such rules might have to do with its determination to conceptualize filiation from the child's perspective. After all, Canadian civil law's toolbox allows for allocating parental responsibilities and duties without a formal legal status.

Third, **Kathleen Hammond**'s piece employs a feminist relational analysis<sup>6</sup> in order to analyze the implications that categorizing embryos as property might have for three relationships involving cisgender women. These relationships are: (1) the relationship between cisgendered heterosexual intended parents, (2) the relationship between intended mothers, the embryo, and society, and (3) the relationship between intended parent(s) and an egg donor and/or surrogate. Hammond's thoughtful and perceptive contribution "follows the lead of Professor Susan B. Boyd whose work advocates that we question the, often unquestioned gendered impact of different legal and policy choices, and how factors such as race and class intersect with this impact."<sup>7</sup> It seeks to respond to her call for more work that uses a feminist paradigm to reveal ongoing and shifting relations of power."<sup>8</sup> She raises

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<sup>5</sup> *Droit de la famille — 191677*, 2019 QCCA 1386.

<sup>6</sup> Professor Boyd's contribution to the advancement of relational theory can be seen in her work on maternal autonomy. See Susan B Boyd, "Autonomy for Mothers? Relational Theory and Parenting Apart" (2010) 18:2 *Fem Leg Stud* 137–58.

<sup>7</sup> See e.g. Susan B Boyd, *Child Custody, Law, and Women's Work* (Don Mills: Oxford University Press, 2003).

<sup>8</sup> See Katherine Hammond, "Relationally Speaking: The Implications of Treating Embryos as Property in a Canadian Context" (2019) 32:2

important questions about the nature of embryos in law and the impact of embryo conceptualization on cisgender women.

Fourth, in the context of single mothers by choice (SMCs), **Fiona Kelly**'s paper explores a new phenomenon in Australia: donor linking. That is, "the process by which parents who use donated gametes to conceive seek access to the donor's identity."<sup>9</sup> In her article, she studies the challenges and opportunities of this practice for SMCs who used donated sperm to create their family. She offers an empirical study and suggests that donor linking may be reinforcing dominant norms around parenting, family, and gender. Ultimately, she wonders what the impact of donor linking is on SMCs' autonomy. This contribution builds on a collaborative work done by Professor Boyd, Dorothy E. Chunn, Fiona Kelly, and Wanda Wiegers<sup>10</sup> and engages with themes that have been ongoing in her career such as ideology, gender, and parenting.

Last, **Suzanne Zaccour** contributes to the scholarship around a theme for which Professor Boyd's

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Can J Fam L 323 at 337. See also Susan B Boyd, "Spaces and Challenges: Feminism in Legal Academia" (2011) 44:1 UBC L Rev 205.

<sup>9</sup> Fiona Kelly, "Autonomous Motherhood in the Era of Donor Linking: New Challenges and Constraints?" (2019) 32:2 Can J Fam L 387 at 390.

<sup>10</sup> See Susan B Boyd et al, *Autonomous Motherhood? A Socio-Legal Study of Choice and Chance* (Toronto: University of Toronto Press, 2015).

work is renowned: law reform.<sup>11</sup> Zaccour's piece takes a feminist approach and builds on Professor Boyd's commitments to demonstrating how rules that appear to be neutral disproportionately affect women, especially vulnerable women. Zaccour is explicit about the pitfalls of formal equality and the relevance of intersectionality. She suggests that family law rules should be built around difficult cases—such as those involving poverty and domestic violence<sup>12</sup>—and not with the ideal egalitarian family model in mind. To put her theoretical framework to the test, she uses four scenarios and the family law reform proposed in Quebec in 2016.

### ACKNOWLEDGEMENTS

This project was funded by the Social Sciences and Humanities Research Council (SSHRC) through its Connection program, the Centre for Feminist Legal Studies, the Franklin Lew Innovation Fund, and the Peter A. Allard School of Law.

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- <sup>11</sup> See e.g. Rachel Treloar & Susan B Boyd, "Family Law Reform in (Neoliberal) Context: British Columbia's New Family Law Act" (2014) 28:1 Intl JL Pol'y & Fam 77; Susan B Boyd, "Walking the Line: Canada's Response to Child Custody Law Reform Discourses" (2004) 21:3 Can Fam LQ397; Susan B Boyd & Claire FL Young, "Who Influences Family Law Reform? Discourses on Motherhood and Fatherhood in Legislative Reform Debates in Canada" (2002) 26 Studies in Law, Politics & Society 43.
- <sup>12</sup> Susan B Boyd & Ruben Lindy, "Violence Against Women and the B.C. Family Law Act: Early Jurisprudence" (2016) 35:2 Can Fam LQ 101.

We would like to extend our thanks to the many groups of people who made the conference and other projects that followed possible, including this special issue. We could not have done this without their help. We are especially grateful to our Dean, Catherine Dauvergne, and to Natasha Affolder, Doug Harris, Debra Parkes, Susan B. Boyd, Claire Young, Sancho McCann, Lauren Marshall, the volunteers at the CJFL, Sara Ghebremusse, Emma Cunliffe, Justice Donna Martinson, Asha Kaushal, Janine Benedet, Michelle Burchill, Simmi Puri, Aki Nishida, Elizabeth Janzen, Nazanin Panah, and Maira Hassan.

No journal issue can do justice to the complexities, richness, and brilliance of Professor Boyd's scholarship. Our aim is that this special issue will provide a small glimpse into her work. It is fair to predict that Professor Boyd's scholarship will continue to inspire diverse stakeholders in family law and feminist studies around the world.

We hope you enjoy this special issue.