



CUSTODY BATTLES

A look at recent legislation

IN CUSTODY DISPUTES, PEOPLE tend to focus on the infringement of men's rights, yet the issue of men defaulting on their child support payments or maintenance payments has received very little attention.

The law governing custody disputes has changed a lot over the years. One of these amendments is the *Children's Law Reform Amendment Act*, in 1981, which represents one of the first attempts by a legislature to create an outline the courts must follow in custody battles.

The act incorporated six new guidelines for the courts. The first requires the court to consider all the circumstances of the child including affection to members of the family. The preferences of the child and the length of time a child has spent in a stable environment must be considered.

The capacity to provide education and other necessities of the child and the disposition of each person applying for custody are questioned. As well, any plans each parent may propose for the care and upbringing of the child are considered.

The relationship by blood or adoption order between the child and persons applying for custody, also plays a role in the final decision.

The most recent legal reform was Section 15 of the *Charter of Rights and Freedoms*. This section says men and women are equal under the law and have equal benefits and protection for the law. There can be no discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental and physical disabilities. Many believe that this new reform can guarantee equality for women under the law.

Yet men have used the argument of equality in the area of family law, specifically in the area of custody disputes. Many biases still exist today; one is the long-held belief that the children usually go with the mother.

Johnette Royer, a lawyer for Nova Scotia Legal Aid, says, "there is a bias in terms of the mother. This is often the case if the mother is the primary care taker of the children by staying in the home instead of working."

Kenneth Crawford, who has practised divorce law to a large extent in the last seven years, says society still believes the mothers usually receives custody. "But that is slowly changing over the last five or

six years," he says.

One hears nowadays about the maintenance or child support and men defaulting on payments. Yet Crawford argues that this is changing, too; "It is becoming very publicised."

History has shown that maintenance and support payments are hard to enforce even by a court order.

"The number of defaulted payments is unbelievable," says Crawford.

Under the new *Divorce Act*, this too is quickly changing. Special provisions are now made to allow for enforcement of maintenance payments.

One of these provisions is if the spouse cannot be located after the divorce. Now the other party can call the Social Insurance Agency to get the new address. Before, such information from a federal government agency would have been confidential.

One of the traps Crawford says men fall into is that they feel they can "stop paying maintenance payments when a child is in the custody of a mother." They also ask themselves, "What do women need all that money for on a child?" Many fail to consider other costs such as heat, light and electricity.

On the actual fees of maintenance, Crawford was quite positive. "I very seldom see an award of maintenance that is too high or too low."

Reasonable. The courts usually tie in all the circumstances, for no two cases are ever identical, and as a result, maintenance for support of spouse and/or child varies depending on circumstances of each case.

The many changes in the law affect different cases in different ways. Two examples of women who have custody are Jane Gordon and Veronica Lynds.

Mount Saint Vincent University sociology professor Jane Gordon and her husband were separated in September of 1979 and filed for divorce in August of 1983. In the first year, a pretrial hearing was held in May. Thirteen months later, a divorce hearing was held. This was appealed in July of 1985; the final absolute decree is yet to be received.

During this time, Gordon's husband used Section 15 to try to receive custody. He was using the basis that the courts tend to give custody to the mother. "This argument pushes my principles to the limits,"

says Gordon.

Gordon agrees that women probably get custody of their children more often than men, saying "it is probably because mothers are first given the responsibility of having kids." The rights of the father ought to be protected, but she believes that in her case they were already considered.

She says her husband suffered from a "lack of realism towards the children." Gordon says parenting is not only an allocation of time, possession or money, "but a realm of responsibilities."

Men across the country are arguing many cases on the grounds of this bias by forming such groups as Fathers for Equality in Divorce. Yet virtually no-one is lobbying for defaulted child support or maintenance payments.

In Gordon's case, her husband was made to pay only \$25 a month for child support because at the time he was unemployed. However, he is presently employed and could pay more, but doesn't, she says.

On the actual defaulting on payments, Gordon figures the numbers are quite high. She feels that "these men want equality but are not willing to pay for it."

Gordon says the new divorce legislation enables money from defaulting parents to be collected federally, but "more should be done."

In the case of Veronica Lynds, there was no actual legal dispute, for things were kept out of the courts. She and her husband made a deal. "If I wanted money, he would have custody." Lynds chose the children.

Lynds too believes there is a bias towards women in society "in an unfair kind of way."

Lynds says "women can be seen as raising sons but men can't always be seen raising daughters. They may not always be fair but that's the case."

In most cases Lynds feels that "the majority of women get the worst end," but "some men get raw deals too."

"Men are more bullish, they threaten to get their way," she says.

Lynds concludes that recently "women are getting more than before."

Perhaps things are changing for the better. But how long will that change take to stop the defaulted payments? Or more importantly, before society will open its eyes to a problem that exists for many people?

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