

## Divorced dads can't catch a break



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*More than a decade after a landmark study recommended an overhaul of Canadian divorce law, courts still haven't caught up to the new reality of Canadian family life. A generation of dads who can't stand being apart from their children is pushing for change.*

When Walter Mueller first walked into the support group, he was asked to draw a picture of his life for the dozen or so men in the room.

Mueller drew three. In each one he was hanging out with his 9-year-old daughter and 8-year-old son – splashing at the family's cottage, riding bikes, trekking through a theme park. The picture isn't nearly so pretty for many divorced Dads.

Mueller has seen some pushed to the brink of suicide and financial ruin in their quest to remain a significant part of their children's lives. He's heard others complain they've been relegated to the role of visitors and virtual ATM machines.

"I was fearful of losing my children – how my life would go on. I didn't see a light in any tunnel," says the 45-year-old Whitby dad, whose wife agreed through mediation to let him see his children almost half the time. "I would have spent every nickel, every dime, every penny I own to get to see my children. Money doesn't matter when it comes to love."

A decade after Ottawa's Special Joint Committee on Child Custody and Access recommended an overhaul of Canada's divorce system – and more equitable child-custody arrangements – fathers still face an uphill battle.

"It's as bad or perhaps worse now," says retired MP Roger Gallaway, who co-chaired the committee and its landmark 1998 report, "For the Sake of the Children," and still gets calls from fathers shocked at their treatment in the family court system.

"Men are still being deprived of their children. The courts have not changed their attitudes all that much."

Family courts around the world have seen a "dramatic increase" in court disputes launched by divorcing dads determined to see their children more than every second weekend and Wednesday evenings, observes Australian law professor Patrick Parkinson.

"There has been a significant change in fathers' attitudes towards parenting after separation," says Parkinson, one of the architects of drastic divorce reforms in Australia that are aimed at boosting shared custody.

"They're more likely to be there in the birth room than smoking a cigar in the waiting room. They're still not doing nearly as much as women, but they're more involved, and when the relationship breaks up they're saying they're not going to be second-class citizens – they're not going to be cut out of their kids' lives." Despite mounting research that says the healthy development of children depends on having a strong bond with both parents, Canadian judges still award sole custody to Mom 45 per cent of the time. While joint custody awards have more than doubled – up from about 20 per cent to 46.5 per cent between 1994 and 2005 – the term is really a misnomer. The kids still live with their mother most of the time, although Dad is supposed to have a say in major decisions.

"Fundamentally, men get screwed in family court," says one veteran divorce lawyer on condition her name not be used. "Judges make sure that assets are split equally, but they don't do that on custody and child-related issues."

Many of the fathers going to family court seeking more time with their kids don't fit the stereotypes of "dead-beat" or "disappearing" dads commonly portrayed in the media. They're men who've changed diapers and helped with homework but feel largely cut out of their kids' lives post-separation.

They include the airline pilot who was so stressed from his custody battle, he called a fathers' hotline for help, saying he couldn't remember landing his plane. Or the dad who had to be talked down from a bridge on Christmas Eve.

They are the men who sign up for DADS (Dads Aiming for Direction and Support), one of the few support groups for fathers struggling in the family courts.

"I can't tell you how many men I've met who have spent \$50,000 and \$60,000 trying to see their kids, who come in here so broken, you're just worried they're not going to make it through to the next week," says Jan Langlois, clinical advisor for the John Howard Society of Durham Region, an agency that usually focuses on ex-convicts but has helped everyone from police officers to bankers since starting DADS in 1995.

She's seen fathers forbidden from their child's graduation because it's not their visitation day, ex-wives who refuse to hand over the kids when Dad is five minutes late for pickup. The free 10-week program, one of the few for men across the GTA, is in such demand, it's now being expanded.

"I don't see men who don't want to pay child support. I see men who end up sleeping on their parents' couches because they're broke (from legal bills) and don't want to see their children go without."

Some have become cut off from their kids altogether by ex-wives who move across the country or defy access orders with virtual impunity, says Langlois.

She's seeing more left devastated by Ontario's 30-year-old "zero tolerance" directive, an initiative from the Ministry of the Attorney General aimed at forcing police and Crown attorneys to crack down on the scourge of domestic abuse against women. By alleging assault, a woman can pretty much assure that an ex-spouse will be removed from the house and tied up in a costly criminal trial during which she'll have

interim custody of the kids, setting the stage for how the case proceeds.

"It's been a death sentence to me as a father in the eyes of my children," says a Toronto dad who agreed to a plea bargain, resulting in a conditional discharge on what he says were false allegations, rather than risk a long and costly trial. He's since spent \$100,000 trying to convince a court that the sole custody awarded to his wife isn't in the best interests of his three sons.

The fact that so many decisions around custody and access are made orally in Ontario's family courts makes it virtually impossible to know how many fathers are like an Owen Sound man who says false allegations of child abuse 15 years ago still haunt his support payment case and cost him custody of his 16-year-old daughter, even though he was never charged or tried.

But one thing is quite clear. Stepping into Ontario's overburdened family courts can be like stepping into quicksand: Toronto father Vitaly Levin has spent \$84,000 so far convincing the court to let him see his girls, 9 and 2 1/2, half the time.

"Judges call it sole custody," says the technology worker. "I call it stolen custody."

That's why so many men opt to represent themselves, or spend Wednesday nights in the nursery of Danforth Ave.'s Eastminster United Church, where Danny Guspie, founder of Fathers' Resources International, offers two-hour divorce strategy sessions.

"One thing that seems to be very much in common with the men I see is that they just want the bleeding to stop," says Guspie. "They take the view, 'Can we not just stop fighting over the failure of our relationship? We screwed up, must we perpetuate that in our children? Just tell me what I have to pay, but don't make me sleep in my car. And when I come to get the kids, don't give me a hard time.'"

Of course, not everyone believes that men get the short end of the stick in family court. "Mothers feel equally angry with the system and also feel they don't get a fair shake," says Ontario family court judge Harvey Brownstone, who has written a best-selling book, *Tug of War*, as a warning to warring couples to try to avoid court at all costs.

He's heard men complain that they risk going to jail if they don't pay support, yet their ex-wives are seldom penalized for lying on the stand or defying court-ordered access to the kids.

But Brownstone adds that in his experience, jailing mothers "has made things worse, not better," noting that the kids often end up in foster care while the court sorts out where they should live.

"They (men jailed for not paying support) have the keys in their own pocket. They can pay and get out."

Pamela Cross, a family lawyer and director of the National Association of Women and the Law, contends too many women still suffer abuse at the hands of men who refuse to pay court-ordered child support. They also have to deal with the fallout when fathers don't show up for their access time, leaving devastated kids waiting at the door.

Men who push relentlessly for more time with the kids tend to be driven more by control issues and cash than quality time, argues Cross. Since child support payments are based on the so-called "40-per-cent rule," if a father has the children more than 40 per cent of the time, he can seek a reduction in payments (whereas if the mother has them more than 40 per cent of the time, she gets full support).

Many parents and lawyers blame 1999 Divorce Act reform for turning kids into "economic hostages" and driving up custody disputes.

Ontario Attorney General Chris Bentley, a former criminal lawyer, has been praised by some family law lawyers for recognizing the unique problems plaguing the family courts. He's been quietly meeting with family law experts across the province the past few months and recently announced a \$150 million increase in legal aid funding, much of it for family law cases, and said he's determined to streamline and speed up the court system while providing more upfront services such as mediation to keep cases out of the courts.

Judges are getting tougher with obstreperous parents – be they fathers or mothers – and sensitive to the importance of dads in their children's lives, says family law lawyer Steven Benmor. As a handful of recent cases have shown, they're also more willing to switch custody if one parent is habitually denying access or turning the kids against the other parent.

Australia's Parkinson studies family law issues around the world and says father's groups that have been pushing for more equal access to their children have been unfairly labelled as fanatics, especially in Canada where the fight between feminists and so-called father's rights groups have been, in his view, "extremely adversarial."

"There are some way-out and wacky men's groups, but the closer you get to some of these groups, the more you see decent, down-to-earth men who are distressed, who are upset, some of them are angry, and they're human beings. All they're saying is, `I love my kids and I want to do the best for them.'" "We need to get away from this warfare and think about the children."

*Sunday: Equal shared parenting*