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The "Deadbeat": Myths & Realities

We've all read the dismal stories about ex-spouses who default on their support payments. But has anyone thought to ask why these people aren't paying?

By Radmila Avramovic & Diana Shepherd

The headline reads: "Deadbeat Dads/Moms." The article then goes on to inform you of how they refuse to pay child support and how they live in luxury while their children go without food, clothing, and the bare necessities to live. Is this depiction accurate? If so, how often does it happen? And -- perhaps most importantly -- *why* does it happen?

Although the answers to these questions will vary depending on the situation, it does appear that the majority of so-called "deadbeats" default on their support payments for one of two reasons: they can't afford to pay them, or they have little or no contact with their children and the parental bond has eroded. According to Toronto family lawyer Judith Nicoll, many parents don't pay because "they don't have the money to pay the award -- or they have that perception." And Joel Miller, a lawyer who established www.familylawcentre.com, attributes it to "changes in economic circumstances, such as loss of job or reduction in income."

"Depending on how equalization of payment is calculated, child support may be set at an unrealistic level," adds Paul Mineiro, the president of Fathers Are Capable Too (FACT), a Toronto-based fathers' rights organization. "Debt incurred during the divorce, or debts prior to the divorce, are mostly placed under the non-custodial parent's name. Creditors chase non-custodial parents for the money owed. However, the non-custodial parent's income hasn't increased, and where there were two incomes to cover these debts, now there is only one. Not only does the parent have to pay the debts incurred, but also for a new home or living arrangements as well as child support."

Brian Jenkins, one of nine directors at FACT, claims, "Eleven to fourteen people a month are going to jail for non-payment of child support in Ontario. Once in jail, they have no means to pay child support, and when released, they're in even greater arrears. The rate of non-compliance is close to the unemployment rate; if you're unemployed, it's difficult to pay support."

The custody link

Statistically, payment of child support is linked to custody and/or frequent visitations. The most recent US Census Bureau data shows that fathers with joint custody pay their child support 90% of the time; fathers with visitation pay theirs 79.1% of the time; and fathers with neither joint custody nor visitation pay support only 44% of the time. Statistics for Canada are harder to come by, Jenkins says. However, according to the Canadian Centre for Justice Statistics, the majority of non-custodial parents currently pay court-awarded child-support payments.

Another reason is that it may be easier to make a decision based on finances (child support) rather than on emotional issues (custody/visitation). "Access denial is not taken as seriously as child support," says Mineiro. Courts find it easier to enforce support orders than access. The argument over access where accusations of abuse or claiming the children are afraid can make the decision emotionally risky and complicated for a judge, whereas payment and non-payment of child support can be decided in minutes.

Separating the issues

Although some divorcing parents try to combine the two issues, the law says that child support and access are independent covenants. And rightly so: otherwise, an abusive parent could refuse to pay support unless the custodial parent allowed the children to spend time with him or her.

Gene is a 35-year-old man who has been wrangling with his ex-wife about child support for and access to their eight-year-old daughter, Katy, for the past three years. "I'm in and out of court all the time," he says bitterly. "I've already spent more on legal fees than I would have had to spend to support Katy to age 18 -- about \$200,000." Gene stopped paying child support 15 months after his ex, Mary, stopped allowing him to see their daughter. "She hauls me into court regarding payment, and I haul her into court regarding access. I was a great father -- she denies access only to yank my chain. Do you really think it's in Katy's best interests that she grow up without knowing her father?"

Probably not, but is it in her best interests to grow up without adequate financial support? Studies show that the children who adjust best to divorce are those who remain in close contact with *both* parents, as long as those parents are not in constant conflict. Assuming that Gene and Mary can agree to resolve their issues with each other -- through counseling or mediation, for instance -- Gene is correct in thinking that it would be in Katy's best interests to have regular, positive contact with her father. But until that happens, Gene must separate his anger at Mary from his obligations to Katy and start making child-support payments again.

Old arguments, old hurts, and anger from the past can cause couples to behave like Gene and Mary, each of whom is completely uninterested in trying to see things from the other's point of view. Each would rather spend the next decade fighting in court than admit any responsibility for creating and maintaining the deadlock they're in now.

Even though child support and access are independent covenants, disgruntled custodial and non-custodial parents do have a few avenues to help them resolve their disputes. Canada's Department of Justice relies on the Family Orders and Agreements Enforcement Assistance Act, which can be used to obtain child support arrears as well as visitation enforcement. This is done through the Family Responsibility Office. There are administrative fees, but it will assist you in staying out of court. However, activities vary from province to province.

How is the money spent?

The resentment, hurt, and mistrust generated by an acrimonious divorce can cause reluctance or refusal to pay spousal or child support. Sometimes, the payer believes the support is being spent frivolously or that it isn't really being used for the kids. How the money is spent is a frequently asked question.

Liz does pay her child support for their two kids to her ex-husband, Joe, but she's getting increasingly upset about the way he seems to be spending it. "Last year, he took trips to the Caribbean and Europe, and our children are walking around looking like street urchins, with ragged and ill-fitting clothes and sneakers that are more hole than shoe," she fumes. "When they come to visit me, I end up buying them clothes and toiletries even though I'm now on a very limited budget." Liz thinks it's adding insult to injury that she's footing the bill for her ex to live "the good life" while their children do without, and she has considered withholding support until Joe proves to her that her money is being spent on the children.

"But how could I face my kids if I stopped paying for them?" she asks. Liz, who owns and runs a small retail business, works too many hours to have her kids on a full-time basis. But she has recently begun to examine her options more closely to see if there's any way that she could have primary custody and still be able to support her family. "Until then, I just have to come up with coping strategies such as getting good-quality hand-me-downs from my sister's kids, and keeping most of these clothes at my apartment so my kids will have something decent to wear when they're with me."

Parents like Liz feel it's wrong that the courts are only interested in whether or not support is paid and not in how it's spent. There are no provincial laws that require an accounting of how it's being spent. "There are two ways one can designate how payment is used," says Miller, who practices family law at Ricketts, Harris in Toronto. "One is to designate by agreement that payments will be made to a third party such as a school, or for hockey equipment and training. The other is to have an agreement that specifies to the recipient where the payment will be spent. But I don't know anyone who would agree to this."

Aside from paying child support, a non-custodial parent who has regular access to his or her kids will often provide non-cash support. This includes buying birthday gifts; taking their children on holidays; buying them clothes, food and groceries; paying partial medical expenses and or child care expenses; and summer-camp fees. Holzman says that parents who pay extra for extracurricular activities (such as school excursions and

sports) normally don't renege on child support. However, the extra payments outside of the sum for child support need to be recorded. "Parents should keep receipts to show to the Family Responsibility Office if there's a problem with collecting the add-ons -- to show that the expense actually occurred."

Resolving support conflict

Going to court isn't the only way to resolve disputes about support or visitations. Before litigating, consider a mediation session to discuss -- or discover -- what the problem is. "Try to resolve the situation through negotiation with your spouse or through lawyers, Collaborative Law, mediation, or arbitration" advises Dr. Barbara Landau, a mediator with Cooperative Solutions. Unless there is domestic violence, the way to prevent the situation of non-payment is to "encourage the relationship and consider how the other party handled the separation, behaving respectfully toward one another and communicating about parenting issues, and demonstrating responsibility in providing for the child," says Landau. Negotiation facilitated by a mediator or collaborative lawyers can provide a forum to deal with some of the issues yourselves rather than leaving the decision to a judge.

Improving the lines of communication and learning to cooperate with your ex will increase the odds of receiving your child-support. "Fostering a spirit of cooperation with your ex means laying down your weapons in the war of divorce in order to protect your children," advise Julie Ross and Judy Corcoran in their book *Joint Custody with a Jerk* (St. Martin's Press, 1996). "It means that you stop being reactive and start being proactive... No matter what your feelings are, your children will be better off if you keep them as your central focus and work diligently at keeping the parenting relationship civil and cooperative."

What can you do?

Legal solutions include an "attachment of wages to the award," an automatic deduction from the payer's wage. "This is the most effective way to receive the payments," says Nicoll. "Other ways are suspending their driver's license and having any government money attached to the award, such as tax refunds."

If there's a valid reason why you can't pay a portion or all of your child support, you should petition the court for a reduction in support. However, it's not good enough to say: "I have a new wife, so I can't afford to pay for my kids." Acceptable reasons include: you lost your job; you could no longer keep your second job due to family obligations or health issues; you have become injured or sick and can no longer work (temporarily or permanently).

The bottom line

"A child raised without adequate support is at a significant disadvantage in life," writes Judge James W. Stewart in his book *The Child Custody Book* (Impact Publishers, 2000). "Inadequate schools, poor health care, and a social environment in which the values of education and achievement will take a back seat to the tasks of obtaining food, shelter, and safety. An economically disadvantaged child will be far less likely to attend college, and the chances that he will drop out of school or engage in criminal conduct as a teenager or young adult are dramatically increased."

Quick Facts

- Custodial mothers represent 85.1% of all custodial parents.
- Only 14.9% of fathers have custody of their children.
- Custodial mothers are more likely to have an agreement or to be awarded child support than custodial fathers.
- Custodial fathers are less likely to receive child-support payments than mothers.
- 56.3% of custodial parents had some sort of agreement or award for their children.
- 32.4% of custodial parents didn't feel they needed a legal agreement.
- Median family income for custodial mothers is \$21,440; for custodial fathers, it's \$30,023.
- The proportion of custodial parents and their children living in poverty is 28.9%, which has dropped from 33.3% in 1993. Today, custodial parents are more likely to have full-time jobs and the

likelihood of participating in a public assistance program, which partially accounts for the drop in poverty.

- 66% of fathers lack the financial resources to pay the allotted payment of child support.
- 40% of mothers reported that they had interfered with the fathers' visitation to punish the ex-spouse.
- 43.8% of non-custodial parents provided health insurance as part of the agreement or award.
- The standard of living after divorce dropped 28% for women and 7% for men.
- More than 1.5 million children -- nearly 2.5% of all US children -- undergo the experience of parents separating or getting divorced every year.

Sources: US Census Bureau, US Government Accounting Office, *American Sociological Review*, *American Journal of Orthopsychiatry*, Washington DC: Child Trends

Child Support & Access Resources

Here are some organizations that can assist you with child support or visitation issues.

- **Canada's Department of Justice
Family Orders and Agreement Enforcement Assistance Act (FOAEA)**
Phone: (800) 267-7777 www.canada.justice.gc.ca/en/ps/foa
- **Family Responsibility Office**
Phone: (800) 267-7263 www.gov.on.ca/CSS/page/services/fro/frohome.htm
- **National Shared Parenting Association**
Phone: (888) 543-2339 e-mail: doppler@total.net
- **National Alliance for the Advancement of Non-Custodial Parents (NAANCP)**
Phone: (613) 729-1106 ext. 3 e-mail: naanpc@comnet.ca
- **Fathers Are Capable Too (FACT)**
Phone: (416) 410-FACT (3228) www.fact.on.ca
- **Parents Without Partners**
Website: www.parentswithoutpartners.org.