FATHERS AND CHILD SUPPORT: DISCOURSE AND SUBJECTIVITY

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Faculty of Social Work
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ABSTRACT

The purpose of this study was to understand the social problem of non-payment of child support as a complex social problem, rather than an individual or economic issue. Arising out of the author’s experience as a social work practitioner and mediator, the goal was to understand how the identity of ‘deadbeat dad’ is produced by the circulation of discourses in the law and through activators of the law, and how these discourses are taken up by fathers as a way of resisting child support. Resistance is regarded in this approach as a phenomenon that is socially constructed, rather than a manifestation of fathers as ‘bad’ persons. The source of those social constructions was sought in the talk of separated fathers and agents of the institutions involved in the separation/divorce process, as well as in the law itself.

The methodological approach to the research was qualitative and heuristic. Interviews were conducted with a small sample of separated fathers and with a purposive sample of institutional informants. A sample of legal documents was critically analyzed. Observation of discursive practices was conducted in the relevant institutions. Through analysis, the data sources located the logic of fathers’ identity in the discourses examined.

The major finding was that vigorous state enforcement of child support as a private responsibility, carried primarily by fathers, is counterproductive. It produces resistance in fathers who do not recognize themselves in the construction of ‘deadbeats’; instead they take up the position of ‘victim’ and resist payment of support. In the discursive struggle between
the state's protection of its financial interests by keeping support responsibilities within families, and the father's focus on their personal rights, the needs of children literally disappear. The problem of non-payment is thus perpetuated instead of alleviated, and children's needs continue to go unmet. The implications for a feminist analysis, for social policy, practice, and research are considered.
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I dedicate this work to my father and to the memory of my mother, Sonia Mandell.
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I. INTRODUCTION AND BACKGROUND

Introduction

The Problem of Paternal Disengagement and Non-Support Following Separation

The rate of non-custodial fathers in default of child support is extremely high in Canada and in other countries. The impact of non-support on women and children has been well documented and was identified during the 1980s as a major social problem in North America (Arendell, 1986; Cassetty, 1982; Kahn & Kamerman, 1988; Stuart, 1986; Weitzman, 1985), and in the West generally (Hahlo, 1982). There was, and continues to be, an unexplained discrepancy between what fathers say is right to do when asked, and what they actually do regarding payment of child support. (Chambers, 1979; Haskins, 1988; Mandell, 1995; Weitzman, 1985).

In Canada, as well as in the U.S., researchers have attempted to determine causes and correlates of non-payment in order that solutions to the problem might then be found. In the meantime, growing societal concern about the economic consequences of non-payment has created a need for solutions at the policy level. Research on child support has attempted to analyze the problem on a broad, social level in order to facilitate these solutions. As a result, there has been a striking pattern of escalating enforcement and aggressive social control throughout Canada and much of the United States (Dudley, 1991). This change has been driven in part by the goal of easing the state’s financial burden as supporter of impoverished mothers and children. In Ontario, for example, despite a provincial enforcement program established in 1987, only 21% of registered child support orders were fully paid up as of 1991 with an additional 18% partially paid (Ministry of the Attorney General, June, 1991). As a result, far more aggressive and intrusive measures were initiated under the Family Support Plan Act of 1992. In spite of such measures, roughly 45% of payors in Ontario (97% of whom are men) are deemed to be in arrears. Arrears owing to recipients amounted to $474.3 million and over $313 million was owing for recovery of Social Assistance payments (Ministry of the Attorney General, March 1995).
Sociological research on non-payment of child support has been criticized for concentrating on financial and economic issues outside the context of visitation and emotional issues (Arditti, 1991). Social structural explanations (i.e. the 'macro' perspective) do not help to account for the fact that many fathers do pay, in spite of negative feelings, nor for the fact that each individual father makes discretionary choices about allocation of his limited resources. These choices have significance; they are not a 'given' to be taken for granted. Thus, at the level of individual practice (the 'micro' level), we remain without a coherent understanding of individual processes related to the non-payment problem.

The broader field of general divorce research, on the other hand, has been criticized by Girdner for focusing excessively on family dynamics and individual characteristics, while excluding the legal context (cited in Dudley, 1991). Psychological and interpersonal explanations of paternal disengagement (non-payment and reduced or non-contact) generally fail to account for the problem being as widespread as it is. They do not help us to understand how so many fathers can allow themselves to disengage emotionally and financially at the expense of their children's welfare. It is difficult to account for such a large-scale phenomenon as father disengagement by relying on individually-oriented or case-by-case analyses. Models which focus on pathology-based assessment and individualized treatment may not be the only or most suitable ones for working with divorced fathers. Referring specifically to non-payment, the 1976 report of the Law Reform Commission of Canada entitled Family Law: Enforcement of Maintenance Orders asserted that "it is incorrect to ascribe default on such a massive scale to some character defect that appears to be the rule rather than the exception among the male partners in broken families" (cited in Foote, 1986, p. 14).

It seems clear that there is a need to integrate the micro and macro research foci in order to develop a comprehensive perspective on the problem of support non-compliance. If we focus on the social structural aspects of non-payment of child-support, we are in danger of overlooking the influence of individual psychology and experience, and especially the issue of
personal accountability. On the other hand, if we focus on the individual subjective dimensions of the problem, we are in danger of seeing it more as a mass mental health problem than as a problem in which individual and structural dimensions are interlocked. This dilemma poses a barrier to successful intervention for practitioners and policy makers alike.

**Objectives of the Dissertation**

My purpose in undertaking this dissertation is to contribute to an approach to the problem of father disengagement and non-payment of child-support that can transcend the two sets of polarties which have plagued these issues: i.e. the dichotomy of individual psychological vs social structural perspectives (micro vs macro) and the polar opposition of men’s interests to women’s interests. In order to bridge the gaps involved in the first instance (the micro/macro split), I will attempt to develop an understanding of the relationships among judicial, administrative, and ‘quasi-therapeutic’ practices. Quasi-therapeutic refers here to those institutional and related practices which are oriented towards the goal of problem-solving or conciliation, rather than towards interpretation or enforcement of the law *per se*. In the second instance (the politics of gender), I try to adopt a reasoned perspective on the subjective experience of non-supporting separated/divorced fathers. My emphasis is on looking at how the subjectivity of these fathers is reflective of systemic conflict around the meaning of fathering as it is played out between fathers and the institutions in the separation-divorce process. In other words, how do fathers ‘carry’ our society’s ambiguous, often contradictory, notions about fathers and families when they separate from their children after a marriage or common-law relationship ends? I will be looking at issues of responsibility for children in general, and how our conceptualization of it in terms of a private family matter -- embodied in the father’s role as provider -- continues to frame how we go about devising ways of having that responsibility met.

My interest in this question arises out of my own clinical experience with families separated by divorce and has been shaped by my reading of the divorce literature as well as previous research
I have done. Particularly challenging for those of us who work with non-supporting fathers is the tendency of many to present themselves as hostile, self-interested, and provocative. Effective practice as a clinician or mediator was disabled for me, as it is for many practitioners, when I found myself unable to respond constructively to fathers who had disengaged emotionally or financially (or both) from their children. Often they seemed incapable of considering realistically the emotional and material needs of their children, focusing instead on complaints that the money is mismanaged or misspent. I found an empathic, non-judgmental approach difficult to sustain in this context. As a practitioner, I needed to understand better the kind of reasoning and subjective experience of non-supporting fathers so that I might be able to find a way to work with them more successfully. On the other hand, when I witnessed or read in the literature about the anguish of some fathers whose children no longer live with them, I found it difficult to understand the widespread problem of financial non-support by divorced fathers as a group. 'If their children are so important to them, why aren’t they being good fathers?'

The more I have sought to understand the subjective experience of fathers in order to develop a successful approach to working with them, the more uncomfortable I have felt about the apparent conflict of that stance with my own personal politics. How to reconcile a feminist commitment to the interests of women with the perception that in order to do so, I must develop an empathic understanding of the men in their lives -- particularly men who are widely characterized as ‘Deadbeats’ -- and whose presentation is often rather hostile with regard to women in general? I know from the responses I sometimes evoke in those who read or hear about my work that the conflict I experience internally is not in my imagination alone. The challenges I have encountered in presenting and writing about my work on non-supporting divorced fathers reflect some of the emotional and political issues that imbue this subject. It is apparently difficult for us to engage in discourse about non-supporting fathers without suggesting that we either want to control them, or vilify them, or -- conversely -- to defend and exonerate them. When I talk about the ways that fathers’ subjective experiences of divorce influence their behaviour, I am often misunderstood by
my colleagues to be saying that fathers are an oppressed group, victims of an inequitable society, and therefore their behaviour must be forgiven. When I talk about the ways in which the role of fathers is socially deconstructed and reconstructed by the divorce process, I am often seen to be blaming society and overlooking the role of personal choice and responsibility in each individual father. Although I openly declare my feminism, feminists are often angry about what I have to say, and anti-feminists have mistakenly interpreted my position as being opposed to feminist interests. There seems to be an assumption by both sides that understanding fathers means we necessarily reject notions of accountability or, conversely, that holding fathers accountable compromises a critical stance vis-à-vis structural issues. In addition, my shift from anger at the earlier history of state tolerance of non-support to criticism of the current enforcement approach has been interpreted as uncaring about the problems facing mothers and children.

The tendency for discourse to polarize the way we approach social phenomena is evident in this situation. We do not seem to know how to think about this problem without omitting something important out of its formulation, thus leaving ourselves with only partial understanding (Mandell, 1993).

Yet another problem emerges from conflicting lines of thinking and inconsistencies within family law itself, as well as in feminist literature about family law. The tension created by the current emphasis on support enforcement, while the separated father's role remains marginal, has largely been ignored in feminist thinking. Granted, the inherent complexities and ideological knots involved in addressing this problem are daunting; however, feminist thinking about the post-divorce family runs the risk of wanting it both ways; that is, continuing financial support by the father along with reduction or elimination of his control and meaningful involvement. This position understandably evokes strong reactions from fathers but is difficult to address without slipping into the rhetoric of either feminist or fathers' rights discourses. The feminist literature on family law tends to avoid acknowledging this conundrum. On the other hand, the literature focusing on fathers' rights tends to emphasize rights rather more than responsibilities.
Although feminists rightly argue that male perspectives must cease to dominate public policy, failing to take fathers' perspective into account in relation to current divorce policy may be unrealistic and, ultimately, counterproductive. It is my belief that an understanding of fathers' perspectives is essential to the development of policy which can transcend a polarized debate of men's issues vs women's. Measures which aim at improving the economic position of women and children are laudable and long overdue; however, continuing widespread resistance of fathers to compliance with child support obligations suggests that we have so far failed to address certain issues which are salient for fathers in a changing matrix of Western family and gender values.

In a previous study of how divorced fathers process the decision not to comply with child-support obligations (Mandell, 1993), the fathers whom I interviewed expressed themes of identity transformation and a strong sense of disempowerment at the hands of their wives and the judicial system. The sense of victimization and injustice was so intense for these men that they had each joined a Father's Rights group and identified (in whole or in part) with its message that fathers are structurally disadvantaged. I was struck, first of all, by the irony of this position, since the literature on divorce emphasizes the severe economic and structural disadvantages of divorce for women and children (Arendell, 1986; Eichler, 1990; Furstenberg & Cherlin, 1991; Kahn & Kamerman, 1988; Levinger & Moles, 1979; Pullingham, 1994, 1995; Stuart, 1986; Weitzman, 1985; 1988). I was also struck by the indications that the sense of disempowerment and social injury was both genuine and significant. I wanted to examine the social reality behind such perceptions and understand the context in which such a position develops. The themes of identity and disempowerment led me to explore the relationship of fathering to a man's identity, and vice versa. My conclusion was that there is an historical and cultural context within which the perception of injustice and disempowerment held by some fathers becomes understandable. The identity issues which they experience as problematic can be understood as signs of social, rather than individual, pathology (Mandell, 1993).

This analysis has relevance for direct practice with divorcing families, which is currently
predominantly therapeutically oriented. On the other hand, increasing emphasis in social policy on enforcement of payment neglects the important dimension of individual emotional vulnerability to divorce. The passage from practice problem to research and back again reflects a need that is typical in the field of social work for research which can actually guide praxis. In this dissertation I attempt to keep both the individual and social dimensions in view with the aim of informing direct practice, policy and further research. The focus is on developing a better understanding of the interface between the micro and the macro. I explore the relationship between fathers’ non-payment of support and the way they talk about what has changed for them as a result of the separation process. This includes not only how they process actual changes experienced within their own families, but how cultural conceptions of family and fatherhood are represented in their subjective experiences of the separation process.

**Background**

The objective of the remainder of the chapter is to set the stage for the research and to place the study and its findings in the context of several relevant fields of knowledge:

1. *Research on separated and divorced fathers.*

   Drawing on divorce-oriented literature, I will be looking at what has been written about how men in general, and fathers specifically, respond to the experience of divorce. This includes psychological, emotional, and behavioural responses.


   I will review the ways in which fatherhood has been represented in the fields of sociology, psychodynamic theory, psychology, and biology, emphasizing in particular the relationship between fatherhood and masculine identity.

3. *An historical perspective on the social construction of fatherhood in Western society.*

   This section will provide a brief sociohistorical overview of how the rights,
responsibilities, and expectations associated with fatherhood have historically been shaped by major social and economic developments.

4. The legal and social construction of post-separation fathering and the main issues arising out of these.

This will serve as an introduction to the issues in family law and in the institutional system of divorce which currently influence the role of the separated father.

5. An overview of how the divorce system operates, to give some context to the discussion of the system by research participants in the “Findings” chapters.

Throughout this review of the literature I will be referring, in relation to both divorce and fathering, to the micro and macro perspectives, i.e. those perspectives which focus on the psychological dimensions and those which focus on the social structural dimensions. This approach reflects the organization of the literature, an organization that contributes to the current impasse in analysis. As noted earlier, the findings from this study suggest that current categories must be transcended in order to reconceptualize responsibility for children’s well-being.

The Response of Fathers to Separation and Divorce

Paternal Disengagement

Overview.

Research on divorce has tended to focus, for the most part, either on the social and economic impact of divorce or, alternatively, on its psychological and interpersonal effects (Arditti, 1991; Salkin, 1983). The divorce literature as a whole is interdisciplinary: it includes the fields of psychiatry, psychology, sociology, social work, law, history, economics, and social anthropology; not surprisingly, the division in the literature between micro and macro tends to fall along disciplinary lines, though several authors (eg. Barker, 1994; Kruk, 1993; Riessman, 1990) try to transcend the micro/macro dichotomy. A phenomenon which has occupied the attention of both clinical and policy researchers is the disengagement of fathers from their children. Paternal
disengagement has been widely documented, both in Canada and elsewhere (Cassetty, 1983; Ministry of the Attorney General, 1993; Kruk, 1993; Pearson & Thoennes, 1988, 1990; Seltzer & Bianchi, 1988). It is manifest, at best, in tenuous relationships between fathers and children, or by irregular/inadequate payment of child support. Many fathers disengage in both ways. Although research findings about the effects of fathers’ continuing relationship with their children on the youngsters’ post-divorce adjustment are “inconsistent” (Furstenberg & Cherlin, 1991, p. 72; King, 1994), evidence of the importance of fathers’ continued financial support is clear (Furstenberg & Cherlin, 1991; Wallerstein & Huntington, 1982). In addition to their material well-being, children’s overall adjustment appears to be involved, either directly or indirectly.

Although the primary focus of the dissertation is on the economic disengagement of fathers (non-payment of support), emotional disengagement (non-contact or reduced contact) will also be explored. There is sufficient evidence in the literature and in practice experience to suggest that the two are not as distinct as social policy and moral sense would suggest. They have been separated into distinct areas for attention from different professions, such as lawyers and mental health professionals, as well as for study by different academic disciplines; nevertheless, in real people’s lives, they tend to be experienced as a whole. The separation of support from access was generally received, at first, as a significant step forward in the protection of children’s welfare. Like other changes, however, its potential helpfulness has been constrained by the limiting framework in which it is set; that is, children’s welfare as the private concern of families.

The micro approach.

The clinical literature tends to conceptualize paternal disengagement and acting out -- whether of a violent or negligent nature -- as pathological responses to a developmentally and socially disruptive event. One explanation posits that fathers who have been invested in a close relationship with their children pre-divorce are likely to become depressed and withdraw from the constrained visiting relationship that follows the majority of divorces (Kruk, 1991); other fathers
may submit to the "passions of the divorce and the father's complex feelings" (Wallerstein & Blakeslee, 1989, p. 235) or, more specifically, to the loss of control and its sequelae (Furstenberg & Cherlin, 1991; Huntington, 1986; Weitzman, 1988).

Other factors have also been identified as influencing the effects of separation on fathers and their subsequent behaviour as parents. These extend beyond the intrapsychic realm to encompass interpersonal dynamics, identity, and role functioning. The effects of the interpersonal dynamics of the former couple, and indeed, of all family members, have been studied by Ahrons and Miller (1993), Furstenberg & Cherlin (1991), Jordan (1988), Johnston and Campbell (1988), and Wallerstein and Blakeslee (1989). Ahrons and Miller’s (1993) review of the research on the relationship between support and other factors concluded that "the relationship between former spouses is a significant predictor of compliance in economic support (Wright & Price, 1986) and that there is an association between the level of paternal contact and fathers’ provision of financial support (Seltzer, Schaeffer, & Chaing, 1989)" (p. 449). Role issues include degree of flexibility in the masculine parental role (Friedman, 1980; Hetherington & Hagan, 1986), and various forms of psychological disturbance arising from the threat to, or actual loss of, the parent-child relationship and the attendant loss of role and identity (Guttmann, 1989; Jacobs, 1986; Myers, 1988; Roman, 1986; Williams, 1986). The difficulty involved in disengaging the paternal role from the marital one is particularly emphasized by Furstenberg and Cherlin (1991), but all of these authors indicate that when the spousal relationship ends, the father-child relationship is likely to be affected.

**The macro approach.**

Social structural explanations of paternal disengagement tend to take one of three general directions. Several analysts have looked at how the gendered division of labour in our society has historically determined marital and parental roles and, in turn, contributed to the way families reorganize following divorce (Arendell, 1986; Barker, 1994; Furstenberg & Cherlin, 1991; Kruk,
1993). This essentially means that the traditional division of parenting roles into caretaker/mother and provider/father are influenced, to a great extent, by social and economic conditions. Termination of spousal relationships does not normally alter this division of parenting roles. Mothers remain caretakers and are financially dependent, as are their children, on the father/provider.

Other researchers, looking for causal explanations and practical solutions to the problem of why fathers often abdicate the provider role, claim that weak and inconsistent policy is the reason for non-support. Their conclusion is that only clearer, stronger, enforcement-oriented policy can remedy the problem (Bissett-Johnson, 1983; Chambers, 1979; Wachtel & Burtch, 1981; Weitzman, 1985, 1988). This analysis has strongly influenced enforcement policies in North America. From this perspective, any proposed psychological links between support default and limited access to one's children are rejected as irrelevant or even counterproductive. While the linking of custody and access issues to issues of support payment is currently anathema in Canadian law and social policy, it is nevertheless emerging as a serious point of contention in the divorce literature along with other questions focusing on equity (Arditti, 1991, 1993; Dudley, 1991; Fox, 1991; Kruk, 1991; Salkin, 1983; Walters & Chapman, 1991). From this perspective, the situation of non-custodial fathers who are obliged to continue financial support but lose decision-making rights over child-rearing and expenditures has been compared to "taxation without representation" (Chambers, 1983). Walters and Chapman (1991) have charged that fathers are "disenfranchised by family law courts" (p. 86). Recently, there have been proposals in the literature advocating a policy shift away from enforcement of private responsibility to the assumption of public responsibility for the support of children and mothers (Chambers, 1983; Eichler, 1990; Pulkingham, 1994, 1995).

Both psychological and sociological approaches have been adopted in studying the relationship between the two kinds of disengagement. Wallerstein and Huntington (1982) found a significant association between good economic support and a good father-child relationship, a
psychologically intact father, and appropriate visitation patterns. The fathers who were best able, at the point of separation, to identify and give priority to their children’s needs, were the ones who maintained the most consistent relationship with their children and were the most consistent support payors. The same study concluded that the pre-divorce father-child relationship was not predictive of the post-divorce relationship, a finding supported by Kruk (1991). Pearson and Thoennes’s large-scale study (1988) concluded that access and paternal participation were key predictors of financial and “in-kind” payments (such as paying for new clothing or entertainment) by absent parents. Seltzer et al. (1989) posited a complementary relationship between payment and visiting, proposing that greater access promotes support payment, and vice versa.

The relationship of separated fathers with their children is a vulnerable one. This has had a major impact on the well-being of the children and their custodial mothers. The lack of continuity between pre-divorce and post-divorce fathering makes father disengagement a particularly puzzling phenomenon which clinicians and policymakers alike have attempted to explain. There appears to be some relationship between continuing financial support and continuing contact, but its nature is unclear.

Fathers’ Experience of Separation and Divorce

Changes and Losses

Research on the impact of divorce on mental health suggests that separation and divorce often produce intense emotional and psychological crisis for men (Jacobs, 1986; Huntington, 1986; Kruk, 1993; Myers, 1988; Riessman, 1990). Numerous authors comment on the vulnerability over time of the relationship between separated fathers without custody and their children (Hetherington, Cox & Cox, 1976; Pearson & Thoennes, 1990; Seltzer & Bianchi, 1988; Wallerstein & Kelly, 1980; Wallerstein & Blakeslee, 1989). Findings regarding the ability of men to cope with separation as compared with women are mixed (Clarke-Stewart & Bailey, 1989;
leaving open a number of questions about the role of family life in male development and emotional well-being. Why is the relationship between fathers and children so changeable after separation? Given the negative effects of separation on men, why is it so common for them to distance themselves from their children in addition to losing the relationship with the spouse? How salient is the role of father to masculine identity that its loss can cause psychological disruption yet it can be abandoned?

In his review of the literature from 1975 to 1985 pertaining to “the psychological position” of the father in the divorcing family, Jacobs (1986) found that a “substantial amount of literature” suggests that the perception that divorce requires “a dramatic diminishment or total severance of their relationship to their children... may be responsible for many of the severe psychiatric sequelae experienced by all family members following marital disruption” (p. 3). From a dramatic increase in car accidents six months pre-and post-divorce to increased suicides, homicides, psychiatric admissions and deaths due to illness, Jacobs reports a clear pattern in the literature of mental health vulnerability associated with family dissolution. He points to the possible undoing of an important developmental phase: If parenthood remolds and matures a man’s psychic organization (p. 12) as psychodynamic theorists claim, what happens when parenthood is severely disrupted? Jacobs describes two components of the “involuntary child absence syndrome” (based on his own study of it in twenty-six divorced fathers) which have important bearing on the question of identity. First, he describes the “intense fear of child absence due [in some fathers] not to any significant legal reality but to the feeling that he would have to accept the role of second-rate parent if he chose to divorce” (p. 44). It appears that the anticipation of having one’s relationship with a child redefined is almost as troubling as the actual experience. Practitioners will note that this is similar to the experience of mothers who face custody assessments or who have been threatened with custody battles by their husbands. This powerlessness seems to be what fathers experience when the potential threat arises (usually more grounded in reality for fathers, because of the bias in favour of mothers as custodial parents). What parents of both genders seem to feel powerless to
stop, and terrified of having to endure, is what Jacobs calls the "cataclysmic rupture of their own normal adult development. It is perceived as a massive derailing of their sense of self accompanied by feelings that life will never be the same again" (p. 48).

I would argue that the experience (or the fear) that one's life experience and key roles will be forever altered is ultimately an issue of identity. Hetherington, Cox and Cox (1976) were among the earliest divorce researchers to find that changes in self concept and identity constituted a major area of difficulty for divorced fathers. The fathers they studied experienced marked emotional distress, including a loss of identity and a disturbing decline in feelings of competence. In addition to unrecognized dependency needs, feelings of loss, anxiety, guilt, and depression were experienced. Thoits, in fact, states that "A legal battle for child custody... is an event that directly threatens the active retention of a highly valued identity, namely parent" (1991, p.106). Similarly, Williams (1986) and Huntington (1986) have each argued that custody battles are essentially struggles for parental identity.

For fathers whose role as parent is reduced or erased following separation, the loss of this identity compounds the loss of spousal identity. In Williams' experience, the response of fathers to this erasure of themselves is "usually either [to] give up and withdraw or fight ferociously to maintain their parental identity" (1986, p. 31). This addresses the two extremes of paternal responses to loss of family life: the distancing from children and loss of contact on one hand and, on the other, the raging retaliatory battles that include violence of all kinds. It is not entirely clear to which end of the spectrum belongs the withholding of child support. It may represent disengagement out of despair, an acting out of anger and protest, a desire to regain some measure of lost power, or some combination of these.

Myers (1988) lists the therapeutic issues for separated/divorced fathers as "loss of control, sense of powerlessness, hurt pride, and desperateness" (p. 71). Symptomatic of these are painful feelings of abandonment, humiliation, and anger, often associated with "retributive violence and spiteful emotions contaminating visitation and custody deliberations". Among the manifestations of
such destructive feelings, Myers includes kidnapping, violent outbursts, sexual abuse of a child, and failure to meet child support obligations. The element of control in non-payment is widely recognized among lawyers, clinicians, the general public, and ex-wives; it is supported in the literature, as well. The desire to regain control -- both internally and over the ex-wife -- also emerges indirectly from work such as that done by Haskins (1988) and Victor & Winkler (1977). In contrast, the element of violence/domination may be less evident.

Huntington synthesizes the problem behind many fathers' behaviour and emotional responses this way:

[They are] responses to an only dimly acknowledged sense of loss of control, order, and expectations. Their sense of justice is violated and rage ensues. The need to be in control of others as well as themselves is so basic to many men that when they believe themselves to have lost that control, they become extraordinarily anxious and feel justified in their rage at their ex-spouse and/or the legal system that has placed them in this situation. (1986, p. 63)

She adds, "Many of the devastating battles over children, over money, over every detail of life, represent an effort to reestablish control and hence self-esteem" (1986, p. 68).

Victor and Winkler (1977) take the argument of powerless fathers considerably further. Their analysis of the father's rights movement blames the women's movement, first for emasculating men in their role as fathers, then for using this as justification to shut them out of the children's lives after separation. These authors maintain that fatherhood "is an essential part of manhood" (1977, p. 76) and cite Noble and Noble, authors of *The Custody Trap*, who define custody with reference to "control... ownership, power, authority" (Victor & Winkler, 1977, p. 78). Thus, all fathers are considered victims of the reduced status of fatherhood in our society, and divorced fathers are especially victimized as they lose all rights and are reduced to virtual powerlessness. In describing the painful "psychic wounds" of divorced fathers who were formerly actively involved with their children, Victor & Winkler paint a striking picture. For such
men, "visiting the home that was once his, seeing the garden and improvements that he may have built himself, realizing that he is often living in a furnished room to maintain his former wife and children in the life-style to which they have become accustomed can only increase the feeling of helplessness in a man who prides himself on his sense of responsibility" (1977, p. 90). The authors seem quite unaware that they have confounded involvement with children, ownership and achievement, accoutrements of social status, and identity/self-esteem as an achieving male with identity as a caring parent.

A similar scenario is conjured up by Wallerstein and Kelly in their exploration of the guilt and depression that sometimes ensue for fathers from the visit-separation cycle:

For Mr. H, it soon became an impossible task to fetch his two daughters at the home which he had built for the family he had lost and continued to long for. He could not bear to stand at the threshold and wait for the children, painfully conscious that another man was occupying his place. (1980, p. 178)

Such feelings of longing are often closely associated with "hurt, anger, shame, loss, pain, guilt and nostalgia" connected with the loss of the marriage, and some fathers respond by avoiding the painful situation which stimulates all these feelings perceived as unendurable. Although different from Victor and Winkler's perspective, this analysis -- like theirs -- describes a problem located socially, rather than intrapsychically. I believe this is why Wallerstein's study, successful as it was in describing the responses of its subjects to divorce, is ultimately unable to account for the phenomenon of fathers distancing themselves from their children. At the 10-year mark in the study, Wallerstein and new co-author, Blakeslee, admit that they are unable to understand the reasons why many fathers, even some who were committed fathers pre-divorce, are unable to carry that commitment (including financial support) over into the post-divorce situation (1989, p. 158).
Interpersonal factors.

- The bitterness and conflict that commonly continue between separated couples is usually attributed by each of the partners to the behaviour or character of the other. Johnston and Campbell (1988) suggest that in fact, the individual personalities and the interpersonal dynamics of the couple influence each other rather than one being caused by the other in a linear way. These authors postulate the interaction of pre-existing psychological vulnerabilities with the particular stressful circumstances and interpersonal dynamics of the separation. They attribute much of the violence observed in the divorcing couples they studied to “interactionally triggered and sustained” factors related to the marriage relationship or separation experience, rather than “ongoing personal pathology” (1988, p.74). The loss of self-esteem or identity can lead to behaviour ranging from provocation or protracted conflict to retaliation and violence, depending on the degree of narcissistic disturbance or injury.3

According to Guttman (1989), none of the social and psychological variables associated with diminishing post-divorce father-child contact is as important as the spousal relationship. “...[I]t is the relationship between the ex-spouses that accounts for the most variance in the post-separation involvement of fathers with their children (Koch and Lowery, 1984).” Furstenberg and Cherlin (1991) discuss the interconnectedness of the marital and parenting role in the context of an intact family, and the difficulties of trying to disentangle them when a marriage is ended. They relate the common struggle of individuals who have difficulty finding a way to be parents when they cease to be husband and wife to the struggle of separating spouses to “establish a separate identity and an independent perspective” (1991, p. 27). The need for a divorcing couple to extricate their parenting roles from the marital context “creates a classical case, in sociological parlance, of structural ambiguity. The ambiguity is that the social and psychological tasks of divorce directly collide with the normal expectations of parenthood” (1991, p. 28). Where successful parenthood calls for sharing, co-operation, and interdependence, divorce calls for independence and distance. Furstenberg and Cherlin imply that for men, parental identity is actually contingent upon marital
identity, so that when the latter is lost, the former most often is not sustainable on its own. Whereas the structure of the intact family allows a distant father’s affective relationship with his children to be mediated by his wife, in the context of divorce, the motivation for this is gone on both sides (Furstenberg & Cherlin, 1991). Divorce establishes a destructive dynamic between men and women that leads many fathers to retreat from parenthood. When these men stop living with their wives and children, they no longer see themselves (or are seen by their former wives) as full-fledged fathers. It is as if their license for parenthood were revoked when their marriage ended (1991, p. 34).

**Connecting personal identity to the social realm.**

In addition to experiencing the numerous losses and changes that are reported in the literature, separating/divorcing fathers (like the remaining family member) encounter the state — through its laws and selected institutions — in ways which are usually new for them. The role of the court, in the disputes which often arise out of the interactions between former spouses, may become instrumental in the pursuit of self-esteem and identity. “The court is an arena in which to master painful feelings of rejection, humiliation, and role loss; to construct redefininitions of the self as good (or the ex-spouse as bad); and to recover a more positive sense of self” (Johnston & Campbell, 1988, p. 76). Recalling the interaction they postulate between pre-existing psychological vulnerability and interpersonal dynamics of the couple, Johnston and Campbell maintain that those with mild levels of “narcissistic disturbance” tend to look to the court for “recognition of their feelings, validation of the rightness of their views, and proof that they are not failures as fathers or mothers, men or women, and do not deserve rejection or belittlement” (1988, p.80). Those with moderate level of disturbances see the judge/mediator as “an authority who will justify the parent’s position ... A ‘win’ in court protects their positive sense of self and the ‘vindicating’ judge is often idealized. A judge who does not rule in their favor is negatively construed; seen as incompetent, biased, or misled; and treated with contempt” (1988: 85-86). In
the severely narcissistically disturbed, it becomes almost impossible to give up litigation and the seeking of revenge. "If the judge decides in their favor, it justifies their negative view of the ex-spouse and their conspiracy theories. If the judge does not decide in their favor, he or she is seen as another conspirator or persecutor" (1988, p. 91).

Findings of identity changes in divorced fathers (Friedman, 1980, Ihinger-Tallman, Pasley, & Buehler, 1993; Jacobs, 1986; Mandell, 1995; Riessman, 1990; Thoits, 1991) can also be linked to the social realm when considered from the perspective of identity theory, which is particularly helpful in explaining the role of social interaction in identity formation (McCall & Simmons, 1978). According to identity theory, feedback from significant others is incorporated in the development of identity and in the assignment of relative importance to the various roles and identities that a given individual has (Thoits, 1983, 1991). In general, the social feedback received by divorced fathers without custody is quite negative. Particularly in the way that fathers are labelled and assigned to new categories as parents, this feedback highlights the fact that there has been a change of status, and that the non-resident/non-custodial parent is being defined in negative relation to the other parent, i.e. as the non-custodial or nonresident parent. This is a crucial point of interface between macro and micro, where the public or social nature of divorce proceedings can have an important impact on the personal identity of fathers. Ihinger-Tallman et al., in fact, refer to their theory of identity changes in separated fathers as belonging to a "middle range" between the micro and macro levels.

The changes experienced by fathers do not always have a destructive outcome. Riessman (1990) attributes the increased post-divorce involvement of some fathers to the experience of recognizing, often for the first time, the importance of relationships and the need for intimacy. Contact with the children necessitates planning, which usually entails establishment or re-ordering of priorities. "Divorce stimulates men to begin to examine the most intimate aspects of themselves. The loss of what some define as key symbols of success, coupled with the profound changes in the organization of their daily lives, precipitates for many a crisis of identity" (1990, p.198).
Unlike others who write about fathers' emotional responses to divorce, however, Riessman sees the identity issues of fathers arising out of structural conditions. Drawing on the comments of her research subjects, she concludes: “As private problems become public and as they lose an important seat of power, some men feel that core features of their identities as competent and achieving people are thrown into question” (1990, p.183).

**Connecting identity and the social realm to issues of power.**

Foote has theorized that non-payment of support constitutes resistance to the operation of institutional power (1986). My own findings on the rationalizations of fathers who do not pay child support are consistent with this perspective (Mandell, 1995). Non-payment was related to the participants’ accounts of their perceived disempowerment in the divorce process. Non-payment had been constructed by them as an act of resistance against the combined power of former spouse and social institutions. Their perspective was that the judicial system had aligned with their former wives against them. The state’s involvement in the enforcement and collection of child support payments from divorced fathers was seen to support the interests of women, rather than the interests of children. From the perspective of these fathers, women are perceived as the winners: they get the children, the money, and the power over their former husbands. Through the divorce process, mothers are empowered by the judicial system, and fathers are disempowered.

Jordan (1988) discusses the link between the sense of “victimization and injustice” divorced men may feel when they hold their wives responsible for the divorce and feelings transferred through acts of violence “on to the society or system which is seen as supporting women and their actions”. This finding was supported in my own research (Mandell, 1995). This phenomenon reflects the extension of the negative experience within the intimate spousal relationship to one’s relationship with the social world, while the experience with the social world is, at the same time, being internalized. In short, changes to identity and self-concept due to changes in role and withdrawal of social support for one's identity combine with the realization of
lost power to produce intense psychological distress.

There seems to be a connection between the issues of power and identity. In the social and legal processing of their separations, the fathers I interviewed (Mandell, 1995) had encounters with their former wives and the legal system which led them to see themselves differently -- not just as fathers, but as individuals, as men; moreover, they perceived that others saw them differently as well. Changes in identity as a father were somehow related to changes in identity and social status as a man, and the connection appeared to be a perception of lost personal power associated with the changed roles of husband and father.

A different perspective on disempowerment is the one which views it in the context of oppression. Mirowski and Ross (1983), in a study of the relationship between powerlessness and social class, maintain that individual beliefs and cognitions may arise out of social-structural positions. Such a view contrasts sharply with the psychiatric perspective “which views these beliefs and cognitions as arising out of organic or intrapsychic processes and which then produce attitudes and behaviours which affect social relations” (1983, p. 234). Specifically, Mirowski and Ross hypothesize that “social positions characterized by powerlessness and by the threat of victimization and exploitation tend to produce paranoia” (1983, p. 228). This perspective brings into focus the role of institutions in the disempowerment of groups/individuals, which has relevance to the divorce process. Divorce is indeed an institutionalized process which entails the language of labelling and disparagement, beginning with custody assignment and extending to child support. The court not only intervenes in a father’s relationship with his children to declare him a different kind of parent and determine how much he will pay for them and how often; it also intervenes in his relationships with his former spouse and with his employer and others. As we shall see, the system is not designed to differentiate ‘good fathers’ from ‘bad fathers’. The perception develops that one has become a ‘bad guy’ because of bad laws and depersonalized bureaucracy rather than through one’s own behaviour.

Because former wives have also frequently labelled fathers ‘bad guys’ or bad fathers, the
legal system’s power to judge, label, intervene, enforce, and punish can be interpreted by fathers as executing the former wife’s will and enforcing her authority. In other words, institutionalized power is seen to back the mother, while the father finds himself being processed in much the same way as the loser in a lawsuit. For most men, this is a reversal of their usual expectations and experience. This offers an alternative, structural perspective on Jacobs’s observation (1986) that for many men, the outcome of the divorce process represents their first experience of what he terms “sexual discrimination”, a factor included in the “involuntary child absence syndrome” which he describes. What is perceived as anti-male or anti-father discrimination may, however, actually be a loss of accustomed male privilege.

We find in the literature a number of different approaches to the question of why fathers tend to disengage from their children. The issue of identity emerges as salient. The fundamental losses and changes entailed in separation precipitate a crisis of identity; associated with it are issues of masculinity, power, and control. These relate not only to the particular former spouse and children in question, but to one’s social status as a father and as a man in general. For many men, this may be a reversal of their normal experience of masculine dominance and privilege.

The Literature on Fathering

In this section, I will put the questions of masculine identity and male privilege following divorce into the larger context of fathering and the role of fathering in masculinity. The literature on masculinity and on fathering blossomed, predictably, in response to the growth of feminism in the West and the attendant changes in social relations between men and women. Prior to 1970, the literature on fathers had been very limited. Much of the research done thereafter has been termed “an extension of the work that has been carried out with mothers” insofar as it took motherhood as paradigmatic of parenting behaviour and viewed fatherhood as a role complementary to it (Guttmann, 1989; Mackey, 1985). Research on fathering has therefore been criticized for biases
which presume a marginal role for fathers in families and therefore tend to reproduce the bias (Russell, 1979; Stearns, 1991); moreover, much of the research done has been based on information provided by mothers and filtered through their perceptions (Guttman, 1989; Russell, 1979).

**Fathering, Masculinity, and Masculine Privilege**

**The relationship between fathering and masculinity.**

The notion with which the previous section concluded, i.e. that institutionally processed divorce constitutes an assault on male identity or, from a feminist point of view, on male privilege, is crucial to this research. While fathers may focus on that which is perceived to be undone by divorce, a thorough understanding of the role of fathers in Western society makes it clear that the position of father is one fraught with ambiguity and inconsistency even at the best of times. Fox (1986) and Barker (1994) have each noted the relative lack of importance given to fatherhood as a marker of masculine identity, compared with the centrality of motherhood in feminine identity. Baber and Dryer were unable to find any “systematic investigation” of the role of fathering in individual male development (1986, p.139), and I was also able to find little in the more recent literature which focused on this topic per se. The reality is that divorce does not create a new problem for fathers so much as it highlights one which already exists in the ‘intact’ Western family, rendering it both more visible and less manageable when a family separates. References in the literature to a “lack of confidence” in Western men (Tolson, 1977) or a “crisis of masculinity” (Levant, 1992; Pleck, 1976) address the ongoing changes in models of masculinity. In part, this is reflected in the evolution of the role of father in the latter part of the twentieth century, and to the struggle to redefine the father and his worth.

In his critical work on “lone fathers and masculinity,” Barker (1994) states:

Sociological theories do not adequately theorise the positions of men in families, and consequently cannot adequately explain lone fatherhood. In different ways
functionalist, marxist and feminist theories of the family and roles within them all tend to perceive men as fulfilling a marginal role in their families, because in the first instance society dictates it, in the second instance the needs of the economy dictate it, and in the third instance patriarchal power enables it. (p. 6)

He adds that each of the three theories fails to give a clear picture or analysis "of how men live their lives within families. One major fact and factor that warrants consideration in relation to this process is parenthood, specifically ideologies of motherhood and fatherhood" (1994, p. 8).

Consistent with Barker's claim that "models of masculinities and models of fathering are not easily congruent" (p. 1), a review of the mainstream theories of gender identity (i.e. psychoanalytic perspectives, from traditional Freudian to Feminist, sociocultural theories, sociobiological or evolutionary theories, cognitive development theory, social learning theory, and life-span theory) found that in each case, the construct of masculinity corresponds to the prevailing Western stereotype of men (Mandell, 1993); i.e., physical and intellectual superiority, aggressiveness, decisiveness, active sexuality, and -- in an intimate social context -- protectiveness and leadership.

The character of Western -- particularly English and North American -- men has ideally been represented as independent, rational, and non-expressive. Most importantly, none of the mainstream theories of gender identity development posit fatherhood as being salient to masculine identity. Although this might seem to provide a handy explanation for why separated and divorced fathers are likely to disengage from their children, such a conclusion would presume that these theories of gender identity describe that which 'must be' rather than what 'is'. On the contrary, however, my study of gender identity and fathering (Mandell, 1993) concluded that representations of masculinity and of fathering in the literature are social constructions which are shaped by particular ideologies, rather than by so-called "objective" realities.

Tolson (1977) sums up traditional male "presence" as the "promise of power", an "expectation of dominance" which has distinct implications for the social politics of gender, including within families. Traditional notions of masculinity make most sense when considered as
complementary to the traditional notion of femininity. Chodorow refers to "feminine and masculine personality and male dominance in a contingent, relationally constructed context" (1989, p. 187). In order to fulfill their destined functions, men like those just described need passive, dependent, willing, emotional women (and children) who require their protection, material assistance and guidance, who submit to their dominant will and who fulfill on their behalf the interpersonal functions of affective relationship. The patriarchal family was understood by mainstream sociological analysis (Benson, 1968), Marxist (Tolson, 1977) and earlier feminist analysis (Chodorow, 1978; Dinnerstein, 1977) alike as a neat division of human functioning into instrumental and expressive categories. In this sense, masculinity and parental roles are understood to be socially constructed. Each of these authors sees family life as reproducing conventions of sexuality and reinforcing parental authority in keeping with historical patriarchal arrangements. The division of behaviours, attitudes and emotions along gender lines has been found in a number of cross-cultural studies (Mackey, 1985; Bergen & Williams, 1991; Rossi, 1984; Yorburg, 1981).

There does not seem to be any debate in the literature on fathering as to the existence of a basic difference -- whether innate or socially constructed -- between men and women with regard to their parenting behaviour and manifestation of nurturance. There is a prevailing assumption, based on extensive evidence from various disciplines, that in modern Western society, wives/mothers give love and care while fathers provide economic and practical support. The father in patriarchal culture has been traditionally understood to be the representative of society in the family; as mediator between the family and the outside world, he represents to his family the authority of the state and its expectations (Benson, 1968; Donzelot, 1979). Tolson (1977) critically describes how this condition is played out in the middle class "myth of domesticity", in which the working and middle class family constitutes a haven for the father from the world in which he is frustrated by the unfulfilled promise of power. At home he can exercise authority and obtain some love and respect in exchange for the protection, concern, and economic support he
offers. "As husband and father, he is the subject of an ideology to which his wife and children are the objects -- of his concern, his protection, his authority. And his focal position is maintained by a continuing economic power -- the material reality to which the ideology corresponds" (1997, p. 95). Tolson's analysis paints a picture of a detached, largely symbolic relationship between father and children similar to the traditional model sketched by Freud, Levinson, and others, where the father's interest is essentially self-centred and his chief reward is a compensatory modicum of dominance. Where a man's class or personal failures impede social recognition of power, Tolson argues that aggressive dominance may be the compensating response instead.

Cancian (1987) sees love and marriage as having become "feminized" in the course of Judaeo-Christian cultural history. The gender polarity described above is, according to Cancian, a product of the division of labour within the dichotomous social arrangements of a sexist industrial society. Because of women's increasing economic dependency in the separation of work from home life and the designation of the former to men's domain, heterosexual "love" became the focus of women's lives and the responsibility for relationships became theirs. Men's role, on the other hand, was to support the family; thus it evolved that "femininity focused on love and masculinity on work" (p. 50). Cancian sees the role of father and husband becoming secondary in men's lives, and their ways of loving focusing on practical assistance, problem-solving and shared activities rather than on serving selflessly. In this sense, she sees the masculine style of loving -- whether as parent or as spouse -- as being different from that of the feminine style; both, however, understood to be socially constructed in support of a particular socioeconomic arrangement.

The primary counter-argument to the claim that gender roles are socially constructed (i.e., that 'biology is destiny') is challenged by Olsen (1993) as follows:

Perhaps the most we can say with certainty is that even if biological constraints exist that may ultimately limit the possibilities for remaking society, we will not be able to determine the part played by such constraints until we have correctly assessed the part played by the social construction of gender roles. (p.85)
This social construction is shaped and reinforced not only by the family but by public policies and legislation, systems of education, media communications, policies and conditions of the workplace (Ehrenreich, 1983; Feldman & Nash, 1986; Hwang, 1991; Lamb, 1981, 1987; Russell, 1979; Tolson, 1977). Even religious belief systems which are older than the capitalist industrialist system but which arise out of patriarchal traditions tend to support this division of roles within the family (Marciano, 1991; Ho, 1991; Schneider, 1984).

A number of authors point out that culture does not determine parenting in a simple or direct fashion (Erickson & Grecas, 1991; Feldman & Nash, 1986; Seward, 1991). It appears that fathering is determined by the intersection and interaction of many important influences, such as the larger culture, class (including occupation and education), religion, kinship patterns, and individual resources and personality, including personal history.

**Nurturance and responsibility.**

Given the assumptions about mothers’ expressive roles vs fathers’ instrumental roles, the question arises as to how nurturance came to be defined as that which only mothers do. Maternal nurturance is identified with selfless giving and caring based on understanding of the needs of the other. Mackey (1985), Russell (1979) and Rossi (1984), writing from a variety of theoretical perspectives, each cite cross-cultural evidence of the capacity (though not necessarily prevalent) of men to nurture in the way that is normally attributed to women in our culture. Wallerstein and Huntington (1983) found that fathers’ awareness of and concern for the child’s needs, separate from his own, was the best predictor at the time of marital breakup of a positive continuing father-child relationship. In addition to the lack of experience and comfort that many fathers have with the demanding physical care of young ones, the tendency for men to see their wives as the emotional nurturers of the family likely adds to the awkwardness of parenting a young child alone. Significantly, Hetherington and Hagan (1986) note that men who were in non-traditional marriages, i.e. more flexible with regard to sex roles, adjust better in their relationships with their
children following divorce, and Barker (1994) notes that men with a "pioneering" orientation to
gender roles fare better as lone fathers than do those with "traditional patriarchal" orientations.

There are other views of nurturance to be found in the literature. Pleck (1976) identifies the
hard-working, "taking care of" kinds of behaviour characteristic of the practical/instrumental side
of the male sex-role as a form of selflessness. During the time when fathers in North American
culture were seen as moral teachers and authority figures (Demos, 1981; Lamb, 1987; Stearns,
1991), it appears that they qualified as nurturers too. Fogel, Melson and Mistry (1986) attempt to
redefine nurturance, trying to see the modern Father-as-Breadwinner, stripped of much of his
historical value as moral guide, social mediator and educator, as nurturant in his own way. If we
accept that the major responsibility of the family remains, as Seward proposes, the care of its
children (1991), then economic support of them can indeed reasonably be considered to reflect
nurturance insofar as it constitutes provision of that which promotes development appropriately.
Undoubtedly, this is how many fathers see it themselves. It has also been argued that the
traditional code of masculinity defined hard work and self-sacrifice for one's family as a masculine
way of demonstrating care (Fein, 1978; Levant, 1992).

What seems strange, however, is that, within North American culture, the father's role
should have become largely limited to this function. Consistent with the concept that nurturance
is, to a great extent, 'made' (i.e., is socialized), not 'born', Lamb (1987) points out that although
most primiparous mothers are as frightened and incompetent as most fathers when it comes to
parenting, they are compelled by the pressure of social expectations to forge ahead, whereas
fathers are culturally permitted to withdraw from the challenge.

Less fundamental than the issue of nurturance but important to an analysis of fathering is
the issue of responsibility. A significant segment of the fathering literature has focused on father-
child interaction as opposed to father's function as sex-role model (a function seen only briefly,
historically speaking, to be crucial (Benson, 1968; Lamb, 1981, 1987). Lamb (1987) has
concluded that, although there seems to be some basis in reality for the belief that fathers are more
involved with their children than they used to be, “the discrepancy between mothers and fathers is especially great in the area of what we have called responsibility... Mothers are identified with caretaking, fathers with play” (p.11). Responsibility is assumed in this context to mean discerning and meeting the day-to-day needs of the child. This is central to the role normally termed ‘primary caretaker’. Lamb’s statement may seem unfair to those fathers who support their families through commitment to hard work, but in the context of social conditions under which a large proportion of mothers work full-time, the continuing discrepancy between the involvement of mothers and fathers in housework and childcare becomes problematic (Armstrong & Armstrong, 1988). Lamb (1987) claims that “many men continue to feel that active parenting and masculinity are incompatible” and therefore are resistant to increasing their part in childcare despite changes in female employment patterns (p. 18). This resistance appears even in societies where public policies strongly support equality between the sexes (Hwang, 1991; Yorburg, 1981).

There exists, of course, the view which holds that men are not instinctually intended for family life beyond procreation, but have been bound to their mates and offspring by the ties of marriage and the culture of family life which has evolved. Family life is said to have begun when man the hunter began willingly to share his food with his mate and child (Stearns, 1991). This precursor to the breadwinner role is often used as a rationale for the ongoing sexual division of labour, supported by the historical and biological reality of prolonged maternal lactation (Rossi, 1977). Masculinity seems to preclude major involvement in domestic and caretaking responsibilities and seems most comfortably directed towards activity in the external world of modern-day variations of the “hunt,” that which Erikson considers to be the adaptation of the “intrusive” masculine instinctual mode to the demands of the external social world. Responsibility as it relates to fathering seems to have been channeled primarily into the functions of provision, leadership and authority, with the latter two distinctly in decline. This raises the question of what becomes of parental responsibility when these other aspects become less salient.
Historical Changes in Fathering

Understanding fatherhood as socially constructed within a historical context helps to understand how it reflects social ideals of masculinity and how it may at times be in tension with them. Modern fatherhood has been recognized as “a human invention” quite apart from procreation itself and is therefore subject to considerable variation according to the demands of changing environments (Lewis & Salt, 1986, p.16). Similarly, Tripp-Reimer & Wilson (1991) observed that the distinction between biological and social fathering is increasing. Demos (1981, p.160) claims of fathering that “[i]ts invariant aspect is the biological one; all else is fluid and changing... no two cultures, or historical epochs, support identical styles of fathering.” His own attempt at outlining the history of fathering in Anglo-American culture posits a “general reordering of domestic life” (1981, p.168) in the transformation from premodern to modern fatherhood. He points out that the provisionary function of premodern fathers as providers was “embedded in a larger matrix of domestic sharing. With modernization it became differentiated as the chief -- if not the exclusive -- province of men” and it became located outside of the household (1981, p.168).

At the same time, the father’s location in the larger world bestowed a special new status upon the father when he returned to the household. Demos sees the the creation of “the Victorian patriarch”, with his command of “attention, affection, respect, deference and devoted care” in this context (1981, p. 176-177). Tolson (1977) talks about the modern father’s expectation of “a modicum of dominance;” Stearns (1991, p.39) argues that as legitimzed patriarchal authority declined historically and the community became “less and less of a comfort, the nuclear family began to be seen more as a place where support and warmth could be found.” Benson characterizes the traditional family as “male-dominated, female-serviced” (1968, p. 310). The privileges of the modern patriarch, then, offset the losses entailed by having to work for wages outside the home.
Models of fathering.

The literature on fathering delineates three models of fatherhood: traditional, modern and emergent (Fein, 1978; Tripp-Reimer & Wilson, 1991). The traditional model is characterized as the instrumental half of the instrumental/expressive role dichotomy described above, resulting in an aloof and emotionally unavailable parent who sees to his family's material and moral well-being. The modern model reflects the view that father-child interaction is important to successful child development, and that father absence has a detrimental effect. The emergent perspective sees potential for nurturance in fathers and recognizes that parenting offers benefits in terms of identity to fathers as well as to mothers. Put somewhat differently, the literature on fatherhood has shifted its focus "from a concern with fathers as persons primarily involved in the economic support of the family and perhaps the discipline and control of older children... to a view that places increasing emphasis on the role that fathers play in the direct care of children of all ages" (Lamb, 1987, p.4).

Representation of fathers in western literature has moved from Moral Teacher/Builder of Character to Breadwinner, to Sex-role Model, to Nurturant father (Benson, 1968; Demos, 1981; Lamb, 1986). The prevalence of one ideal over another does not mean that the previous one disappears; rather, various models co-exist, with differential degrees of acceptance. "[M]ost researchers concur that the modern notion of a male parent equally participating throughout a child's lifetime is only selectively practiced in pockets of American society" (Tripp-Reimer & Wilson, 1991). Others agree that the claim that fatherhood is changing in most cultures and that fathering behaviour is becoming more flexible is out of synch with reality (Lamb, 1987; Russell, 1979; LaRossa, 1988; Sagi, Koren & Weinburg, 1991). There is consensus around the fact that change is occurring, but there does seem to be a gap between the "culture of fatherhood" (LaRossa, 1988) and the practice of fatherhood. Moreover, the new culture of fatherhood does not, nor should it be expected (given the multiplicity of factors which we have found contribute to fathering) to represent a uniform ideology. It does appear, however, to be associated with the changes in models of masculinity in the West.
Some writers attribute current re-evaluation of male stereotypes to the effects of the women's movement (Pleck, 1976; Tolson, 1977; Victor and Winkler, 1977); however, there have also been important broader social and economic factors. Aside from the direct threat to themselves through the sharing of power and resources, men's resistance to changes sought by the women's movement remains understandable from the perspective of “attachment to the privileges they accrued from the sexual division of labor between housewives and breadwinners” (Ehrenreich, 1983, p.103).

The effects of industrialization and the location of work for wages outside the home.

Under a premodern agrarian/subsistence economy, all family members shared the labour required to sustain themselves and the products of that labour. However, in an industrial economy where wages were earned away from the home, the principle of the “family wage” became a necessary principle (Ehrenreich, 1983). It was accompanied by the sharp, gendered division of roles and commitments. This social construction of marriage emphasized the commitment to share and the dependency upon that sharing; in return, the working man was to receive personal care services for himself and the rearing of his children. (The resulting “domestic incompetence” of men has been added by Demos (1981) to his list of factors which contributed to the marginalization of fathers in the family.)

For a time, “the notions of success, masculinity and being a good (i.e., sole) provider were... tightly intertwined” (Ehrenreich, 1983, p.103). Ehrenreich explains that the “breadwinner ethic” is indeed an ethic, rather than a psychologically or biologically determined role, and as such was shaped by a particular ideology. She argues that the breadwinner ethic, as the driving principle in the male role, was supported by “an enormous weight of expert opinion, moral sentiment and public bias, both within popular culture and the elite centers of academic wisdom” (1983, p.12). Theoretical rationalizations which ascribed to the role of provider the attributes of maturity or successful adaptation (Ehrenreich terms the latter a codeword for conformity) rendered
adult masculinity indistinguishable from the breadwinner role; thus, "it followed that the man who failed to achieve this role was ... not fully masculine..." (1983, p. 20). Similarly, Stearns (1991) writes:

The central role assigned to fathers within industrialization involved breadwinning, the adequate provision for children through work and wages won outside the home. This role provided the chief criterion for measuring good fatherhood over a century-long span, for insufficient provision was a badge of male failure. (p. 42)

The socially constructed association between irresponsibility and effeminacy/homosexuality left men having to take up the breadwinner role to prove masculinity or to seek ways of avoiding that role without compromising masculine identity.

Whereas premodern Western fathers held a high level of authority because of their control over property, modern wage-earning fathers no longer had such legitimized power. "Patriarchy meant, in practice, an abundant willingness to intervene in children’s lives" (Stearns, 1991, p.33), but when fathers lost their ability to confer or withhold property, were distanced from their families by work away from home and replaced as moral/religious teachers by formalized education, the involvement with family changed. "Fatherhood declined in this context, as a practical force in the lives of families and of men themselves" (1991, p. 39).

Ehrenreich argues that eventually, the exchange of male support for women’s services began to break down in a society where men have learned to do for themselves and/or products became available to replace the labour of wives, while women’s work itself became increasingly devalued. It thus begins to look more and more as though men are contributing more than their fair share to the arrangement (1983, p.78-79). Ehrenreich cites Charlotte Perkins Gilman, the early feminist, who observed that as men became increasingly responsible for the economic support of the family and as women became increasingly economically dependent upon them, men seemed to be paying women for their services in marriage "in inverse relation to the work performed" (Ehrenreich, 1983, p. 5). During the latter half of the twentieth century, Ehrenreich claims that the
ideology which supported the breadwinner ethic has collapsed. Tracing several North American male subcultural phenomena of the last four decades, she argues that the agenda of separating the role of provider from masculine identity and male social status has been gradually met in North America.

From a Marxist Feminist point of view, the construction of masculinity in an industrialized economy and the resulting gendered division of labour supports the mode of economic production. This position is articulated by Catherine MacKinnon, who states, "...capitalism expresses the same authority structure as does the family, through its organization, distribution of wealth, and resource control..." (1989, p. 61.) From this perspective, masculine identity is psychologically split along the lines of dichotomy inherent in capitalist social relations; i.e., work vs home, work vs leisure, work vs "life" (Tolson, 1977; Olsen, 1993).

Changes in marriage and women's rights.

The fact that women in most Western societies are far freer now than ever before in modern history to initiate divorce and better enabled by a variety of conditions to live independently means that the power of husbands and fathers has been dramatically curtailed. Demos suggests that this may well have changed fatherhood "as a category of social experience" for men (1981). A woman's right to seek the dissolution of her marriage without losing custody of her children means that men in families have a level of accountability which they did not have when there were no opportunities for women to become financially self-sufficient. Increasing civil rights for women and accompanying political influence has led to changes in family law, particularly custody and support law, which in turn support greater independence for women. The traditional dominant-dependent relationship is thus supported less and less by public policy and law.

At the same time, men's legal obligations to their families even after dissolution have been increased. In 1881, the province of Ontario granted mothers equal rights to guardianship of their children and in 1888 obligated deserting husbands to support their wives; in 1922, Ontario
assumed jurisdiction over child support. Hitherto, under the laws of Confederation, husbands had remained legal guardians of their children and a wife who left home lost all rights to children and to property (Statistics Canada, 1983). The relevant historical developments which influenced this shift were the products of Victorian ideology. From this perspective, children and mothers were viewed in a new light: children were increasingly seen as a special, vulnerable class of persons, and mothers as inherently better suited to the care of children and instinctually inclined to serve the needs of the family better than men. Cancian (1987) characterizes the Victorian "blueprint for marriage" as one which emphasized duty to family roles: women's duty was to care for the family and men's was to provide, guide and protect. Emotional and sexual intimacy between spouses were not considered central in this schema. This ideology reflected a complex of changing beliefs and sex roles associated with broad historical and social changes in Western life towards the close of the 19th century and beyond.

Changes within economic, religious and educational spheres interacted with political and social changes including the social reconstruction of marriage and the family. Women's increasing "visibility as competent adults" (Walters & Chapman, 1991, p. 87) resulting from new property rights and eventually enfranchisement supported the belief that they could be adequate caretakers, at the same time as theory about the importance of early childhood development stressed the value of attentive caretaking. Mothers' role as nurturer and teacher through childrearing became increasingly valued for children's emotional well-being and family unity, and fathers were the ones responsible for protection, dealing with the outside world, and economic security. "Fathers were still heads of households, but the rights of parents in their children had shifted" (Walters & Chapman, p. 84). This ideology was reflected as well in child custody laws: from approximately late 19th century to the mid-1970s, the basis for determining custody had shifted to the "Doctrine of Tender Years," which favoured mothers as custodial parents where young children were involved in a separation.

By the 1920s and 30s a new "blueprint" for marriage had emerged in the West, known as
Companionship marriage. "This blueprint identified the family with marriage, not parenthood, and emphasized emotional and sexual intimacy between husband and wife" (Cancian, 1987, p.34).

The shift from duty to self-fulfillment was a by-product of social changes leading to the loss of traditional economic and social functions for the family. After World War II, as North America actively encouraged its women out of their wartime jobs and responsibilities and back to their children and kitchens (Kome, 1985; Pierson, 1986), the Companionship marriage gave way to a revised form of divided duties and extreme commitment to the family. "The Victorian ideology of separate spheres was still partly intact; it was the husband's job to support the family, while the wife was the center of home life. But the authority of the husband had declined -- he was to be more of a pal to his children and more of a companion to his wife" (Cancian, 1987, p.37).

The "pal" or play aspect of father-child relationships has been described by Stearns (1991) as compensation for the loss of the father's function as sole breadwinner and authority. Stearns sees this as an outcome of a reduced valuation after the 1940s of "aggressive male personalities...which weakened the legitimacy of aggressive male role models" (1991, p. 47).

View of children.

Under traditional patriarchy, children were considered the property of their father, one of the family assets. Beginning in the latter nineteenth century in the West, as children came to be seen less as chattel and more as dependent individuals, the rights of the father with regard to children changed dramatically. Fox (1986) sums up the interaction of this development with those that have been mentioned above:

...redefinition of a father's property interests in children to a personal relationship interest and the extension of this relationship interest in children to the female parent, the growing spatial separation of paid work from domestic life that left women at home as caretakers of children, the emergence of the child development movement that emphasized the importance of the mother as caretaker during a
child's early years, the introduction of child labor laws, which converted children
from an economic asset into an economic liability, and support laws holding fathers
responsible for support of their minor children, whether or not they retained
physical custody of them.

Obstacles to change.

In addition to the limited acceptance of the emergent model of fathering, there are important
structural factors which support the continuation of divided parenting roles. These are gender-based
economic inequalities which impede fathers'/families' willingness to actively seek or take
advantage of opportunities for increased paternal participation in childcare (Erickson & Grecas,
1991; Lamb, 1987). This means, for example, that the normally higher earning power of men
makes it likelier that couples will choose to forego the woman's income and have her stay at home
as caretaker. In addition, employment practices and social welfare programs which have
traditionally recognized this reality, such as maternal leave and maternity benefits, do not yet
generally recognize fathers as legitimate caretakers.

Seward (1991) sees the barriers to increased father involvement lying in the combination
of the power of the breadwinner/homemaker stereotypes, the emphasis of developmental theory
on the mother-child relationship, and the focus of sociologists on the marital dyad at the expense of
the parent-child relationship. In addition, we have seen how the virtual fusion of masculinity with
the instrumental/provider role made it very difficult for men to consider roles other than those as
viable options. Roman argues that industrialization -- in concert with psychoanalysis and sociology
-- as having “played key roles in... restricting the conceptual options open to adults” (1986, p.87).

Within some ethnic groups, policies which impose changes on fathers for which their own
masculine socialization has not prepared them will not only fail to be embraced, but may actually
alienate men from their fathering roles. Mothers, too, need to be accepting and supporting of
increased father involvement, or conflicts over values and power are likely to create family
dissension (Lamb, 1987). We also find that between different classes of similar ethnicity, attitudes towards fathering, and expectations of parenting roles may vary significantly (Bozett & Hanson, 1991; Yorburg, 1981).

* * *

This section has explored the question of salience of fathering to masculine identity. What we have found is that this has not been historically constant. Fathering, the role of provider, and masculinity have at earlier stages in history been more or less intertwined, depending on social and economic conditions. In our own transitional era of shifting gender roles and increasing openness to diverse forms of family life, there is no universal ideal of what men should be like, or what fathers should be like. Rather, we find multiple representations, which in some instances are contradictory. Where discontinuities and inconsistencies arise between masculinity and fathering, men who are parents have to cope with the tensions that result between their several identities.

The Construction of Fatherhood in the Context of Separation/Divorce

The tender years doctrine has been replaced, beginning in the 1980s, by the best interests of the child; the latter is the “paramount” principle in determining custody determination under the Divorce Act 1985, and the sole principle under the Ontario Children’s Law Reform Act 1980. Any presumption in the legislation in favour of one parent over another is thus eliminated. Likewise, economic support is now explicitly the responsibility of both parents. Nevertheless, in the vast majority of cases in North America (and in most Western countries) it is mothers who retain custody of the children following separation (Crean, 1988; Statistics Canada, 1983). Despite a “sturdy minority” of actively participant fathers, the fact remains that “until further notice, [Canadian and American women] have babies in the expectation of being the principal responsible parent; and men have babies on the understanding that for them the role is optional (Crean, 1988, p. 7)". At the same time, it is fathers who most often are obliged to pay child support (Crean, 1988; Kahn & Kamerman, 1988; Weitzman, 1985, 1988).
In arguing against the social bias in our culture which favours mothers over fathers as caretakers, Fox (1986, p. 394) challenges the very use of the term noncustodial father:

In defining the noncustodial father, one could argue on semantic grounds that “noncustodial fatherhood” is a contradiction in terms. “Fatherhood” connotes the.shouldering of the full complement of responsibilities and privileges of the parent role, whereas “noncustodial” connotes a restriction, limitation, or cessation of those same obligations and privileges. Fathers without custody of their children are hard pressed to maintain a meaningful parental role...

This “ambiguity at the core of the visiting relationship” is identified by Wallerstein and Blakeslee as “one of the major stressors for fathers” (1986, p. 235). We recall here the claim by Furstenberg and Cherlin that because of the structural ambiguity of the divorced father’s role, many fathers “retreat from parenthood.”

If the emergent model of fathering is taken as the norm, then Fox would be accurate in his criticism. We have already seen, however, that in our culture, this model may be idealized but is by no means normative in practice. With this functional role of the mother removed, some fathers do learn to relate to their children in a more direct way. Several researchers (Kruk, 1991; Riessman, 1990; Wallerstein & Blakeslee, 1989) have found that in some families, fathers actually increase their direct involvement with children after separation. Most, however, become even more distanced (Hetherington, Cox & Cox, 1976; Seltzer & Bianchi, 1988; Wallerstein & Blakeslee, 1989; Wallerstein & Kelly, 1980). Furstenberg and Cherlin conclude that “[w]e may be attempting to engineer a direct role for fathers in divorced families that doesn’t often exist in nuclear families” (1991, p. 119). Somehow, in the intact family, whatever asymmetry exists in the father’s parental status is either not perceived as disadvantageous, or is adequately compensated by other conditions. Divorce, however, “disrupts the family distribution system” (Furstenburg & Cherlin, 1991, p. 47).

Lamb notes that in our culture, the key influences available to fathers in their role aside
from breadwinning are emotional support of mothers and other family caretakers, instrumental support of mothers, and direct interaction with children (i.e., "through caretaking, teaching, play and one-on-one interaction") (1987, p. 7). Father’s influence -- thus mediated by emotional and instrumental support of the mother -- is most often ended, or becomes negative, following separation. Anyone who has worked with or known divorced families has encountered maternal complaints about being undermined as a parent by the ex-husband. This problem undoubtedly exists for separated fathers as well, since they are often undermined by former spouses who mistrust them as persons and as parents. A custodial mother, however, continues to have significant contact with and direct influence on her children, while the fathers Lamb is describing are more reliant on the indirect type of influence that comes from the good will of the mediating parent. This can create a form of dependency on the part of separated fathers that renders their wives more powerful as parents. Ariditti (1991), paraphrasing Salkin, describes the non-custodial arrangement as “giving one parent (usually the mother) total control over visitation [thus] placing the custodial parent in a position of control and power. This places the other parent (usually the father) in a position of powerlessness leading to stress and emotional withdrawal” (1991, p. 113).

Whatever the model of family and fathering, the role of the non-custodial parent is legally narrowed. Fox offers the following definition of non-custodial fathers in America: “...those fathers... for whom the parent role has been legally altered so as to vest in the mother only the father’s ‘powers, rights and duties’ with respect to his children” (1986, p. 394). Canadian legal analyst Michael Cochrane (1993) states:

The distinction between custody and access is basically the difference between having the right to make all decisions regarding a child and simply being entitled to information about the child’s health, education and welfare, and to occasional time with the child. (p. 74).

Put differently: “Access has been characterized as anything left over after custody” (Cochrane, 1993, p. 77). In sum, the father loses his power to the mother, while retaining limited access to
his children under conditions devoid of both responsibility and legitimate authority. Within the traditional model of the father as breadwinner/protector/social mediator, the father unquestionably loses the latter two functions while retaining the first. The withholding of the provider function in the form of non-compliance with child support obligations thus effectively cuts the noncustodial father's formal ties with his child, further defining himself as non-parent. If the conception of fatherhood (or the reality) is expanded (as in the modern or emergent models) to include caregiving, this function is also diminished or dissolved by loss of custody. Often, access to the children is so restricted for one reason or another as to leave the father without the opportunity to offer caregiving. He also loses the potential benefits available from the intimate nature of caregiving and the potential for the positive experience of self involved in successful parenting (Friedman, 1980; Tripp-Reimer & Wilson, 1991).

The discontinuities and contradictions among models of fathering and models of masculinity are rendered increasingly complex when a father lives apart from his spouse and children. What happens now is that particular representations of fatherhood are institutionalized through the law, which may or may not be congruent with a given man's identity as father, nor with his self-image as a man.

**Institutional Regulation of Marriage and Separation**

**Overview**

In this section, I look at the institutional system within which fathers experience the reconstruction of their role following separation. I will outline the legislation and practical processes which structure the relations of the separated or divorced family. The various possible 'trajectories' which an individual might follow through the separation process will be identified.

Divorce essentially represents state permission not only to end a marriage, but to marry again. Whereas the right to divorce was once unavailable even to monarchs, and subsequently to
none but the very wealthy and influential in England and Canada (Gies & Gies, 1989; Horstman, 1985; Morris, 1971; Murch, 1980; Statistics Canada, 1983), it is now a democratic and relatively accessible procedure. The state no longer intervenes around the termination of the sexual relationship itself if the couple seeks a separation or an uncontested divorce; the state does, however, concern itself in all instances with respect to the division processes. These matters are in fact highly regulated by the state. The emphasis in Western family law has, in fact, shifted historically from intense regulation of the grounds for divorce and the matter of fault, to the regulation of property division (Glendon, 1981).

The ancient concept of separation *a mensa et thoro* (from bed and board) means a separation that does not involve legal or religiously recognized dissolution of the marriage. The spouses simply live apart. Today in Canada, separation akin to the separation from bed and board is available to legally married and common law couples who may, if they wish, avoid all state regulation of the separation of their lives, assets and children. However, if a couple wishes to divorce (that is, if they are legally married and wish to terminate that status under the law), they must obtain a divorce under the federal *Divorce Act* of 1985. In that case, the state -- through its judicial system -- will exercise a certain amount of control over the termination process. How much control the state and, consequently, the individuals involved, end up having is highly variable. As a general guideline, many lawyers and divorce counsellors advise clients that the less they are able to achieve by mutual consent, the less control they will be able to maintain over the final outcomes, and the greater will be the need for documentation and formal procedure. In addition, the length of time required for resolution of disputes may be significantly increased by the need to wait on the fulfilment of procedural requirements.

**Rules and procedures.**

The system itself is very complex and highly rule-bound. An uncontested divorce has become, according to Cochrane, a “purely procedural event” in most provinces since 1986. This
means that a couple need not even attend court; the granting of the divorce is accomplished through procedural means between the lawyers and the court. Once the final judgment has been issued, the couple fills out appropriate forms along with supporting documentation and files them with the court. (As of 1993, the national average for using this procedure was 68% and in some provinces was as high as 98% [Cochrane, 1993, p. 58]). If, however, there are any disputes pertaining to property division, and/or custody and access, the procedures are numerous and complex. They serve the purpose of regulating the nature and manner of information put before the court, as well as structuring the behaviour of the parties toward one another and towards the institutions.

While the relatively small proportion of contested divorces nation-wide may suggest that the problem of dealing with the system is limited to a select few, this is hardly the case. Many couples who have not even approached the stage of deciding whether to divorce take issues of interim custody, access arrangements and support to family court. Spouses who have arrived at separation agreements without the involvement of court may later find themselves resorting to the courts for resolution of difficulties that arise. *Figure 1* illustrates the trajectory of one of the fathers interviewed for this study as an example of how complicated the process can become, even before any kind of satisfactory agreement or order can be reached.

The rules which govern the procedures are known formally as *The Rules of Practice* or *The Rules of Court*; Cochrane characterizes them as "the rules of the game." These "provide for virtually everything that can happen between the institution of proceedings (starting the case into the court system -- for example, by getting the Registrar to authorize commencement of an action) and the obtaining of a judgment ..." (1993, p. 43-44). The *Rules* also provide for appeals, enforcement of court orders and numerous other matters. One published version of the *Rules*, with case summaries interpreting them, runs nearly 1100 pages in length (Cochrane, 1993, p. 44). The *Rules* extend to regulation of the forms that must be used in order for documentation to be acceptable for filing at court. Not limited to the standardized presentation of information, the Rules "prescribe everything from the colour and size of the paper to their form and content" (p. 44).
Some documentary procedures are intended to get information into the record, which will signal an immediate change in the operation of the Plan vis a vis that individual (e.g., notification that employment has been interrupted or resumed). Certain kinds of documentation are designed to put information before the court for its consideration in a decision (e.g., the salience of the all-important Financial Statement for the division of assets and the calculation of support); others are designed to maximize effectiveness of the administrative process (reporting changes of address or notification that in accordance with the terms of a support order and the law, a child is no longer considered a "child" eligible for support), or even as an attempt to structure the behaviour of the parties beyond the actual procedure itself (e.g., the requirement for giving 30 days notice to the parent without custody before a custodial parent moves with the child; this is designed to give the non-custodial parent the period of time legally [procedurally] required to file a motion in opposition to the move [Cochrane, 1993, p. 57]).

Jurisdictional differences.

To complicate matters,

[the various levels of court within each province have their own sets of rules...]

Every level of court for family law has its own set of rules... If used properly they can provide a great deal of control over the progress of a case. (1993, p.44)

As numerous sources indicate, these rules and the procedures they govern are frequently not used properly, and a considerable degree of control is lost to all concerned (Cochrane, 1993, p. 57; Cole & Vidal-Ribas, 1995). The net result is a process that is fraught with technical requirements for which technical expertise is normally necessary. In addition to stressing the need for sound legal advice, Cochrane urges careful monitoring of the way the lawyer handles the case at every stage. He cautions that "not all lawyers care equally" about their clients.
One need not be involved in a divorce to be registered with the Family Support Plan, so the majority of support arrangements with any type of formal agreement are involved with the Plan. With a caseload of well over 100,000 (Ministry of the Attorney General, September 1993), the Plan is designed to process large numbers of cases as uniformly as possible. The Plan has been described as a "volume agency" which is not designed or equipped to deal with "customized" arrangements intended to meet an individual family’s needs (Cole & Vidal-Ribas, 1995). As with many bureaucratic institutions, individuals are categorized. Other characteristics of such a highly bureaucratized agency with a regulatory function and a relative lack of personnel are a high degree of regulation and documentation, reliance on information systems, centralization, and interaction with electronic systems rather than people.

The enforcement agencies have been granted significant powers to intervene in the lives of individuals, particularly payors. The enforcement legislation empowers them to notify employers directly when a Support Deduction Order is made and to demand certain types of information on an ongoing basis, in addition to the garnishment of wages. The agencies have access to numerous sources of information about payors in order to trace and locate them when they are not forthcoming. They have the power to seize property and to intercept payments from other levels of government (such as income tax refunds or, in a case cited by Cochrane, a lump sum payment by OHIP to a doctor whose support payments were in default). The FSP may take a payor in arrears to court and may request that the court issue a warrant for a person’s arrest under particular circumstances. There is a proposal before the Ontario government that an individual in arrears should not be granted or permitted to renew a licence for business, motor vehicle or fishing until arrears have been paid. This would entail a significant degree of monitoring and information exchange.

The Plan is also highly procedurally driven, which necessarily results in a high degree of bureaucratization, documentation, and consequently a need for advice from professionals such as
lawyers, paralegals, regarding how to negotiate these processes and structures efficiently and advantageously (Cochrane, 1993, p.62; Cole & Vidal-Ribas, 1995). Some procedures may be automatic (such as wage garnishment) and therefore occupy a default position which must be stopped once begun, rather than initiated by request or application, etc. Other procedures must be requested, either in writing to the Family Support Plan or by application to the court, often involving considerable waiting periods and legal expense. Because the entire system is so information dependent, there are many occasions on which notification must be exchanged between the payor (or the payor’s employer or the payor’s lawyer) and the Plan, or the receiver and the Plan.

**Costs.**

The separation/divorce process can be very expensive. Lawyers’ fees, court filing fees, expert testimony, accounting consultants, time taken off work to attend meetings or court, can add up quickly. Cochrane estimates that the average contested divorce takes about two years to complete and costs about $10,000-$15,000 in legal and court fees (Cochrane, 1993).

Additional costs are incurred if the help of experts is needed for the complex valuation process by which assets are divided between spouses in Ontario. The cost of seeking a variation to a court order for support is often prohibitive, and as a result non-custodial parents whose financial situation has been reduced “usually prefer to fall in arrears, wait until their financial situation improves and then apply for a retroactive variation” (Federal / Provincial/ Territorial Family Law Committee, 1995: Appendix D-2). Regardless of which party initiates a motion for variation of a support order, the length of time it may take for the process to unfold can cause hardship. In the case of the outlying provincial family court such a matter may be settled within one month or less. In General Division court, the same matter may take up to a year. Meanwhile, the custodial parent and child seeking an increase are in need of more funds than they are receiving, or a payor who is legitimately unable to pay falls into the defaulter category. Often, both occur.
Current Legislation

- *Divorce Act, 1985.*

Canada’s *Divorce Act* is federal legislation which sets out the provisions for divorce in Canada. Only federally appointed judges, who sit on superior courts (given different names in different provinces), may make orders for divorce. Where there is no system of unified family courts, an application for divorce is heard in the trial division of a province’s Supreme Court, or in the District Court with judges sitting as a local division of the Supreme Court (Vayda & Satterfield, 1989, p. 90). Although there are procedural variations among the provinces in the way that a divorce is handled, the substantive provisions are uniform across the country.

A divorce judgment may provide for the terms of the dissolution of the marriage alone (called the “main relief” under the Act), or it may include the terms of “corollary relief” as well. Under the Act, corollary or secondary relief may be provisions for orders of spousal maintenance, custody of children and maintenance of children, including interim orders for relief. It is possible to obtain a divorce judgment without conclusion of the corollary proceedings, but only if both spouses agree to do so; otherwise, the court may delay or stay the final order of divorce until arrangements are completed which the court deems to be reasonable. The state did not always intervene in matters of support. Support was part of a system of “private law” which “simply was not serving [custodial parents]” (Federal/Provincial/Territorial Family Law Commission, 1995, Appendix D-1). Awards tended to be very small and the expenses involved in enforcing payments were high. In addition, many custodial parents ended up having to turn to social assistance. Particularly after the rate of marital breakdown in Canada soared during the 1970s and 1980s, “governments felt the problem directly in their budgets” (1995, Appendix D-1).

Custody is governed by both the *Divorce Act* and, in Ontario, the *Children’s Law Reform Act, 1980.* The current principle for determining custody under both Acts is the “Best interests of the child”. Support is governed by the *Divorce Act* and the provincial *Family Law Act, 1986.* Other matters relevant to the *Divorce Act* include residency requirements, a national Divorce
Registry, grounds, provisions for reconciliation, and involvement (no longer mandatory) of the Children’s Lawyer formerly called the Office of the Official Guardian. Under the Divorce Act, a custodial parent must give the non-custodial parent thirty days’ notice of his or her intention to move the child. This provision is designed to permit the non-custodial parent an opportunity to move for a variation of the custody order.

The Divorce Act does not provide for the division of property because the federal government—and hence its legislation—does not have jurisdiction over property. Legislation concerning property is the responsibility of the provinces. Thus, if an application for divorce is accompanied by a request for the court’s involvement in the division of the family property, the provincial laws for the division of property will be applied in concert with the federal divorce law. Schemes and formulae for dividing assets can be highly complex, and may vary from jurisdiction to jurisdiction. Even definitions of what constitutes “family assets,” i.e. assets subject to equal division vary from province to province. Ontario, for example, does not distinguish between family assets and non-family assets since the Divorce Act came into being. Legislation to govern those division processes is under the Family Laws of the Provinces and Territories. Cochrane characterizes the goal of all provincial and territorial division schemes as an “attempt to divide equitably, if not equally, the value of all the assets acquired by the couple between the date of the marriage and the date of their separation or divorce.” He concludes that marriage is “for all intents and purposes an economic partnership between a man and a woman,” not very different upon its breakup from a business partnership (Cochrane, 1993, p. 62).

**Provincial family law.**

In addition to its jurisdiction over property division, each province has laws which provide for child support, spousal support, custody, access and other matters. If a couple chooses the court’s involvement in its separation to help with these matters but is not seeking a divorce, then all the matters normally considered corollary relief under the Divorce Act can be handled under
provincial family law, and federal legislation does not apply. Provincial statutes governing family law in Ontario are outlined below:

1. *Ontario Family Law Act*, 1986. This act provides for property division in case of marriage breakdown and divorce. The means for calculating child and spousal support are also included. Marriage contracts, cohabitation and separation agreements all are covered by the Act, as is the status of the family home. Marriage is treated, in law, as an economic partnership.


This act provides for the determination of custody and access where federal legislation is not applicable. Under this and the *Divorce Act*, wide judicial discretion is available. The provincial Act is in general harmonious with the federal Act with respect to custody and access, although there are differences.


Each province has its own enforcement legislation. In Ontario, the *Family Support Plan Act* replaced the *Support and Custody Orders Enforcement Act* of 1985. The original legislation established the structure and powers of the agency first known as the Office of Support and Custody Orders Enforcement (SCOE), subsequently known as the Family Support Plan and currently named the Office of Family Responsibility. This agency collects support payments pursuant to either a federal or provincial court order, i.e. whether part of a divorce or formal separation agreement. Even when a support order has been issued by a federal judge as part of a divorce, enforcement is strictly a matter for provincial court.

Under this Act, whenever the court issues a Support Order, a Support Deduction Order (S.D.O.) is automatically issued along with it and sent to the Director of the Family Support Plan. Under certain conditions, S.D.O.'s may be issued for Support Orders made prior to the 1985 legislation. Upon receipt of the S.D.O., the Plan then initiates the garnishment of wages for payors who are salaried employees. Self-employed payors may submit post-dated cheques directly
to the Plan annually. In Ontario, this process is automatic and universal since 1992. Under the original legislation, the plan was an ‘opt-in’ one, and payments could be made by any payor directly to the agency. S.D.O.s were issued only for payors in default. Current policy is designed as if each father who is in default were deliberately not paying, ever, in spite of ability to pay (M. Bongard, Dept. of Justice, personal communication, Feb. 5, 1996).

While variations to a Support Order may be obtained by either party where there is evidence of a material change in circumstances, the test is a stringent one. (Cole & Vidal-Ribas, 1995; Cochrane, 1993). It is also possible, and often necessary, to obtain interim orders for support (as it is interim orders for custody) or interim variations to an order. There is wide judicial discretion with respect to interim orders and, according to Vayda & Satterfield (1989), these are not closely inspected by the court.

The Family Support Plan is not responsible for regular payment to the receiver; it will only forward payment once it has been received from the payor or the payor’s employer. From the time a Support Order is issued until payments are actually received from the payor and disbursed to the receiver, a substantial delay may occur, simply because a number of steps are built into the statutes, although time limits apply (Cole & Vidal Ribas, 1995).

Enforcement is most commonly executed through garnishment of wages, where the payor is a salaried employee. In most jurisdictions there is a maximum amount of wages that can be taken through garnishment, In Ontario the maximum is 50%. An employer who shields a payor’s income by not deducting according to the terms of a garnishment, risks civil action (Cole & Vidal Ribas, 1995). The Family Support Plan can compel an employer to make the deductions as ordered by the court.

Sometimes enforcement is carried out by seizure of property under a Writ of Execution or Warrant of Distress. The legislation provides for imposition of a jail sentence in case of non-payment, but this is rarely done. The Family Support Plan is empowered to use information from federal sources to trace payors when necessary, and to intercept federal payments such as income
tax refunds, Canada Pension Plan, etc. When information is received regarding a debtor’s unreported income source, FSP is permitted to act to gain access to that source without having to notify the debtor (Cole & Vidal Ribas, 1995).

It is worth noting that support enforcement in some American and Canadian jurisdictions is privatized. Enforcement has been described as a “growing industry” with a proprietary interest in seeing the continuation of policy which favours active enforcement (K. Kulisek, Dept. of Justice, personal communication, Feb. 5, 1996). The annual conference of North American Enforcement Agencies, including both government agencies and private contractors, is attended by representatives of the Canadian Federal Justice Department.

The original title of the legislation governing enforcement in Ontario (and the office established to administer it) included both Support and Custody Enforcement. The evolution of the agency’s name to that in charge of Family Responsibility intends a nominal shift away from enforcement, perhaps in response to a growing awareness in government that enforcement has proceeded without regard for the role of fathers as caretakers (J. Sturrick, Dept. of Justice, personal communication, Feb. 5, 1996). The title change hints at a number of important contradictions, however. First, there is a shift away from state responsibility for family well-being to a reinforcement of the notion of the family as a private entity responsible for its own well-being. The elimination of reference to custody (let alone access) as an area of concern reminds us of the state’s interest in the economics of divorce; ironically, though, at the same time as support enforcement measures are toughened through legislation, the budget of Ontario’s enforcement office has been dramatically reduced.

*Federal Orders and Agreements Enforcement Assistance Act, 1986.*

This Act is complementary to the provincial enforcement legislation. It provides the enforcement agencies with access to certain federal data banks in order to facilitate tracing and locating of support payors who are in default. In 1992-93 additional funds were provided for a five-year period to help the provinces and territories improve their enforcement programs (Federal/
Custody and Access Enforcement.

Enforcement of custody and access is available, under the law, to custodial and non-custodial parents respectively. In practice, few mechanisms exist for the purpose of access enforcement, and it is rarely exercised. "With a few exceptions, access enforcement is not effective in Canada" (Cochrane, 1993, p. 147). When access is denied, the only remedy available to the non-custodial parent is the civil one of having the custodial parent found in contempt of court. The court must be satisfied that the denial is "a wilful interference with the non-custodial parent’s entitlement to access" and "the standard of proof required on a contempt hearing is higher than in normal civil proceedings" (1993, p.146). As is the case with support enforcement, the more flexible and co-operative the language of a separation agreement is with regard to access, the more difficult it may be to enforce it. When agreements use terms such as "reasonable", "generous" or "liberal" access, "it is next to impossible to obtain court enforcement of these vague expressions" (1993, p.77).

If the custodial parent is found in contempt of court, the court may impose either a fine or jail. In most instances, neither of these is imposed because of "inappropriateness" (Cochrane, 1993, p.146). On the other hand, partly because civil remedy is available, police are reluctant to intervene in access difficulties. Bill 124 introduced in the Ontario legislature in 1988 proposed a procedure for access enforcement which sought to address the complaints of non-custodial fathers such as cost and time involved in gaining access to the court for remedy, as well as options for the court other than a finding of contempt.

Custody enforcement becomes relevant when children are abducted by the non-custodial parent or are not returned following access periods. Inter-jurisdictional agreements exist within Canada, as well as between Canada and a host of other countries, to facilitate the location, apprehension and return of these children to the custodial parent.
Figure 1. Trajectory of the father named "Art" through the separation/divorce system.

**INITIATING EVENT**
- Decision to separate
- Motion to vary support
- Motion to vary access
- Support default
- Access Dispute
- Support/Property Dispute
- Custody Dispute

**INSTITUTION/PROFESSIONAL**
- LAWYER
- LEGAL AID
- MEDIATOR
- FAMILY SUPPORT PLAN (OFFICE OF FAMILY RESPONSIBILITY)
- COURT

**OUTCOME**
- Interim support order
- Interim custody order
- Order Upheld
- Support Deduction Order
- Stay of Enforcement
- Garnishment
- Bankruptcy

**SEPARATION AGREEMENT**
- ASSESSOR
- OFFICIAL GUARDIAN (CHILDREN'S LAWYER)
- DIVORCE
Alternative Trajectories Through the System

There are a number of different trajectories, or paths, that a particular couple/family may take through the system, depending on a variety of factors. By the time an individual father is involved in an enforcement process, he may have had numerous encounters with lawyers, courts, mediators, counsellors, enforcement personnel or he may have had limited experience with any of the institutions involved. Each encounter is an encounter with institutional practices interpreted and enacted by institutional agents. *Figure 1*, which illustrates the case of a father interviewed for this study, shows an example of one individual’s trajectory through the system.

Separation agreements are commonly negotiated by couples, with or without the aid of professionals, even though there is no plan to divorce. In many cases, a separation agreement precedes the divorce action. In addition, a couple -- whether divorcing or separating -- may also undertake mediation with a lawyer, social worker, psychologist or member of the clergy. Mediation may address financial and property matters, including support, and/or custody and access arrangements. In a cooperative context, these latter may be termed and treated as a ‘post-divorce parenting plan.’ Although it is normally hoped that mediation will preclude the possibility of adversarial negotiations, this is not always the case. Mediation often follows a period of hostile dealings between the spouse and may be ordered by the court, as provided by the Children’s Law Reform Act. Conciliation services attached to family courts are another option, as is private arbitration, i.e. outside the court system.

The basic steps for any legal proceeding, including a contested divorce or application for an order of support or custody, are as follows (Cochrane, 1993, p.44):

1. exchange of letters between lawyers,
2. exchange of legal documents (called pleadings),
3. discovery of each other’s cases,
4. motions (mini-trials on matters that come up from time to time),
5. pre-trial (settlement discussion before a trial),
6. trial, and
7. appeal (if necessary).

The exchange of letters and pleadings (Steps 1 and 2 above) involve a “barrage of material”, the purpose of which is to “narrow the controversy until the key issues are identified” (Cochrane, p.45). The vast majority of cases do not progress beyond step #5; 80% of all family law cases are settled at pre-trial (Vayda & Satterfield, 1989).

Many parents are able to agree on custody and access arrangements, with or without the help of lawyers and/or mediators. When there is a dispute which is not easily resolvable, however, a formal child custody evaluation may be requested by one or both parents or it may be ordered by the court. These evaluations are conducted by psychologists or social workers. It is not unusual for a family to undergo more than one assessment, particularly where the process has broken down or when one or both parties are dissatisfied with the results. While it is no longer required that the Children’s Lawyer of Ontario (formerly known as the Office of the Official Guardian) be notified of every divorce, it is requested by the court to do an assessment in a custody or access dispute where the best interests of the child are not clear.

Support arrangements may be arrived at by mutual agreement, again, with or without lawyers’ or mediators’ involvement. The agreement is filed with the court, which then automatically issues a Support Deduction Order (S.D.O.). Once a S.D.O. is issued, at whatever step of a proceeding, a parent obligated to pay child support becomes engaged with a whole new set of procedures and institutional interactions.

**Trends and Debates in Family Law**

Although divorce is a personal experience which happens to individuals in families, it is also a social phenomenon which occurs within the context of institutional structures and policies; it has public meanings (Riessman, 1990) and social implications. When spouses end a marriage, there are federal, provincial, and often religious laws which define just how they will disengage
from one another. Their property, income, assets and resources, and -- above all -- any children they may have are divided according to varying combinations of individual choice, negotiated options and a host of legal, economic, cultural and social constraints. All of society and, indeed, the state itself take an interest in how families are dis-organized and re-organized (Glendon, 1981; Statistics Canada, 1983).

The present study has unfolded in the context of proliferating discourse about the ideology behind Canadian family law reforms during the past two and a half decades. Attempts to identify competing ideologies with respect to separation/divorce issues, to address competing claims and to identify links between ideology and practice appear in scholarly literature, popular press, judicial decisions, and government-sponsored study reports.

The developments in Western family law over the past several decades have been dramatic and significant, constituting what Glendon calls “an unparalleled upheaval in the family law systems of Western industrial societies... Contemporary family law reflects new ways of thinking, not only about marriage and family life, but also about law and government.” (1989, p.1-2). Glendon focuses on the “persuasive and constitutive aspects” of law, which reflexively and continuously interact with ideas, feelings and conduct (1989, p.10). In other words, the law reflects how we expect and want things to be and, at the same time, influences how we conceptualize them and prescribes how we will live them out.

As divorce has become more freely available, attempts to counteract its negative economic and social effects have had both advantages and disadvantages. Glendon’s study of five Western countries concludes that “no country has achieved a satisfactory resolution of the interrelated problems of spousal and child support, property division, and child custody” (Glendon, 1989, p.197). The laws regarding divorce, custody, access and support constitute the expression of institutionalized conceptions of fathers, as well as mothers. They are at once reflective of historical ideals and prescriptive of current behaviours. The changes in the family law of most American states has been characterized as reflecting the “social goal of equal protection and equal
responsibility for mothers and fathers” (Walters & Chapman, 1991, p.88). This goal is generally shared by the reforms of the past two decades in Canadian law, as well. Following is a brief introduction to those trends in Canadian family law which are salient to this study. Each has engendered controversy, often polarized around men’s vs women’s rights.

**Custody Determination**

The historical shift in determining custody and access from the *tender years* principle to the *best interests of the child* principle was introduced in the section on historical changes in fathering. This shift reflects the trend towards ‘gender neutrality’ in law; it recognizes that the *tender years* principle reinforced the existing sexist division of roles in society and in the family. It also reflects an attempt to put the needs of the individual child in question above any general principles of child development and above the rights of individual parents. Supported by the principle that it is normally in a child’s best interests to maintain continuing contact with both parents, and that co-operative parenting is best for the child, the overall thrust is towards increased power-sharing with regard to custody and access. Thus, the potential for a certain amount of tension between parental rights and children’s needs is created. Increased sharing of child-care and the provision for joint custody have important implications for child support as well. The argument is that when fathers share a significant amount of time with the children, their child-care costs go up, and the costs of the mother go down; consequently, child support payments from the father to the mother should be lowered.

It has been observed in the literature that under the prevailing *best interest* doctrine, the normative definition of *primary caretaker* favours the parent who spends the greatest amount of time with the child, and thereby “often penalizes fathers, especially fathers of young children” (Hetherington & Hagan, 1986, p.134). This argument can be understood to support either the view that fathers are being ‘disenfranchised’ by the courts (Walters & Chapman, 1991) or that inequalities underlying the economic differences between married men and women become more
visible after separation.

Feminist legal theorists have attempted to counter the trend towards gender neutrality, arguing in favour of a primary caretaker principle as the determinant of custody assignment. This position argues against formal equality in family law because of substantive inequalities in power and responsibilities between men and women (Smart & Sevenhuijsen, 1989).

A final issue which has emerged around custody and access where the dimension of gender underlies the debate is the 'mobility rights' of the custodial parent. There has been considerable controversy over the question of whether a custodial parent who chooses to relocate for purposes which could arguably serve the child's interests (such as better working conditions, wages, housing, or support network) may take the child with her, thereby interfering with the principle of the child's right to 'maximum contact' with the other parent, and the other parent's right to contact with the child.

Levels of Child Support

These debates focus on how child support levels should be established which are adequate for the child (and how is "adequate" to be determined?), fair to both parents (who should have to sacrifice what?), and consistent across jurisdictions. The issue was the subject of a Federal/Provincial/Territorial Family Law Committee study (1995). The law emphasizes the responsibility of both parents for the economic support of the child, and primacy is given to child support over other concerns in legislation and judicial decisions. Nevertheless, support default continues and so does the poverty of custodial mothers and their children. The intransigence of the problem has led some authors to suggest that perhaps it is not realistic to expect that an income which formerly supported a single household will, under most circumstances, adequately be able to support two (Glendon, 1981). At the time of writing of this dissertation, the controversial Federal Child Support Guidelines had just come into effect, in an effort to establish a formula for adequate, fair and consistent levels of support across the country.
The issue of levels of child support has been exacerbated by the separation in law of child support from spousal support. As women’s education levels and participation in the workforce have risen, the expectation that wives will become financially self-sufficient following divorce has supplanted the expectation of continuing dependence on the former husband. This development is also a reflection of the trend towards gender neutrality and the equalizing of rights and responsibilities.

**Enforcement**

Since the mid 1980s, the response to support default has been state enforcement of child-support payments. Aggressive policies designed to collect payment of child support have recently been enacted in many jurisdictions, with increasingly greater powers of enforcement being introduced in the 1990s. Although the legislation regarding enforcement is gender neutral, the overwhelming majority of parents obliged to pay child and/or spousal support are fathers, so that enforcement practices are for the most part exercised in relation to fathers. The term ‘Deadbeat Dad’ has become a common and familiar term used by the various media to refer to fathers in default. Thus, “we have two trends between which there is substantial tension: the trend toward gender neutrality of child support and the trend toward more efficient pursuit of fathers who do not pay” (Walters & Chapman, 1991, p. 89).

There are no matching mechanisms for enforcing visitation and access by non-custodial parents, the majority of whom are also fathers. Bill 124, which attempted to introduce such measures in Ontario in 1988, was championed by fathers’ rights groups and opposed by women’s groups.

**The Trend Towards Family Courts**

The Family Law division of the provincial court is an important feature of the justice system in Ontario. This province also has one model Unified Family Court where all family
matters are heard in a single court. In 1987, the Zuber Commission Report urged the expansion of the unified family court concept with the intention of making “all family law matters more accessible to the citizens throughout the province, economically, geographically and intellectually” (Vayda & Satterfield, 1989, p. 85). The subsequent plans for expanding the system are considered an integral part of improving the administration of justice in Ontario (Ontario Civil Justice Review, 1995).

The Relative Merits and Dangers of Alternative Dispute Resolution (ADR)

There has been considerable debate over the past decade about the advantages and disadvantages of Alternative Dispute Resolution, particularly mediation. The report of the Ontario Civil Justice Review (1995) strongly emphasized a focus on ADR as part of its proposals for a revised judicial system. Despite the arguments in favour of mediation as a non-adversarial, empowering alternative to the legal system (Girdner, 1985; Irving & Benjamin, 1987), important questions have been raised about its potential risks for women (Boyd, 1989; Ricci, 1985). The main issue is whether mediation processes favour male interests and negotiating positions at the expense of women’s rights. Some authors emphasize the subjective experience of individual women who may not be accustomed to negotiating on an equal footing for a variety of reasons, or who may feel intimidated by an abusive or domineering partner. Mediation has been called a process which takes place “in the shadow of the law”, thereby potentially depriving women of the law’s protection.

The Role of Professionals in Decision-making Regarding Custody and Access

Judges vary widely in the degree to which they seek and/or rely on the opinion of assessors, particularly when the latter offer formal recommendations. The question of how much authority custody assessors ought to have has been addressed in a Discussion Paper on Custody and Access published by the Department of Justice (1993). The relevant ‘stakeholders’ were
invited to participate in the process of reshaping custody/access policy. The Discussion Paper was issued to synthesize the material submitted in response to this invitation. While judges are the only persons trained to exercise judicial authority, custody assessors are the only ones trained to deal in a systematic way with information about the family functioning and the child’s development, etc. Training is offered to judges but is said not to attract the very judges who are unsympathetic to a mental health approach.

Another issue is whether ‘experts’ in the fields of mental health and social work, inadvertently contribute to the oppression of women. Feminist theorists worry about the emphasis practitioners give to emotional issues and psychosocial “needs”, sometimes over the rights of women (Smart, 1989). The generally sympathetic response of practitioners to the principle of maintaining meaningful relationships for the child with both parents has supported the demand overall for an increase in shared parenting. As noted above, this potentially creates problems in terms of power relations and financial support.

**Summation**

As the historical and social/structural conditions which spawned dichotomous gender roles gradually change -- and the gender roles along with them -- the content of masculinity receives critical scrutiny. Power relations based on gender role stereotypes are being seriously challenged, resulting in significant threat to the status and privileges masculinity traditionally entailed. Some of the newer conceptions of masculinity devalue the traditional male gender role, potentially adding to the ambiguity and insecurity which accrue to male identity. This is particularly problematic in the context of a masculine stereotype that emphasizes confidence, dominance, decisiveness, rationality, aggressiveness, etc.

The problem is particularly acute within the family domain. The functions and status of fatherhood, previously delineated by the code of masculinity, have also undergone change. The traditional family, founded both conceptually and practically on the division of labour, powers and
gender qualities, has evolved (at least, within the middle class) into something different. In the context of historical change, fathers shifted from a central position of ownership and authority to a marginal but crucial role as providers, while mothers alone were assigned the role of nurturers. The dynamics of family life were increasingly shaped by modern economic realities, supported by theoretical paradigms that reinforced these patterns as 'only natural'. The socially constructed content of fatherhood has become increasingly ambiguous and inconsistent, resonating with the problems of masculinity itself.

Within a sociobiological, psychoanalytic, or social/structural framework, the question of why fathers distance themselves from children can be understood relatively easily. If involved, active fathering is not considered central to one’s identity or functioning as a man; if one’s role as father is precisely to operate from the margins rather than from ‘within’; if one’s attachment to one’s children is socially learned and mediated through the spousal relationship, then divorced fatherhood is constructed in a manner completely consistent with distancing from children. Most fathers are actually lacking in the skills -- if not the capacity -- to parent children without the support of a co-operative woman. The phenomenon of father distancing becomes incomprehensible only if examined within the current -- and still somewhat rarefied -- construction of masculinity/fatherhood that emphasizes the importance of expressiveness, dependency needs and attachment in men’s lives. Only if one accepts the emergent paradigm of androgynous, nurturant fathers does the question of how divorced fathers can abandon caring behaviour become problematic. Even so, the structural conditions which underpin fatherhood, both in the intact and the divorced family situation, make it difficult for fathers to maintain a strong, positive paternal identity.

The linking of paternal identity to masculine identity in the context of existing gender relations offers insight into what may happen to fathers when divorce separates the father-child relationship from the marital relationship that previously sustained it. That marital relationship makes fatherhood not only worthwhile, in many respects, but actually viable. Masculine and
paternal identity are so dependent on feminine/spousal complementarity that they may founder when the wife/co-parent is no longer available in this capacity. The more this complementary role changes and becomes parallel, the more anomalous becomes the father's role. Moreover, within the divorce situation, the rules which normally govern spousal and gender relations seem to change. Many men encounter in the North American laws of custody, access and support, a reversal of their social status and normal expectations of privilege or control. Whatever balance makes marriage and fatherhood desirable is apparently upset and perceptions of unfairness, victimization and powerlessness -- so inimical to masculine identity -- elicit powerful psychological responses. These responses are mediated/distorted in part by personality variables such as narcissistic vulnerability. They are often directed towards the ex-wife and towards the justice system (even the entire social system) which is perceived as favouring her interests as a woman over his as a man.

The legislation and institutional processing of family separation and divorce is one important juncture at which fathers are at risk of experiencing challenges to personal identity and/or masculine privilege. The relationship with one's former spouse and children is redefined and one's behaviour with regard to them is highly circumscribed. Separating parties may find themselves in the position of having many demands made upon them, with limited control over the outcome of crucial decisions regarding their own and their children's future. Privacy may be lost in several areas of one's life. Finally, the law and the system reflect traditional gender roles and at the same time have tried, through major reforms, to counter them. In several important ways, the contradictions and unresolved tensions about gender relations structured into society as a whole are suggested in the issues pertaining to family law and the divorce system.
NOTES

1. The problem of violence against women post-separation is largely absent from the early policy literature on child support, but is currently a high-profile issue addressed by women's groups and many judges, lawyers, social workers and mediators. The potential positive influence of increased father-child contact on economic support may be outweighed by the risk of compromised safety for mothers. In any case, if a positive relationship between spouses truly is a predictor of compliance with child support, then increased contact between parents with a poor relationship (especially a violent one) seems unlikely to have a beneficial effect on child support payment.


3. Wallerstein, too, has discussed the evidence of "severe narcissistic injury" in individuals who sustained high levels of easily accessible anger for ten years following the divorce (1986).

4. Among the fathers I studied, there was scathing derogation of judges whose decisions were disappointing. It appeared, too, that humiliating treatment by judges who were themselves contemptuous of the non-paying fathers added to the shame and rage these men expressed (Mandell, 1995).

5. A wry American Country and Western song is entitled "She Got the Gold-mine, I Got the Shaft".

6. This argument was developed in an earlier paper, Divorce and the status of women (Mandell, 1991) which explored the relationship between divorce law in Canada and England and the status of women.


8. Canadian law, through the Divorce Act of 1985, has restored to some extent the right of the noncustodial parent to be recognized by the child's school, medical caregivers and social welfare/mental health personnel (Department of Justice, 1986), thereby acknowledging that concern, rights to information and wish for involvement need not be terminated automatically even when a parent ceases to be guardian and caregiver.

9. The relatively new option of a Joint Petition for divorce is used by very few Canadians (only 4.7% as of 1993) (Cochrane, 1993, p.58).

10. The Official Guardian is currently known as the Children's Lawyer of Ontario. The former name was the one in use at the time the research was conducted and the name used by all participants. It has therefore been retained in the dissertation in order to maintain continuity and minimize confusion.
11. The same principle will be followed in the dissertation with respect to the Family Support Plan/Office of Family Responsibility as the Office of the Official Guardian/Children’s Lawyer. For the sake of coherence, the name used by the research participants will be retained throughout the dissertation.

12. Ontario’s model Unified Family Court was established in Hamilton by the *Unified Family Court Act* of 1976 (S.O. 1976, c. 85). The Act confers upon the judges of this court the powers of a provincial court (family division) judge, of a surrogate court judge, and of a local judge of the Supreme Court (Vayda & Satterfield, 1989, p.84).
II. CONCEPTUAL FRAMEWORK & METHODOLOGY

To recapitulate briefly, the starting point for this research is our inability to account for the failure of a large proportion of divorced and separated fathers to adequately support their children. We have been unsuccessful to date in finding ways to engage the majority of separated fathers in behaviour that is congruent with the way that the law and society as a whole define them. The question here is why, with a view to developing more effective strategies for social change.

In this chapter, I present the various elements that make up the conceptual framework and methodology of this study. The elements of the conceptual framework consist of the following:

1. the perspective of critical social theory and its role in uncovering the operation of power in regulating social relations;
2. a historical view of the family as a social construction, including the role of the state and its institutions in the family;
3. the social construction of 'social problems', divorce in particular; and
4. the social construction of multiple identities through the multiple social discourses that regulate social relations.

The connective tissue is poststructural theories of how modern power is exercised, how identities are produced in the process, and how individuals take up those identities.

**Conceptual Framework**

I begin with the belief that we live in a world that is socially constructed (Berger & Luckman, 1966); that "the 'obvious' and the 'natural' are not given but produced in a specific society by the ways in which that society talks and thinks about itself and its experience" (Belsey, 1980, p. 3). Within this framework, what we refer to as 'social problems', including divorce and non-payment of support, are also socially constructed; but how does a social problem get to be a problem? Moreover, assuming the postmodern/poststructural view that identities are formed
within socially constructed realities (Belsey, 1980; Feathersone & Fawcett, 1993; Henriques, 1984; Smith, 1987; Weedon, 1987), what is the relationship between identity and the discourses which construct social problems? In other words, how do individuals take up identity positions within socially constructed problems?

**The Perspective of Critical Social Theory**

Because the discourses regarding families, separation, child support and custody/access are not only multiple, but often ambiguous and even contradictory, I have sought a perspective capable of exposing the respective ideological frameworks of competing positions on these socially constructed problems. Bernardes has argued that the job of sociology is not neutral, but rather “to make clear the nature and forms of social control” (Bernardes, 1987, p. 679). The aim of this approach, otherwise called critical social research, has been described by Harvey (1990) as “analysis of social processes, delving beneath ostensive and dominant conceptual frames, in order to reveal the underlying practices, their historical specificity and structural manifestations” (p. 4). My work falls broadly within this tradition. The analysis is informed by the tradition of Foucault regarding the association of micropractices with the operation of modern power, with its focus on the creation of subjectivity through discursive practices (as discussed below). This approach will emphasize the multiplicity of practices and discourses associated with divorce, examining the various values and belief systems which imbue the different sets of practices exercised by the assorted professionals involved. The design of the research is influenced as well by the work of Dorothy Smith, who indicates the need to examine the function of ideology in the “relations of ruling” (Smith, 1987, p. 3).

The capacity of critical social theory to reveal how ideology functions in social control is relevant to this study insofar as I have made assumptions about non-payment of support as a power issue. Based on my review of the literature, as well as on my own previous practice and research, I make the assumption that non-payment of support by non-custodial fathers is the
expression, in part, of a subjective experience of disempowerment. It may be framed by them as part of a strategy of resistance to the perceived combined power of state and former spouse. Thus, the question of how power operates in the divorce process specifically, and in the family generally, is integral to the question of how fathers position themselves vis a vis the system.

We have seen in the previous chapter that neither the ‘micro’ perspective in the literature nor the ‘macro’ perspective alone gives us a satisfactory explanation. The issue involves the subjectivity of individuals, and the dynamics of spousal and family interrelationships; at the same time, it extends well beyond these. By taking up the position of ‘non-compliance’ vis a vis the support enforcement system, many fathers place themselves in opposition not only to their former wives, but to the state and its institutions as well. My question aims at what is it that is going on here between fathers and the state, through its institutions, that needs to be better understood. As a practitioner with families experiencing divorce, I believe it is important to sustain an awareness of the subjectivity of the individuals with whom I work; I believe it is also necessary to develop a perspective on the “big picture” in order to fulfill the social work mandate of social criticism and social change. The big picture necessarily includes the social, legal and economic landscape in which families come together, take shape, and sometimes come apart; this means including the role of the state in structuring family relations within the scope of the research.

In his examination of how “family policy” debates accomplish the “ideological structuring of personal relationships,” Bernardes (1987, p. 687) develops the connection between the nature of the family as simultaneously private and public on the one hand, and the ways in which the ideologies which imbue family policy shape family relations in unrecognized ways. He concludes:

The Macro and Micro, Agency and Structure are not each two dimensional at all but are rather two unities. It is this unity of both Macro/Micro and Agency/Structure which holds the key to real sociological progress -- both within the area of “family” and elsewhere. (Bernardes, 1987, p. 690)

Although he focuses more on family relations than on ‘subjectivities’ per se, Bernardes is
explaining the phenomenon of how public discourses -- specifically, discourses about families -- produce in individuals notions about family as a social category, and about themselves as family members.

Thus, in living our lives we negotiate our way through structures and, in negotiating structures, we structure our lives which is what actually makes our lives, lives as opposed to nothingness.... (1987, p. 693)

This organic relationship between social discourses about families and the subjectivities that are taken up by family members (specifically, fathers) is the focus of my attention in this study. It is precisely those "structures" and the way that "negotiating" them in the separation/divorce process exposes fathers to particular discourses and practices, and hence to particular identities, that I am interested in understanding.

Social Construction of Families and the Role of the State in the Family

In this section, I will briefly discuss the relationship of the modern family and the state in terms that will connect it to the overall theoretical framework. Families do not exist exclusively at the level of private emotions and interpersonal dynamics; they evolve within -- and reflect -- the broader social relations of gender, power, and economics. As challenges and changes take place at the broader level of social relations, they must necessarily be felt in the family as well. It has been said that the Western family is in a state of continuous flux; it is "the product of human history, its evolutions and revolutions" (Gies & Gies, 1989, p. 3). Among the more striking changes is the fact that the "residential and biological unit" known as the 'nuclear family' (the grouping of mother, father, and children) had no name in any European language prior to the eighteenth century. Previously, any term for 'family' referred to all the members of a household, including other relatives as well as unrelated persons such as servants or slaves (1989, p. 4). Moreover, the "egalitarian" family,

in which husband and wife share authority and in which democracy extends in
some degree to the children, is a modern invention. In the past, fathers had unquestioned authority, sometimes even the power of life and death. Wealthy families tended to be more authoritarian, poor ones, in which the economic contributions of the wife were indispensable, less so. (Gies & Gies, 1989, p. 11)

The functions of the family have also changed. While the functions of the modern family are normally limited to “‘socialization’ and channeling of adult sexual needs”, the pre-modern family did much more.

[It] functioned as a defense organization, a political unit, a school, a judicial system, a church, and a factory. Over the centuries these functions have been surrendered one by one to the great external institutions of modern society, the State, the Church, and industry. (Gies & Gies, 1989, p. 7)

This shifting of functions and boundaries between the family, the state, and social institutions, i.e. between the private and the public, has been studied by Donzelot in *The Policing of Families* (1979). In his theorizing of the modernization of the family, Donzelot seeks to understand the relations between the family and the social in ways that avoid the limitations of the selected theories of Marxism, feminism and psychoanalysis. He describes his method as

posing the family, not as a point of departure, as a manifest reality, but as a moving resultant, an uncertain form whose intelligibility can only come from studying the system of relations it maintains with the sociopolitical level. This requires us to detect all the political mediations that exist between the two registers, to identify the lines of transformation that are situated in that space of intersections.” (1979, xxv)

**Administrative Practices and the Family**

Donzelot’s starting point is Foucault’s work on “the proliferation of political technologies” which extended, from the eighteenth century onward, into what had previously been considered
private realms of functioning. These areas included, among others, health, sexuality, and "modes of sustenance." "All the techniques that found their unifying pole in what, at the outset was called policing..." (Donzelot, 1979, p. 6). He cites an 18th century source in which the following comment on policing was offered: "The aim of policing is to make everything that composes the state serve to strengthen and increase its power, and likewise serve the public welfare." (1979, p.7, citing von Justi.) This connection between the family and the state leads Donzelot to characterize the family as "both queen and prisoner" in relation to the social (1979, p. 7). He sees the procedures whereby the modern family has been transformed as transforming society as a whole, i.e. through the integrative functions of modern policing.

Following Foucault, Donzelot is particularly interested in the role of social discourses in the modernization of the family. He explores the changes in discourses through which "the family has changed from being a pillar of society to being the place where society constantly threatens to come unglued" (Donzelot, 1979, p. 219). The transformation of the family included historical developments in Western Europe in the late 19th century that tended to reduce the social importance placed on the family, such as divorce legislation, the entry of women into the labour market, and attempts to establish birth control. That importance lay, for the socially privileged, in the "juridical power" of families; i.e. the family's role as the "best support for the vertical relations of dependence and prestige" (1979, p. 178). The struggle over the autonomy of the family and of the individual in relation to each other and the state continues in societies like ours, where there is constant tension between the value of individual freedom and the value of societal responsibility for individuals. That struggle is highlighted in the event of marital separation, where the modern couple is considered free to dissolve their emotional and sexual ties, but is regulated around the disposition of property, assets and children.

Administrative Practices of Divorce and the Family

The history of family law in five western countries has been studied by legal scholar Mary
Ann Glendon. She has looked at the United States and four European countries, both Catholic and non-Catholic. Her findings are significant for my work.

A historic shift in the relationship of the state to the family has taken place. Regulation has been withdrawn where it once was taken for granted, and intensified where until recently it had been unknown. For the most part, these developments do not appear to have taken place in conscious furtherance of any coherent set of objectives. (Glendon, 1989)

Focusing on the relationship between specific changes in the law and the prevailing social behaviour and attitudes related to marriage, Glendon concludes that the "principal converging tendencies" in family and social life had been in progress prior to the changing of the laws themselves, rather than the other way 'round. The many changes in legislation, beginning in the 1960s, "merely formalized and systematized transforming trends that had long been diffuse and partially realized in each country's law" (Glendon, 1989, p. 2). Glendon describes the overall direction of changes as being characterized "by a progressive withdrawal of official regulation of marriage formation, dissolution, and the conduct of family life on the one hand, and by increased regulation of the economic and child-related consequences of formal or informal cohabitation on the other. At the same time, the rise of modern administrative states has brought about a marked increase in the degree and types of bureaucratic control to which families and their members are subject" (1989, p. 2).

The extension of state control into the areas of 'economic and child-related consequences' of separation and divorce are particularly relevant to my project. The withdrawal Glendon describes from some aspects of family life at the same time as regulation of other areas is increased creates ambiguities, tensions and contradictions which are particularly germane to the issues of separation, custody, access and support. At the same time that some areas once subject to legal (even parliamentary) scrutiny are now left to the private discretion of individuals, areas once considered private are now subject to regulation. Conceiving of separation/divorce and its sequelae
as regulated social relations helps to see it as a nexus in which the private is made public, and the public, in turn, shapes the private experience. This is the thesis of Riessman’s important study (1990) of individuals’ subjective experience of family breakup in the context of the public processing of it.

Thinking about how the state regulates and intervenes in family matters pertaining to marriage and separation is tied to broader issues of how the relationship between the state (“the public”) and the family (“the private”) is constructed and indeed, how the family itself is viewed in a social and economic context. Parton (1991) outlines Foucault’s analysis of the emergence, in the late nineteenth century,

of a new set of discourses which were interrelated via their common concern with the family. In doing so, a new site of activity and a new conceptual space was opened up which previously did not exist -- what he calls “the social”. The social developed as a hybrid in the space between the private and the public spheres and produced new relations between the law, administration, medicine, the school and the family. (p. 11)

The emergence of the social was a response to the problem of how to balance concern for the rights of individual children with the liberal approach of non-interference with the autonomy of families taken as a whole (1991, p. 12).

Parton’s work on the development of discourses specifically related to child protection in Britain (1991) relies largely on Foucauldian theory and method. Analysis of discourses to uncover the mechanisms of social regulation and of power as “productive” is central to Foucault’s method. Parton’s succinct and accessible articulation of Foucault’s approach is useful for an analysis of the social regulation of families following separation or divorce:

Foucault’s primary objective was to provide a critique of the way modern societies control and discipline their populations by sanctioning the knowledge-claims and practices of the new human sciences .... He argued that these new disciplines
legitimated new forms of knowledge and new forms of social regulation which have subverted the classical order of political rule based on sovereignty and right. They instituted new regimes of power exercised through disciplinary mechanisms and the stipulation of norms for human behaviour. No longer are the crucial decisions taken in the courtroom according to the criteria of judicial rights, but in the hospital, the clinic or the welfare office according to criteria of “normalisation”. Even when decisions are taken in the courtroom, these are increasingly colonised by the “psy” complex and the criteria of “normalisation” (Foucault, 1977a). (Parton, 1991, p. 5-6)

Foucault’s interest in institutional practices offers an analysis of the mechanisms whereby modern power is exercised over individuals. His analytics of modern power uncover the multiple discursive practices through which macro structures shape individual experience. In particular, his description of the “intensification and ramification of power” (Foucault, 1979, p. 198) seems applicable to the process by which divorce, custody and child support are governed.

A Foucauldian analysis for an understanding of non-payment of child support has previously been undertaken by Catherine Foote (1986). Her objective was to reconceptualize the phenomenon of spousal and child support “as an example of the operation of power in our society” (p. 76). Her conclusion, based on an analysis of the practices related to support, custody and enforcement was that laws, policies and services related to divorce produce new categories of people:

[A] separated spouse, a divorce/e, a dependent child, an independent or a dependent former spouse, a maintenance defaulter, or a “divorce cheat” [are created] as a differentiated type of individual... Such categories are then available for detection, monitoring, intervention, and control because they are identifiable, distinguishable, accessible, and needy or culpable. Differentiation produces the potential for
information, while this knowledge so-gathered sustains and builds science and professions. (Foote, 1986, p. 77)

In sum, "current responses to the phenomenon of spousal and child support facilitate surveillance, normalization, politicization, and governmentalization, in Foucault's sense of those terms" (1986, p. 78) so that spousal and child support have become a "field for the operation of power" by the state (1986, p. 79).

Foote's understanding of the productive function of power in the area of child and spousal support leads her to conclude that it is unhelpful to think of defaulting on support payments "as a failing of individuals or of the enforcement system which can be cured." Rather, from a Foucauldian perspective,

it can be thought of as a point of resistance to power, as a struggle against the proliferation of resistance to power, as a struggle against the proliferation of monitoring and control. Because the operation of power always evokes a corresponding antagonism, stopping defaults may be impossible. Instead, studying this particular niche for resistance should teach something about how intervention and control are working in our society. Defaulting may locate and reveal the nature of power as much as it demonstrates the failure of defaulters or of those who pursue them. (1986, p. 80)

Although Foote's conceptualization of non-support as resistance is crucial to an understanding of the way in which attempts to bring about a change in support patterns have failed, it does not help to account for why many fathers do pay support, or why so many pay a portion, but not all, of the amount of support which has been ordered. I find it difficult, as a social work practitioner, to ignore the question of individual responses which fathers have to the social expectation of them with respect to their children's economic well-being.

The subjectivity of individuals, shifting under the changing circumstances and discourses which separation entails, needs to be included in the analysis. The identity of father is problematic
for men in modern western society both within and outside of the "intact" nuclear family. My interest, therefore, is in building upon Foote's insights into the nature of power in the enforcement process by examining how competing discourses about fathering, families, and the family's relationship to the state produce a variety of subjectivities in separated fathers without custody. A range of subjective positions means a range of different relationships that fathers experience with respect to the state.

**Discourse and Subjectivity**

The emphasis of poststructural analysis on how individuals take up identities within socially constructed realities calls for some elaboration of the concepts of discourse and subjectivity, their relevance to the questions of construction of the family and of the father, and the way in which fathers take up identities within the socially constructed reality of family separation.

**Discourse.**

Discourses are "sets of material, institutional and language practices" through which Foucault argued modern power is "exercised", rather than "possessed" (Featherstone & Fawcett, 1993, p.5). The link between public discourse and individual behaviour has been demonstrated, for example, in van Dijk's work on the reproduction of racism in individuals through public discourses (van Dijk, 1987). Discourses are seen as the means by which ideological positions are transmitted to individuals, "a domain of language-use, a particular way of talking (and writing and thinking) in which ideology is "inscribed" (Belsey, 1980, p. 5). The role of language is to provide "the mechanism whereby policies and practices are represented, refined and made amenable to action" (Parton, 1991, p. 10).

Discourses in Smith's usage are "those forms of communication and interrelation that are mediated by documents -- journals, magazines, newspapers, books, television, movies, etc." (1984, p. 63). Discourse in this sense has a regulatory function. The purpose of analysing
discourses is, in Smith's words, "making documents or texts visible as constituents of social relations" (1984, p. 59).

Legislation, policies and institutional procedures are also forms of public discourse (Bernardes, 1987; Chambon & Bellamy, 1995; Fraser, 1991; Parton, 1991). Glendon focuses on the ways that legislation both contributes to and reflects social constructions:

Lawmakers dealing with social phenomena act through linguistic and imaginative characterization of behavior which is to a large extent unconscious. This process produces legal norms which are at times expressions of someone's values or ideals; at times merely "ideal types" (in the sense of theoretical abstractions from, or attempts at systematic summary of, social data); and at times (more often than not) mixtures of both. (Glendon, 1989, p. 5)

Critical social theorist Nancy Fraser examines institutionalized patterns of interpretations involved in what she terms "the politics of need interpretation" (1991, p. 144-160). Referring specifically to the discursive dimension of social-welfare programs, she emphasizes the "social meanings embedded within ... programs, meanings that tend otherwise simply to go without saying" (1991, p. 146). The system's "implicit norms and tacit assumptions" are exposed by examining its administrative practices ("mode of operation"), in order to understand how the subjectivity of the system's recipients is positioned (Fraser, 1991, p. 151. Italics mine). For example, a woman's claims to benefits tend to end up being based on her identity as an "unpaid domestic worker or parent", while a man's are based on his identity as a paid worker (1991, p. 150). Fraser notes the individualizing (as opposed to familializing) of social welfare recipients through administration practices, then the dividing of them into gender-based subsystems.¹ She concludes that the American social welfare system operates as a "juridical-administrative-therapeutic state apparatus," "translat[ing] political issues concerning the interpretation of people's needs into legal, administrative, and/or therapeutic matters. Thus, the system executes political policy in a way that appears nonpolitical and tends to be depoliticizing" (1991, p. 155). In locating
her analysis in “the social” arena, she means to include the “active side of social processes, the ways in which even the most routinized practice of social agents involves the active construction, deconstruction, and reconstruction of social meanings.” She includes, too, the “micro- and macro-political resistances and conflicts” obscured by functional analyses (1991, p. 156).

Analysis which emphasizes discourse gives recognition to “the centrality of language in representing and constituting social reality” (Parton, 1991, p. 3).

Discourses are structures of knowledge through which we understand, explain and decide things. They are structures of obligations which establish different responsibilities and authorities for different categories of persons such as parents, children, social workers, doctors, lawyers, and so on. They are impersonal forms, existing independently of any of these persons “as individuals” (Foucault, 1977b; 1978). They are historical and political frameworks of social organisation that make some social actions possible whilst precluding others. (Parton, 1991, p. 3)

The discourses of interest in this study are the discourses about families, fathers, and the relationship between family and state.

**Subjectivity.**

The concept of subjectivity signals a socially formed identity, a product of the interaction between the individual and social discourse. Working in the tradition of Derrida and Lacan, Belsey writes:

The subject is constructed in language and in discourse and, since the symbolic order in its discursive use is closely related to ideology, in ideology. It is in this sense that ideology has the effect, as Althusser argues, of constituting individuals as subjects, and it is also in this sense that their subjectivity appears “obvious”. Ideology suppresses the role of language in the construction of the subject. (1980, p. 61)
In their book, *Changing the Subject*, on the interplay of psychology, social regulation and subjectivity, Henries et al. define subjectivity as referring to “individuality and self-awareness -- the condition of being a subject”. They qualify this usage, however, by adding that “subjects are dynamic and multiple, always positioned in relation to particular discourses and practices and produced by these -- the condition of being subject” (Henries et al., 1984, p. 3). The authors link this understanding of subjectivity with the potential for “a different politics of transformation” (p. 1). They argue against “the opposition of individual and society and therefore of individual change and social change” (p. 2).

In a similar vein, Valverde argues that an understanding of social subjectivity cannot be adequately achieved “by portraying it as composed of an internalized ruling ideology side by side with an impulse to resist...”. Rather, the interest of critical social theory lies in understanding the ways in which social subjectivity is formed, internalized, contested, and re-formed through the struggles of competing discourses.” (Valverde, 1991, p. 176, citing Stuart Hall). She stresses the need to analyze the organization of social subjectivity “through structures and discourses of domination” *as well as* through “counter discourses and subversive actions.” To this end, “one has to consider the potential usefulness of post-structuralist theories of subjectivity” (1991, p. 182). The advantage of post-structuralism is expressed as the view that subjectivity is never singular.... Rather, it is always fragmented and always in flux. The fragmentation is not due simply to the co-existence of domination and resistance, but also to the simultaneous presence of a number of distinct discourses converging on a particular social subject with varying degrees of effectivity. (Valverde, 1991, p.182)

According to Hollway, particular discourses may co-exist which create contradictions that an individual must somehow negotiate or resolve. Discourses construct meanings and practices insofar as “meanings and values attach to one’s practices and provide the powers through which he or she can position him- or herself in relation to others” [i.e. as subject or object] (Hollway, 1984,
p. 227). In other words: “Discourses make available positions for subjects to take up. These positions are in relation to other people” (1984, p. 236).

What is meant by the concept of identity being “offered” or “made available” to individuals? How does this work? Weedon explains Althusser’s notion of the “interpellation of individuals as subjects.” This is described as a “hailing” function which “recruits’ subjects among the individuals or ‘transforms’ the individuals into subjects” (cited in Weedon 1987, p. 30). Weedon adds that this process of interpellation “relies on a structure of recognition by the individual of herself as the subject of ideology...” (1987, p. 30). This suggests an approach to key questions arising from the failure of current enforcement policies to adequately recruit fathers as either responsible fathers or responsible debtors: How is it that so many fathers take on the behaviour of “deadbeat” as publicly defined, at the same time as they express rejection of the identity of deadbeat? What subjectivities are implicated in the disengagement of separated fathers from the economic and emotional well-being of their children?

**Construction of Social Problems**

The division noted in the previous chapter between the micro and macro perspectives in the divorce literature generally, and in the child support literature in particular, is consistent with the explanation offered by Edelman of how social problems are constructed through competing discourses as “reinforcements of ideologies” (Edelman, 1988, p. 13). Edelman’s work on the political dimensions of constructed social problems gives us an understanding of how the dominant discourse defining a “social problem” at any given historical moment is actually the victory of one particular interest among a number of discourses representing competing interests. Relying on Foucault’s historical analysis of “changes in discourse that constitute problems” such as madness, crime and sexuality, Edelman theorizes the ways in which problems may disappear from common discourse as though they had been solved, or may be discussed in “changed legal, social or political terms as though they were different problems.” Thus non-problems or inevitabilities “may
come to be seen as problems,” while damaging conditions may not be defined as political issues at all (1988, p. 12).

Edelman explores the theoretical link between constructed social problems and subjectivity. In their function as reinforcers of ideologies, social problems accomplish the following:

They signify who are virtuous and useful and who are dangerous or inadequate, which actions will be rewarded and which penalized. They constitute people as subjects... they create beliefs about the relative importance of events and objects. They are critical in determining who exercise authority and who accept it. They construct areas of immunity from concern... they define the contours of the social world, not in the same way for everyone... (1988, p. 13)

The discourse of social problems thus defined tends to emphasize certain troubles and downplay or conceal benefits in accordance with the dominant interest or ideology. The possibility of “benefits” being themselves outcomes of the problem tend to be concealed (1988, p. 14). The political effects of this are that conflict of interest between social groups may be muted, while the impression is given of public concern for the plight of those who are victimized by the situation. “In these subtle ways language forms help moderate the intensity of social conflict” (1988, p. 14). Edelman concludes that “[t]he language is clearly vital to a political maneuver and to the construction of subjectivity” (1988, p. 15). An example of this, as we shall see, is the shift in the Divorce legislation to gender neutral language, or the recent change in the media from the term ‘Deadbeat Dads’ to ‘Deadbeat Parents’. In both instances, gender neutral discourse is meant to reflect an ideology of gender equality and the repudiation of a gendered division of roles and labour. It serves to mask several things, however: first, it denies the social reality that gender divisions in the family and the market continue. Second, it masks the fact that the problem of non-payment of child support is in fact a gendered one. Third, it distracts us from the problematic category of deadbeat by focusing on Dad as the problematic label. Finally, it may serve to “mute” the conflict between feminist and men’s rights positions around this particular issue, but it does so
by reconstructing the problem, rather than by contributing to its solution.

Edelman's analysis of how the "right" and "wrong" sides of any social problem are socially constructed are most instructive in examining the debates about child and spousal support. To evoke a problem's origin is to assign blame and praise. ... Each origin reduces the issue to a particular perspective and minimizes or eliminates others. Each reflects an ideology and rationalizes a course of action. A particular explanation of a persisting problem is likely to strike a large part of the public as correct for a fairly long long period if it reflects and reinforces the dominant ideology of that era.

(1988, p. 17)

This analysis helps to understand the history of changing policies and literature on child support, accounting for the periods of ignoring the problem altogether (or failing to acknowledge it in public discourse as a problem), and for periods of variously attacking it as a sign of moral lassitude, understanding it as psychological inadequacy or economic difficulty, identifying it as structural inevitability, etc. Rather than replacing one another, these discourses co-exist, with prevalence of one over another shifting according to factors which Edelman analyzes. These shifts are evident in popular as well as social scientific texts, including television. Along with the shifting construction of the problem, preferred solutions shift as well, and so do the leading recognized authorities in interpreting the problem and its preferred solutions.

Explanations for persistent social problems must, then, necessarily receive contradictory responses, i.e. both acceptance and rejection. The function of these conflicting responses is "to intensify polarization and so maintain the support of advocates on both sides" (Edelman, 1988, p. 18). The language of socially constructed problems also serves to rationalize the vesting of authority "in people who claim some kind of competence." How the problem is defined "generates authority, status, profits, and financial support while denying these benefits to competing claimants" (1988, p. 20). In the field of divorce, the players are readily identified within this framework: lawyers, mediators, judges, enforcers, assessors, social workers, policy makers, and
therapists vie with one another for recognition as experts with the best solution.

Finally, Edelman describes how new legislation or other public acts -- what he terms “gestures” -- are enacted in order to foster the belief that a particular problem has been solved, or that progress is being made towards a solution, even though it is highly unlikely that this will actually be the result (1988, p. 24). Using anti-discrimination legislation as an example, Edelman argues that the many efforts to solve social problems are “counterproductive” insofar as they create “the illusion of solving the problem, thereby permitting others to not address it, and they may produce subjectivities and conditions which support the exercise and the tolerance of the problem on all sides” (1988, p. 26-27). Thus, problems may be constructed as negations of other problems or as diversions from other problems. Not surprisingly, divorce is included in Edelman’s list of problems to which this strategy applies. More specifically, however, it is possible to see the problem of child support in this light. Worrying about how to enforce payment by fathers distracts us from the structural issues involved. These include the gendered division of labour and its attendant inequalities, which means women end up dependent on the money men earn in order to raise their children; the question of ‘public’ (state) vs. ‘private’ responsibility for the welfare of women and children, assumptions about the patriarchal family as a primary social unit, and so on.

**Maintaining the Complexity of Multiple Discourses and Multiple Subjectivities**

The goal of bridging the gap between the private/ individual and the public/ state calls for a theoretical framework that will aid in understanding the interaction between the two realms in terms of a dynamic relationship, rather than a static or deterministic one. The study of fathers’ subjectivity in interaction with social institutions and processes is complicated by the fact that each of these domains is itself complex and multifaceted. Thus, there is no essential entity that we can know and name *The Separated Father* who will stand for all fathers in this category. There are many different kinds of fathers, separated or otherwise, who feel, think, and behave differently from one another. They cannot simply be divided into *caring* and *uncaring*, either; they seem to
fall somewhere along a continuum of caring to uncaring, within a matrix of feelings and behaviours. The purpose here is to develop an understanding of separated fathers that leaves room for the many kinds of fathers we find in the real world. At the same time, there are multiple influences and developments within the social realm affecting families; we cannot point to any unitary ideology or unambiguous set of guidelines by which family life is determined. Thus it will be necessary to consider both the multiple identities of fathers (socially constructed meanings of fathering which individuals take up or reject) and the multiple discourses and practices which contribute to producing them.

Weedon offers the example of how the participants in a miners’ strike were positioned in multiple, conflicting subjective locations by the various competing interests which defined the meanings of the strike and the motivations involved in it. Thus, “the miners were simultaneously criminal thugs and ordinary decent men...; the police were both upholders of the law and agents of class interest...” (Weedon, 1987, p. 21-22). This approach seems well suited to my task of understanding how fathers seen as irresponsible “bad guys” by the system manage to see themselves as righteous “victims”, how lawyers for the province of Ontario can be “the guys in the white hats,” “intrusive” and ineffectual bureaucrats, and how judges can be constructed as incompetents, “problem-solvers,” and “unprincipled”. Weedon notes that “[t]he need to rescue a coherent subjectivity from this battle over the meaning of the strike led to a hardening of positions between striking and working miners, the police and the politicians which precluded any shift in power relations, through the realignment of interests” (1987, p. 22). Similarly, the polarization I have referred to between feminist and fathers’ rights positions seems to have made it difficult for the development of policy around child and spousal support which can successfully bring about social change for the ultimate benefit of children.

Featherstone and Fawcett (1993) address the relevance of multiple, varied -- and even contradictory -- subjectivities for their own study of child sex abuse:

Thus many writers describe men’s sexuality and psyches as a complex
interweaving of power and powerlessness (Liddle, 1993). However the individual positions men take up vary enormously. Consequently, explorations of men’s abuse of children must incorporate an acknowledgment of the complex and shifting nature of power relations. (p. 12)

Opening Up Possibilities for Change

As a social worker, it is important to me that the outcome of such a critical approach have the potential to contribute to our thinking about constructive social change for families. I believe that some possibilities have inevitably been foreclosed by the polarization between micro and macro analyses, and between feminist and fathers’ rights positions. I am, however, concerned that any changes in policy or practices should be certain to benefit those who experience oppression.

Other critical social researchers have successfully approached their work with similar demands of their theoretical framework. In their work on feminism and child sexual abuse, Featherstone and Fawcett (1993) express the desire to “open up possibilities” that tend to be foreclosed in the feminist literature on abuse. Their review finds “an unhealthy polarisation between explanations which focus on the structural and those which look at the individual”; rather, there needs to be “a recognition that explanations can be on a number of levels” without being mutually exclusive. They cite Goldner et al.: “‘To say that violence, domination, subordination and victimization are psychological does not mean that they are not also material, moral or legal’ (Goldner et al 1990, p. 345)”, (Featherstone & Fawcett, 1993, p. 8). On the other hand, they cite a complaint about the “unhelpful” tendency of feminist authors to “privilege” explanations reliant upon “notions of patriarchal power” while “suppressing” psychological ones. “[T]he underlying hypothesis of all men benefitting by controlling all women belies the fact that men appear extraordinarily flexible in their control strategies, and patriarchy theory suggests no independent dynamic to explain why those changes take place (Clegg 1994, p. 36)” (Featherstone & Fawcett, 1993).
Weedon's work on feminism and poststructuralism emphasizes the usefulness of certain poststructural theories for an “analysis of patriarchal power relations which enables the development of active strategies for change” (Weedon, 1987, p.13). She argues for “the appropriateness of poststructuralism to feminist concerns, not as the answer to all feminist questions but as a way of conceptualizing the relationship between language, social institutions and individual consciousness which focuses on how power is exercised and on the possibilities of change” (1987, p. 19). Weedon explains that the poststructural theory of subjectivity conceptualizes it “as a site of disunity and conflict, central to the process of political change and to preserving the status quo” (1987, p. 21). Her emphasis on change as the desired outcome of theoretical analysis is appealing for my purposes. The poststructural approaches favoured by Valverde, Weedon, Hollway, and Henriques et al. lend themselves to an understanding of social problems as social constructions, and of the way in which identities (or subjectivities) are formed within those constructions. Such an approach permits going beyond the split between the individual and the social to an analysis of how the individual is socially formed and, in turn, forms the social. It enables us to move “away from analyses which set up binary oppositions such as men versus women, state versus the family, innocent versus guilty, powerful versus powerless” (Featherstone & Fawcett, 1993, p. 11).

The emphasis of these authors on a combination of postmodern and feminist approaches in order to get beyond the artificial dichotomization of micro and macro, so as to understand the complex relationships between them, is supportive of the theoretical framework I have adopted for this dissertation. Their discussion of multiple, changing subjectivities and strategies related to power and control issues between men and women are especially helpful in examining the contradictions around power and control that are central to the whole question of post-separation relations.
The Research Questions

A strategy of enforcement has not solved the problem of widespread poverty among children of separation; imposing the identity of ‘deadbeat’ or ‘bad guy’ on fathers has not succeeded in engaging their co-operation. My interest is in understanding why that is so. At the heart of this research is the issue of social change. The fundamental research question is: How does the subjectivity of non-custodial fathers with support obligations reflect systemic conflict around what it means to be a father, and how is that conflict played out between fathers and institutions in the separation-divorce process? Put differently, what is the relationship between fathers’ identity and the social institutions, discourses and practices related to family breakups? In order to get at this, we need to understand what identities are made available to separating/divorcing fathers, and how they are made available. We need to learn something about the different patterns in which fathers take up or reject these identity positions within the social construction of separated families. That is, how do they represent themselves as fathers and as men, and how do they deal with the representations of themselves that they find reflected back to them by the system? In what ways are their representations of themselves congruent with those of the system, and in what ways in conflict with them? How do the congruence and conflict relate to fathers’ processing of the question of support payment? What can we learn from this that might help us to bring about a more constructive approach to the question of post-separation/divorce poverty for children and mothers?

Methodology and Rationale

Overview of Design

The research is a qualitative, heuristic, multi-method study of separated non-custodial fathers’ subjectivity in the context of systemic discourses relating to family separation, and the operationalization of those discourses by institutional actors. Consistent with the purpose of the study, multiple sets of data were gathered and analyzed. These were: a sample of texts pertaining to
relevant law and policy, a sample of institutional interpreters (or activators) of those texts, a sample of separated and divorced fathers without custody who had experienced difficulties related to support, and a selection of sites where policy is respectively developed, interpreted, and ‘activated’. Data was collected by a single researcher through semi-structured interviews, analysis of legal and policy documents, and participant observation.

Rationale for a Qualitative Approach

The approach of qualitative research is ideally suited to the objectives of the research. Qualitative research “emphasizes social context, multiple perspectives, complexity, individual differences, circular causality, recursion, and holism” (Moon, Dillon & Sprenkle, 1990, p. 364), all of which are elements of the underlying conceptual framework. More specifically, the purposes of this study indicate a qualitative approach in a number of ways suggested in the qualitative research literature:

1. The objective of generating theory in a relatively untheorized area is consistent with the constructive aspect of qualitative research (Goetz & LeCompte, 1984).

2. The inductive approach of qualitative theory (Goetz & Lecompte, 1984; Dawson, Klass, Guy, & Edgley, 1991) allows the development of theory which is grounded in the lived experience of social actors (Smith, 1984, 1987; Van Manen 1990).

3. The focus of the research is on complex, recursive processes, a focus more appropriately addressed by qualitative than positivist strategies (Moon, Dillon, & Sprenkle, 1990; Dawson et al., 1991).

4. Qualitative research has potential for bridging research, theory, and practice. “[Q]ualitative methods are close to the world of the clinician. Qualitative researchers tend to ask the kinds of questions that clinicians are asking and to explore these questions in ways that are clinically meaningful” (Moon et al., 1990, p. 367).
Source of Methods

- The choice of methods was determined by three requirements. First, the father’s perspective needed to be known in order to understand the identity positions they had taken up and those they had rejected; second, the identity positions in the discourses of the law and public policy needed to be uncovered; third, the way that these discourses are mediated by institutional actors needed to be understood. These objectives necessitated the use of several methods, the sources of which are outlined here.

Analysis of social relations of textually mediated public discourses

One influence on the methodology for this research is Smith’s approach to the study of social relations as they are organized by public discourses. Although Smith’s interest lies in exploring the ‘relations of ruling’ from the standpoint of women, the assumptions which underlie her methodology suggest its applicability to this dissertation.

We are part of a world a major segment of the organization of which is mediated by texts; forms of discourse have emerged that are vested in social relations and organization; reason, knowledge, concepts, are more than merely attributes of individual consciousness, they are embedded in, organize, and are integral to social relations in which subjects act but which are not reducible to the acts of subjects. The strategy of attending to social processes as the ongoing activities of actual people can be extended to phenomena which have formerly been approached as subjective or as cultural phenomena, i.e. as socially given forms of subjectivity. Discourse and ideology can be investigated as actual social relations ongoingly organized in and by the the activities of actual people. (Smith, 1990, p. 160)

This mode of inquiry “begins where people are and explores the actual practices engaging us in the relations organizing our lives” (1990, p. 10).

Investigation of these “organizing practices” involves making “documents or texts visible
as constituents of social relations” (Smith, 1984, p. 59). Textually mediated forms of social organization

externalize social consciousness in social practices, objectifying reasoning, knowledge, memory, decision-making, judgement, evaluations, etc. as the properties of formal organization or discourse rather than as properties of individuals. They are, of course, accomplished by persons in everyday local settings, who thereby enter into and participate in objectified forms constituting organizational and discursive relations beyond themselves. (Smith, 1984, p. 60).

Smith’s work in institutional ethnography shows how the study of subjective experience serves as the point of entry into an understanding of the broader context (economic, social, political and historical) in which any given social phenomenon is embedded (Smith, 1984; 1987; 1990). Her description of a study of the work done by women in relation to their children’s schooling, combining phenomenological enquiry and reading of text, offers a useful model for constructing an enquiry which begins with the standpoint of given individuals and explores “through them the relations organizing the everyday world as the matrix of their experience” (1987, p. 181).

The rationale for beginning from the standpoint of individuals is to avoid being constrained by the “conceptual practices” of conventional social science discourse, becoming “unable to break out of the institutional presuppositions and making our analysis in terms of the functions of the institution” (1987, p. 165). Beginning with individual experience through the interview process permits beginning “in the work and practical reasoning of actual individuals as the matrix of experience in the everyday world.” Rather than aiming to generalize from the particular, however, Smith’s methodology aims to see how the “general” operates through an examination of the particular, how “subjects [are] constituted as objects” (1987, p. 74) in the social relations organized by social discourses. Although she has distanced herself from sociological traditions such as phenomenology and ethnography (1987; 1990), Smith described her method in its earlier stages of development as “institutional ethnography.” The crucial departure of her use of the term
from traditional use, however, is that the goal is not merely descriptive but

- a commitment to an investigation and explication of how “it” actually is, of how “it”
  actually works, of actual practices and relations. Questions of validity involve
  reference back to those processes themselves as issues of “does it indeed work in
  that way?” (1987, p. 160)

I planned to use the standpoint of fathers’ experience as a point of entry into the textual
discourses which organize the social relations of separated families and the institution I call the
divorce system. I also planned to trace the mediation of textual discourses through the institutional
actors who interpret or “activate” the texts and interface with individual fathers as representatives of
the system. “Interpretive practices which ‘activate’ a text are viewed as properties of social
relations and not merely as the competences of individuals (Smith, 1983)” (Smith, 1984, p. 70).
These interpretive practices are multiple, rather than unitary, and are given shape by the social
location of the interpreters in terms of their professional training, orientation and experience, and
personal belief systems. These, in turn, have been shaped by the process of socialization within the
context of gender, age, personal experiences and cultural norms. Thus the institutional actors ‘enter
into’ the process of ordering social relations differentially. Such differences are often masked by
documentary practices, which “[transpose] what were formerly individual judgements, hunches,
guesses and so on into formulae for analyzing data or making assessments. Such practices render
organizational judgement, feedback, information or coordination into objectified documentary
rather than subjective processes.” (Smith, 1990, p. 62)

Postructural approach to subjectivity.

Smith’s focus on analysis of texts does not offer a way to reach a detailed understanding
of the subjectivity of fathers from their own perspective, which was part of the original practice-
rooted motivation for the research. I needed to study the “lived experience” of fathers and at the
same time be able to make the connections between their own subjective positions and broader
social discourses. The postructural approach to the discursive organization of identity which was discussed above was deemed to suit this purpose.

**Observing Discursive Practices**

Participant observation is considered one of the “mainstays” of qualitative methods by Taylor & Bogdan (1984, p. 5) (the other being “personal documents, including unstructured interviewing”). They define it as “research that involves social interaction between the researcher and informants in the milieu of the latter, during which data are systematically and unobtrusively collected” (1984, p. 15). Direct observation of institutional settings and practices gave me unmediated exposure to several situations in which the processes and discourses under study were actually operationalized. This was intended to further contextualize the findings from other sources.

**Data Collection**

Multiple sets of data were collected and analyzed. The individual sets of data are described below along with the respective methods of data collection.

**Samples.**

The selection of participants, documentary samples, and sites of observation was consistent with the characterization of qualitative “criterion-based” selection techniques as “appropriate for research designs that focus on generalization to theory, rather than on generalization to populations” (Moon, Dillon & Sprenkle, 1990, p. 360). A combination of criterion-based selection techniques was used as appropriate to each of the data samples.

1. *A sample of separated fathers.*
   a) Description of population.

The original limiting criteria for inclusion in the sample of fathers were:
i) father divorced, (or separated for at least six months), without custody, and with an agreement or court order specifying child support obligations;

ii) child support payments in arrears (either unpaid, partially paid, or irregularly paid) for two months or longer; and

iii) father not involved with any ‘fathers’ rights’ or similar group.

Initially, the plan had been to interview only non-custodial fathers who were not paying court-ordered or agreed upon support, or who were in arrears.

Two developments subsequently led to broadening the approach: First, during my meeting with personnel at the Department of Justice, Ottawa, one of the policy researchers asked: “Does anyone know what motivates the ones who do pay?” From a phenomenological perspective, an understanding of the subjectivity of fathers who are exposed to difficulties with the system yet continue to pay regular child support is an important potential source of insight. Second, three fathers who did not fit the original criterion regarding arrears status were each identified by a different referral source as a subject who could make an important contribution to the research. I trusted this judgement by practitioners who understood the nature and purposes of the research. Therefore, the second criterion was changed to include fathers who had experienced any kind of difficulty with child support payments or with the support enforcement system. Referral sources who had been advised of the original criteria were informed of this change.

There was no intent to limit the sample to fathers who had been involved with the Family Support Plan, since a range of experiences with institutions was desired.

b) Locating Participant Fathers

Initially, an attempt was made to recruit participants directly. At the suggestion of a family court judge and a Family Support Plan lawyer, a direct approach was made to several individuals in the foyer of a provincial family courthouse serving a mixed rural and urban area, who were awaiting a scheduled default hearing or other support-related matter. A letter was handed to each
person with a verbal introduction of myself, and a request that they read the letter and consider participating. I re-approached each individual later in the day to ask if they were interested. Several said “No,” and one said “I’ll think about it” but never contacted me. This lack of response under the circumstances was not surprising; there was a relatively high level of tension discernible among the people waiting in and around the courthouse, and a marked lack of privacy. In retrospect, the expectation that fathers would be responsive to a stranger enquiring into confidential matters under these circumstances appears to have been unduly optimistic.

The next route was to seek referrals from those likeliest to have constructive contact with potential research participants. Referral sources were professionals selected from a variety of fields of practice, i.e. mediators, lawyers, and social workers, to try to reach participants who had had a variety of experiences with the divorce system. Some of these were known to the researcher through professional networks, while others were recommended by knowledgeable sources in the community. All but one were located in a large urban centre. An effort was made to include practitioners with a client base likely to generate participants from a range of racial and ethnic groups. The lack of success in recruiting participants from these groups meant a more homogeneous sample of fathers, which presented both limitations and advantages.

Each referral source was initially contacted by telephone for the purpose of a personal introduction if the researcher was not known to them, and to ascertain interest in participating as a referral source for the study. In each case, the professional contacted agreed to receive a “package” containing a detailed letter of introduction (Appendix A-6), a summary of the research proposal, criteria for inclusion in the research sample, and several envelopes, one to be given to each potential participant. Where requested, a copy of the Ethics Protocol was included (Appendix E). In each envelope was a letter of introduction to the potential father participant (Appendix A-3), and two copies of a consent form (Appendix A-5). The letter requested that interested individuals contact me by telephone and leave a confidential message saying they were willing to be called directly to discuss the research further. Alternatively, they could sign a “Consent to Contact” form
which could be forwarded to me in the stamped, self-addressed envelope included (Appendix A-4). Each referral source qualified their acceptance by stating that the delicate nature of the professional relationship and/or the emotional state of the potential participant might render the referral process inappropriate. To help alleviate this problem, the professional was given no further role in the process from the moment the envelope was handed over to the participant, and the participant was assured subsequently that service would in no way be affected by participation or lack of it, and that the professional would not be informed regarding his decision to participate or not.

Telephone follow-up was done with each referral source on two occasions, one month apart. Four referrals were obtained in this way, one from each of three mediators in the community, and one from a colleague on faculty at a university who referred a student. The two lawyers and the court mediator each said they had given out one or two letters, but believed the clients were unlikely to follow through.

Next, I approached the clinical director of a family service agency in a large urban centre and requested permission to address the agency’s staff about the research project and request their cooperation in referring clients. In addition to individual, marital and family counselling, this agency has specialized programs for separated and divorced families. The clinical director referred me to the agency research co-ordinator, who gave approval and referred me to the executive director. The latter granted permission to proceed and scheduled a presentation to the staff at their next meeting. (See Appendices A-1 & 2.) After explaining the research to the staff, I announced that referral packages would be left with the clinical director, and that any social worker with a potential participant on his or her caseload should take a package and proceed with the referral process. Three father participants contacted me following this presentation, each from a different referring social worker.

Each father who contacted me received a personal telephone call to review important information, ascertain his suitability for the study, and arrange an interview once he gave consent.
Each father who contacted me ultimately consented to participate and each followed through with the interview.

c) Data Collection

A two to three hour interview was conducted with each father. Each participant chose whether to be interviewed at my counselling office in Toronto or at another location. Two chose to meet at my office, three at their own respective business locations, and two at the office of the individuals who had referred them to the study. The interviews were semi-structured and were followed to the extent that all areas outlined in the interview schedule were covered. These included demographic and circumstantial information, experience of the separation process, contact with children, and perspectives on child support. (See Appendix B, Fathers' Interview Guide.) Every effort was made, however, to allow the participant to tell his story in his own way in order to preserve as much as possible the organization he himself brought to his lived experience. All interviews were taped and extensive field notes were taken during and following the interview.

2. A sample of institutional informants

a) Description of population

The sample of institutional informants was a purposive one, selected to represent the major institutions associated with support determination and enforcement, i.e. the judiciary, community lawyers, mediators, and the Family Support Plan. A list of potential institutional informants was developed through discussion with colleagues in the field of law, social work and mediation. In order to get a sample of informants dealing with fathers from a mix of ethnic and socioeconomic backgrounds, the list included participants from different sectors of a major urban centre as well as from centres serving rural populations.

b) Locating the institutional participants.

Each potential participant was contacted by telephone directly, and given a brief
introduction of the researcher and the study. Permission was granted in each case to receive a kit by mail containing the Ethics Protocol and two copies of a consent form (Appendix C) Each of the institutional informants approached consented to participate and meetings were subsequently arranged and kept. Two potential participants who worked for organizations were asked by the researcher to check with their supervisors regarding permission to participate. Each did so and received the necessary permission. Subsequent to the completion of two interviews, however, permission to continue interviewing of the Family Support Plan Lawyers was overridden by the Director of the Family Support Plan on the grounds that FSP personnel represent the Plan and “have no personal opinions” about their work.

c) Data Collection.

Each institutional informant was offered the choice of interview location; each chose his or her own office. One judge, however, requested a last-minute change. Since he wished to attend an amateur performance in which his young child was participating, he requested that I accompany him to the location of the performance, where the interview took place before and after the presentation. Interviews with informants were two to three hours long, with the exception of one lawyer, which lasted only 45 minutes. These interviews were taped, with the exception of one in which the machine malfunctioned, and the above interview with the judge which was conducted in a church basement, where taping would have been inappropriate and counterproductive due to background noise. Semi-structured interview formats were followed (See Appendix D.) and were generally adhered to, although participants were permitted to impose whatever order they chose on the questions and issues covered. Extensive notes were taken throughout all the interviews; notes of the untaped ones were verbatim to the extent possible. Field notes were recorded following each interview.
3. A documentary or textual sample.

I recall here Smith’s use of the term discourse ("those forms of communication and interrelation that are mediated by documents" whose "ideological processes serve to co-ordinate sites of the ruling apparatus coming under different jurisdictions", 1984, p. 63) and her formulation of the purpose of critical social research using analysis of discourses ("making documents or texts visible as constituents of social relations"). I selected a purposive sample of texts to represent the range of texts which constitute the social relations of marital separation and divorce. The sample was comprised of

i) the legislation pertaining to support, enforcement, custody, and access;

ii) mainstream legal textbooks which interpret case law for the purpose of educating lawyers and judges;

iii) publications from the Family Support Plan articulating policy and procedures regarding support payment and enforcement. These are directed (in different versions) at a range of target groups, including payors, recipients, lawyers and employers; and

iv) the report of an intergovernmental committee mandated to study child support in Canada.

These materials were selected in consultation with a family law expert from the Office of the Attorney General, a faculty member of the University of Toronto Law School, and a family mediator.

4. Participant observation.

Four sources of observed data were used:

a) Fathers and institutional actors in court.

Because of the crucial element of interface between individual and institution, it was desirable to include direct observation of fathers interacting with institutional agents in the institutional context. With the prior permission of the judge and the Family Support Plan lawyer in
question, I spent a day as an observer at a Provincial Family Courthouse in a centre serving a mixed urban and rural population in southeastern Ontario.

Dawson et al. (1991) distinguish four main types of participant observer roles that are common to field research. One observer roles is the observer as participant. In this role the researcher goes “to the scene of the study to collect information without in any way trying to carry off the pretense that he or she is a participant” (p. 253). Consistent with this role, interviews may be conducted at the scene in order to understand or gain insights into that which has been observed. I observed as the Family Support Plan lawyer conducted interviews with support defaulters whose cases were scheduled to come before the court that day. Subsequently, I observed the same lawyer presenting those cases which went forward during the course of the day.

b) FSP Offices.

A tour of the largest regional office of the Family Support Plan was a serendipitous outcome of conducting an interview there. I was able to see in concrete details -- such as the structure of the office (such as bullet-proof glass between clients and front staff) and the nature and distribution of activities -- how much of what I learned about FSP actually looks and ‘feels’ in operation.

c) Lawyers being trained to interpret the law for separating divorcing clients.

A second observer role is complete observer (Dawson et al, 1991, p. 253). In this role, one “[observes] situations in terms of what can be understood purely from the outside” (1991, p. 253). I was permitted to attend an educational program for family law lawyers presented jointly by the Family Support Plan of Ontario and the Family Law section of the provincial Bar Association. An invitation to observe was issued by a member of the organizing committee, who acted as an advisor on family law throughout the course of the research. The focus of the particular half-day session which I observed was on the procedural and legal intricacies of meeting the eligibility
requirements for enforcement of support and custody orders. Two of the presentations were by family law lawyers, the third was jointly done by a family law lawyer and the Director of the Family Support Plan.

d) Institutional actors developing legislation and policy.

A meeting was arranged with a group of six lawyers, researchers and policy analysts at the Department of Justice in Ottawa. The meeting came about after I contacted the Department to ask if I might sit in on any policy discussions related to support, in order to become familiar with the issues and processes at the policy development level. The contact person ascertained that a number of staff members would be equally interested in hearing about this research, so a two-and-a-half-hour meeting was arranged in which I had the role of participant as observer (Dawson et al., 1991, p. 252) rather than the originally intended observer as participant. In this new role, "both the researcher and the people under study are aware of the researcher's role."

Extensive notes were taken during and following each of the observations.

Analysis

Interviews and Legal/ Policy documents.

The analysis of data from all sources involved analysis of both themes and discourses. I use themes to refer to areas of content, the what that was being talked about. Van Manen (1990) defines phenomenological themes as "structures of experience" (1990, p. 79) through which we make sense of, or discover meaning in, experience. Discourse refers to the contextual field within which the themes are developed. It is made up of language and constitutes how things are talked about.

Analysis of the interviews had originally been planned according to the qualitative analysis program called Q.S.R. NUD.IST (Non-numerical Unstructured Data Indexing Searching and Theorizing). Q.S.R. NUD.IST was selected because of its capability for constructing and testing
theory in addition to its flexibility in managing unstructured, complex data. The program is characterized as being especially suited to the task of creating, not only testing, theory with the aid of computer power, without losing complexity (Richards & Richards, 1991). NUD.IST was used to develop categories in the fathers’ data through the use of indexing “trees”. Next, searching the indexing system assisted in exploring connections among categories across the fathers. Conceptual links were established through these processes which then led to developing broader conceptual categories and themes. In this way NUD.IST helped in the process of developing and organizing the themes and meaning structures in the fathers’ interviews.

Next, the analysis of the institutional informants’ data was undertaken, using a different approach. Because the categories and themes had by now been developed, I looked for their presence in the institutional data, comparing the institutional and fathers’ interviews to each other, and different institutional interviews to one another. At this point, however, it became difficult to know where to go next. I felt I understood the interviews, but not the fathers. I concluded after much frustration that I had gone as far as I could go with the analysis generated using NUD.IST, and that I had, after all, become too removed from the context of the data. Rather than attribute this to a shortcoming in the program itself or to my own status as a novice NUD.IST user, I refer to Van Manen for an understanding of why the program was ultimately less helpful than I had anticipated.

Too often theme analysis is understood as an unambiguous and fairly mechanical application of some frequency count or coding of selected terms in transcripts or texts, or some other break-down of the content in terms of protocol or documentary material.... Making something of a text or of a lived experience by interpreting its meaning is more accurately a process of insightful invention, discovery or disclosure – grasping and formulating a thematic understanding is not a rule-bound process but a free act of “seeing” meaning. (Van Manen, 1990, p. 79)

In any case, I needed to look at the data in a new way and this was extremely challenging after
having become so intimate with it for months in the original way.

It eventually occurred to me to ask questions of the data in ways that I might ask them of clients. The purpose of understanding the subjectivity of the fathers is essentially the same as the one that underlies the counselling process as I understand it; that is, the process of discovering and formulating, simply and coherently, the meanings which the client’s lived experience has for him or her. Therefore, the adaptation of exploratory techniques for this purpose in counselling seemed a promising way to approach the task at hand. I had already established, for example, that fathers talked about their fathering experience prior to the marriage breakup and following the breakup, and I had explored connections between those two themes. I now imagined asking each father to complete a number of key sentences which were suggested by the existing categories, such as: ‘I am a good father because...;’ ‘I couldn’t be the father I wanted to be because...;’ ‘I would be a better father if only... .’ I then analyzed each of the interviews again, this time interpreting the responses to these that were already latent in the data. The crucial difference, of course, was that the client himself was not present to participate in the interpretive process. It was therefore important to stay very close to the data, using the fathers’ own language and images. Where there were contradictions or inconsistencies, I attempted to establish whether they might be a result of misinterpretation, or whether there was anything in the interview to support the contradiction as a meaningful pattern in the father’s talk. The purpose was not to interpret pathology or intention, but meaning. I was ‘asking’ each father what it means to him, for example, to be a ‘good’ father, and in fact, to be a father at all. This was a way of getting at the how the father understood the identities available to him as well as those which he took up and those in which he did not recognize himself.

This technique proved very productive. It led to the conceptualization of the fathers’ subjectivity along the lines of four main areas of subjectivity. The next step was to search for evidence of discourses in the institutional informants’ interviews and the legal/policy texts that related to these areas of subjectivity. These texts were now carefully re-analyzed adapting the technique of sentence completion. For example, ‘A good father is one who...;’ ‘Being a father
means... ’ This allowed the institutional agents’ interviews to be understood at the level of content — i.e., his/her authorized, as it were, interpretation of the law and societal norms— and at the levels of subjective meaning. I developed a grid with the four themes identified along one axis and the three sources of documentary data (fathers’ interviews, institutional informants’ interviews and legal and policy texts) along the other and filled in the grid as this level of analysis progressed. In this way, each of the four areas of subjectivity was linked to discourses found in the institutional informants’ interviews and the legal texts. 4

**Direct Observation.**

The observation of default proceedings in the courthouse was used in several ways. Exposure to details such as the absence of amenities in the courthouse, the large number of cases on the docket, the informality in the dress and demeanour of individuals appearing before the court in contrast to the highly formal behaviour of legal personnel, etc., helped to give me first-hand grounding in the nature of the family court experience. Events and conditions observed were used to generate questions directed to the institutional agents present at the site, which was extremely helpful for gaining insights into the way the system works and what some of the issues are from an institutional perspective. The visit to FSP offices served a similar purpose, except that no fathers were present during the time I was there. From the bullet-proof glass separating clients from frontline staff to the recorded greeting on the telephone, to the size and activity of the mailroom, the information gathered from the FSP administrator and other informants was given added meaning in the details. The direct observations in the courthouse and in the FSP regional office were generally very consistent with the data gathered from the fathers and the institutional informants, which helped to validate the interview data.

Attendance at the educational program for family law lawyers was useful for information purposes, and extremely helpful for validating the discursive analysis. Participation in the meeting with Justice Department staff was useful in a number of fundamental ways. Aside from the very
informative content which helped orient me to the complex policy issues, dealing with a highly intelligent, knowledgeable and open-minded group of individuals ensured that I could not slip into any simplistic notions of government as bad, ignorant, or insensitive. It reinforced my starting position that institutions are made up of individual actors whose subjectivity is inextricable from their professional selves. I was also able to discern some of the important political pressures that were involved (although not always clearly acknowledged) in the policy directions ultimately taken.

Limitations of the Study

The various effects of the researcher on the research is one of the fundamental issues in methodological discussions (Dawson et al., 1991; Lincoln & Gulba, 1985, pp 92-109; Taylor & Bogdan, 1984). The effects of the researcher's social location was a particularly important issue in this study. The inherent difficulties in recruiting a group of fathers who are, by definition, likely to be avoiding 'the system' are obvious. Although separated and divorced parents who consent to participate in research have been reported to be quite forthcoming (Riessman, 1990; Mandell, 1995), locating them -- particularly fathers with support orders -- can present a significant challenge (Mandell, 1995). One of my referral sources (a lawyer) said: "If they don't care enough to go to court, they're not likely to care enough to talk to you."

As a female, 'white', feminist academic researcher, there were additional limitations on my ability to reach out successfully to fathers from non-mainstream ethnic and racial groups, whom I had originally hoped to include in the study. The same referral source commented: "These guys don't trust the system and I think you probably sound to them like part of that system." The advantages of focusing on a homogeneous group of white, middle-class fathers eventually emerged and will be discussed in the Findings section; however, the lesson for researchers wishing to include members of visible minority groups remains. It is important to collaborate with someone whom the potential participants are likely to trust.
The particular effects of the researcher on the interviews which took place is difficult to ascertain. The fathers' awareness of the researcher's background in divorce practice led to references in virtually every interview to the assumption that I would be familiar with particular dynamics, feelings, and situations. This expectation of being -- and perhaps the desire to be -- understood was likely an important influence on the fathers' eagerness to talk about their experiences. In addition, the fathers were all drawn to participation by the desire to have their story told. They came hoping that I, in turn, would be 'heard' by those with the power to change things; each expressed the hope that the study report might be influential in bringing to light the problems and solutions they identified. The fathers seemed to view me as a spokesperson for them. In this sense, the narratives were undoubtedly shaped by the context in which they were told.

A limitation which is peculiar to this study is the fact that policy, legislation and practices pertaining to support enforcement were continually evolving during the period in which the research was conducted, analyzed and written up. Non-support came increasingly to be constructed as an urgent social problem requiring an enforcement-oriented solution; at the same time, provincial governments changed, funding dwindled, and Ontario's enforcement plan was severely 'downsized' and centralized. Even the names of the programs changed. Changes were introduced regarding the judicial system as well as federal support and custody legislation. Every change or proposed change elicited strong public debate between women's groups and fathers' rights groups. It became difficult at times to say anything about the issue without concern that it might no longer be applicable a month or two hence. Every effort has been made to note those changes which are relevant, especially for the analysis and conclusions. Overall, however, the main thrust of the findings is unaffected by the changes; rather, it tends to be a case of plus ça change, plus c'est la même chose.

**Researcher Bias and Subjectivity**

Among the common concerns about qualitative research, particularly when conducted by a
single researcher, is the role of researcher bias and the general lack of 'objectivity' in qualitative methods. In acknowledgement of such concerns, I refer to Van Manen’s reconceptualization of *objectivity* and *subjectivity* in interpretive qualitative research:

> [O]bjectivity means that the researcher is *oriented* to the object, that which stands in front of him or her. Objectivity means that the researcher remains *true to the object*.... “Subjectivity” means that one needs to be as perceptive, insightful, and discerning as one can be in order to show or disclose the object in its full richness and in its greatest depth. Subjectivity means that we are strong in our orientation to the object of study *in a unique and personal way* -- while avoiding the danger of becoming arbitrary, self-indulgent, or of getting captivated and carried away by our unreflected preconceptions. (1990, p. 20)

By Van Manen’s definition, this research has been conducted with both objectivity and appropriate subjectivity. The biases which I hold as a feminist practitioner in the field of divorce have been declared and have been exposed in each instance where reflection has revealed them to be operational in the conduct of the research or interpretation of the data. The major methodological approach to ensuring the “trustworthiness” of the data interpretation (Lincoln & Guba, 1985) has been through the use of “triangulation”, i.e. use of multiple data sources and multiple methods of analysis.

**NOTES**

1. With reference to the post-divorce custody-access process, Kruk observed that the judicial system “diverts attention from [gender-based inequalities] ... by ‘individualizing’ an essentially structural problem” (Kruk, 1993).

2. Fraser calls it “the social” “in order to mark its noncoincidence with the familiar institutionalized spaces of family and official economy” (1991, p.156).

3. Feminist legal theory supports a discursive approach to issues governed by law. “Law represents both a discourse and a process of power” (Fineman & Thomadsen, 1991, xiv). The power of family law pervades the daily lives of separating/divorced family members in both direct
and indirect ways through legislated norms and through the regulatory minutiae of procedures. Where the law is silent and has deliberately excluded areas of decision from the "public" arena for "private" negotiation, it also reflects a particular discourse and orientation to power (C. Rogerson, personal communication, June 23, 1995; Fineman & Thomadsen, 1991). Because norms are seen to be "created by and enshrined in law [as] manifestations of power relationships" (xiv), feminist legal theory examines "legislative and political processes in the construction of law" and "social and cultural perceptions and manifestations of law and legality" (xiv), rather than judicial decisions alone. This conceptualization is congruent, on one hand, with Smith's theorization of the application of extra-local texts to particular local instances and, on the other hand, with the ways that case law is developed and applied.

4. The use of grids, or matrices, for the analysis of qualitative data is discussed at length by Miles and Huberman (1994).
III. FINDINGS: FATHERS

This is the first of four chapters on the findings of the research. It will be followed by a chapter on the institutional context and one on the legal context in which these themes of subjectivity have been constructed. A fourth chapter will discuss the interaction of subjectivity and institutional discourses against a wider ideological and socioeconomic background. In this chapter I present a collective description of the sample of participants, and introduce profiles of each father. The profiles are intended to demonstrate the multiple trajectories through the system represented by the participants and are important to an understanding of the fathers’ material. In presenting the analysis of the fathers’ material, I focus on their presentation of self in terms of the following subjective positions:

1. self as father;
2. self as husband/partner;
3. self as a person in society, a citizen; and
4. self as victim, as disempowered.

Description of Sample of Fathers

The seven fathers interviewed are ‘white’, Canadian-born, ranging from 37 to 47 years. Coincidentally, three of them are age 47. Five live in a major urban centre, one in a suburb outside of that centre, and one in a small urban centre some two hours away. Three work as professionals, one is a businessman with a post-secondary degree. One is a former musician and technician attending university as a full-time undergraduate student. Two are in the real estate business, one of them a former teacher. Figure 2 shows occupation, status of custody and access, support status, and payment record. A detailed individual profile of each father is presented in Appendix F.
<table>
<thead>
<tr>
<th>OCCUPATION</th>
<th>CUSTODY</th>
<th>ACCESS</th>
<th>CHILD SUPPORT</th>
<th>SPOUSAL SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neil professional self-employed</td>
<td>sole to wife</td>
<td>no contact for 6 years</td>
<td>pays in full regularly</td>
<td>NA</td>
</tr>
<tr>
<td>Gary professional self-employed</td>
<td>sole to wife</td>
<td>irregular</td>
<td>pays in full regularly</td>
<td>not paying</td>
</tr>
<tr>
<td>Morris business commission + salary</td>
<td>Sole to father initially &amp; now; 1 child was with wife for 2 years (joint custody)</td>
<td>Wife denied access now. Used to have reg. contact. Father had reg. access while son was with wife.</td>
<td>wife has been pursued for her share of support in each custody/access situation</td>
<td>NA</td>
</tr>
<tr>
<td>Donald business self-employed</td>
<td>sole to wife</td>
<td>regular contact</td>
<td>paying partially, regularly</td>
<td>not paying</td>
</tr>
<tr>
<td>Art business self-employed</td>
<td>sole to wife</td>
<td>regular contact</td>
<td>stopped paying “temporarily”</td>
<td>stopped paying</td>
</tr>
<tr>
<td>Randy professional self-employed</td>
<td>sole to partner</td>
<td>regular contact, may change</td>
<td>paying in full regularly, may stop</td>
<td>paying in full regularly, may stop</td>
</tr>
<tr>
<td>Keith university student on assistance (Previously ‘working class’)</td>
<td>sole to wife</td>
<td>regular contact</td>
<td>paying regularly to assignee, supplements informally</td>
<td>NA</td>
</tr>
</tbody>
</table>

Figure 2. Fathers’ Group Profile
Five fathers have two children, one has three, and one has one child. The children range from age 3 to 20. Length of separation ranges from 18 months to 12 years. All but one of the fathers was legally married to the spouse from whom the separation in question occurred. None had been previously married. Two of the fathers admit to having left the marriage in order to be with another woman and the same is vaguely implied for a third father; three left after many years of marital strain, two of these following efforts to save the relationship through some form of professional help; in the final case, it was the wife who initiated the separation after years of unhappiness. Two have remarried, one of whom has separated from his second wife. Two have become involved in new live-in relationships, one of which has ended; four remain unattached. None of the fathers has had additional children since separating. Six fathers do not have custody of their children; one has joint custody of both, and at one time had sole custody of both.

Four of the non-custodial fathers have a court order to pay child support, and three of those are ordered to pay additional support, either in the form of spousal support, and/or mortgage, etc. One is not ordered to pay additional support, and the former spouse is on Family Benefits; the last has a mediated agreement to pay child and spousal support. Six fathers, including the custodial father who has been a recipient in the past, have been registered at one time or another with the Family Support Plan (FSP). Only the one with the voluntary agreement has never been involved with the Plan. Four fathers are currently deemed in arrears by the Plan. One of these is not currently paying, but plans to resume payment at the start of the next fiscal year, although at a rate below that of the court order. Two of the four in arrears pay regularly at a rate below that ordered by the court; one stopped paying when he was found to have an accumulated credit, and did not resume payment because FSP failed to advise him when the credit was used up. Of the remaining three, one is not obligated to pay support of any kind, and two have always paid in full and on time; of these two, one is seriously contemplating cessation of payment. The experiences of the fathers in the separation process, particularly in encountering the institutions involved, have differed in some significant ways and been quite similar in others. They have followed different
trajectories through the system and an understanding of these provides a context in which to analyse the subjective experiences they share in their interviews. By ‘trajectories’ I mean a route through the system involving encounters with various institutions in particular patterns. This constitutes the “negotiation of structures” that Smith talks about.

The homogeneity of the sample in terms of race and ethnicity is most likely a result of methodological issues identified previously. Efforts to recruit fathers of Caribbean-Canadian and immigrant origins were unsuccessful, probably due to predictable wariness regarding involvement with a researcher who is representative of the system within which they have been marginalized in multiple ways. However, the homogeneity of the sample with regard to race and class is useful in one important way. It is a group of white, mainly middle class Canadian men. (The one man who describes himself as “low class”, or working class, is nevertheless currently a university student in an applied professional field.) Since the fathers’ interviews reveal a strong emphasis on perceptions of oneself as disempowered and victimized by the separation/divorce process, their ‘mainstreamness’ is helpful as a reference point. If such a group of men characterizes the process this way, what might we reasonably surmise about fathers from other socioeconomic, racial or cultural backgrounds?

As for the arrears status of four out of seven of the interviewees, the self-selection of volunteers was clearly skewed towards those who felt they had what was referred to as “a story to tell”. The researcher’s request for volunteers who had experienced some “difficulties related to support” attracted fathers with a felt need to be heard because they had experienced what they perceived as being ignored or silenced by the system at some point. Presumably, they expected a full hearing from the researcher; furthermore, each father also hoped that the research would be disseminated in a way might have some beneficial impact on the system. The fact that all but one of the fathers had been involved with the Family Support Plan at some point is an artifact of the universal enforcement system in Ontario; i.e., there is a strong likelihood of being registered in the Plan because the law requires it in all cases where an agreement has been filed with the court, and
filing is a prerequisite for state enforcement. Any fathers who are not involved with the Plan may be unregistered for a variety of reasons, but since any of those reasons are associated with being removed from the judicial and enforcement system, these are most likely to be fathers who have not experienced significant ‘difficulties related to child support’. This is not meant to suggest, however, that their former spouses have not experienced difficulty in receiving payments; only that from the father’s perspective, there may be no ‘story to tell’.

There is a variety in the situations of the fathers vis a vis custody and support that does not permit hasty conclusions about cause and effect. For example, of the two fathers who have consistently paid regularly and in full, one (Neil) has been registered with the Plan from the beginning and on the only occasion where he was deemed to be in arrears, it was the Plan’s error; the other (Randy) has an unregistered and therefore unenforceable agreement, which means he pays on a completely voluntary basis. On the other hand, Neil’s contact with his children ended six years ago when his former wife removed them from the jurisdiction without notifying him of the new address, while Randy faces the imminent removal of his daughter to a city nearly two hours away, and he is consequently thinking of stopping payment of support. Randy pays substantial spousal support, Neil has never been obliged to pay anything other than child support. Two other fathers continue to pay partial support, but have reduced the amount claiming inability to pay. The issue for each of them is primarily the imposition of spousal support and the perception that they have been unfairly and unrealistically burdened financially. One of these fathers (Gary) also has complaints about interference by the ex-spouse in his relationship with the children, even though they are young adults; the second (Donald) has a very co-operative ex-spouse who supports his involvement with the children. Art has stopped payments for the calendar year in question because he has already paid what he feels is a fair amount; i.e. full child support and reduced spousal support. He, too, has complaints about interference by his ex-wife in his relationship with the children. One father (Keith) has no complaints about the amount of support he is obliged to pay (and does pay) because it is very low, and he has never been obliged to pay spousal support.
because his ex-wife is on Social Assistance. He is, nevertheless, "in trouble" with the Plan, ostensibly due to administrative bungling. His chief complaint is that, in spite of his commitment to being an involved, active father, his relationship with his son was forever diminished by the custody and access arrangements, hurting both him and the child. Finally, Morris has never had to pay support because he has had either full or joint custody of his children since the separation. He nevertheless has complaints about the Plan and about the system as a whole which are consistent with those of the other fathers.

**Presentation of Social Identities**

Something all the fathers share is the perception that because of serious flaws in the existing system for regulating custody, support and access, they as fathers/ as men have been treated or characterized in ways that change how they see themselves and are seen by others. In the content of the fathers' interviews I have identified several constructs related to subjective positions, ways in which the fathers identify themselves or perceive they are identified by others. These subjective positions are as fathers, as husbands, as what I have chosen to call citizens, and as victims or disempowered subjects. These four areas of social identity appear consistently throughout the interviews and represent those areas of subjectivity which are most relevant to the thesis. They are the themes which best help to answer the question of how fathers take up identity positions in relation to the public discourses associated with separation and divorce.

The social identity of father relates to the various meanings of fathering, including what it means to be a good father (one's role as responsible caretaker or provider, nurturer, guide, hero, source of stability) or a bad father (negligent, irresponsible); the significance and priority given to fathering both before and after separation, and the feelings between oneself and one's children. The identity of being a husband includes the expectations and actual experience of both marriage and separation, one's role as provider, lover, parent, and the relationship between the marriage and the parent-child dynamics. I have called the third identity position citizen because it focusses
on issues of personhood within a societal context. It is about being a 'good' person or 'bad'
person, being a law-abiding citizen or being treated like a criminal, entitlement and rights. The
identity of victim or disempowered is about loss of control as well as abused rights, and a
perception of social diminishment.

Each area of subjectivity is constituted by a number of themes. Broadly conceived, these
themes include:

1. relationship (feelings, roles, dynamics);
2. finance (income, payments, expenses);
3. justice (rights and fairness);
4. morality (good person, bad person; right and wrong; responsible, negligent);
5. combativeness (adversarial relationship, conflict, winners, and losers);
6. the child (both in terms of their best interests and as objects of relationship); and
7. gender equality (in terms of rights and responsibilities).

These themes and their component discourses exist alongside one another in various
combinations, sometimes harmoniously and often incongruously. At times one or another
recedes while others dominate. Sometimes the discourse is so in tune with familiar social
constructions of fathering that we hardly notice it. Sometimes it is so jarring or seemingly out of
place that it demands our attention to what is going on.

What it Means to Be a Father

Good father/ Bad father.

A few examples from four of the participants (Donald, Art, Neil, and Randy) should help
to demonstrate how multiple discourses shape the ways that fathers construct and present
themselves and their experiences. We begin with Donald, whose visiting arrangements are the
most flexible of the group, and whose former spouse is the most cooperative. (Donald has at no
time wished to have joint or sole custody of the children.) He explains how he views his
relationship with his children and describes the nature of his interaction with them.

Fortunately, the relationship that I have with my kids is fantastic. It’s uh... and it has been -- I would say ever since the, the Exit Date, again, as I, as I define it. I always had a good relationship with my kids, uh, again, maybe the fact that they are boys -- they tend to look at me, today anyway, as a -- their best friend. And I’m very involved with them -- WAS when I was in the marriage, and continued on, because again, to me, anyway, they’re the most important part of MY life as it relates to this whole uh, this whole family scenario. So uh, I think today I will tell you, I get along BETTER with them than I did when I was at home, for a VARIETY of reasons.

As it turns out, however, he sees them less than the order allows.

Q. How often have you ended up actually seeing them?
A. In the summertime, I would say four out of seven days, and now, with school back to regular schedule, probably three out of seven. But generally, it’s a Thursday night, I’ll take them out for dinner, and then if I don’t HAVE them on the weekend, I’ll SEE them on the weekend. Depending on whether I’m working or not. My uh, commitments to work sometimes include seven days a week, six days a week, so --....
[a series of details follows]...
Q. So, the rate -- I’m just trying to get a really good sense --
A. -- Yeah, sure, go ahead.
Q. -- The rate that you see them is about what -- that they stay over for a full weekend is about what, once every-y-y --?
A. -- three weeks, maybe.
Q. Three weeks.
A. Yeah. And it depends. It’s uh... A lot hinges on my schedule, and where I am and where I have to be. Again, if I have to be at work on a Saturday morning, then they’re less likely to sleep over only because it’s too early to drop them somewhere else and they’re better off being at home. My ex works on Saturdays so my mother would pick them up.
Asked whether he helps with homework and gets involved in the children’s regular activities or is limited by his “schedule,” Donald says:

A. The latter. Yeah. Yeah, definitely. And, homework is something that’s done, generally right after school, or it’s already completed if it’s Friday -- maybe the homework load is less, I don’t -- I really don’t know WHAT they do uh, homework-wise for the weekend. But it doesn’t seem to be an indicat -- er, um, an issue, I should say. that we have to deal with.

Q. Mm hmm. So it’s not something you have a great deal of involvement in.
A. No, not at all.

Donald then describes how he and the children spend time together. He begins with a description of shopping expeditions for “candy and junk food” and then explains that they spend time “hangin’ out,” visiting Grandma, playing ball in the park, going to the beach, and generally engaging in fun activities. He says the children look forward to their time with him; they all go off together in a way described as carefree.

Donald is emphatic about his sense of responsibility as a parent:

Uh, my attitude is Yes, I left my wife, but I didn’t LEAVE my three kids. I’m still RESPONSIBLE for them, no different than SHE’s responsible for them. Anyway, --

Donald has begun by establishing himself as a good father in his own terms through a focus on relationship, in this case, a discourse of father as “pal”, a “buddy” relationship of a typically masculine kind. This discourse then gives way to talk about business (work), which in turn gives way to discourse of “the best interests of the child” (i.e., if I have to work, the children are better off at home). He specifically excludes a number of parenting functions, such as involvement in school work, from the domain of “responsibility”, then declares himself a responsible parent on equal terms with the children’s mother. What emerges is a construction of a responsible father which consists primarily in being a pal to his children and in having maintained some interest in them. He acknowledges without apology that he gives his business priority over spending time with his children. His construct of a responsible mother, on the other hand, is one who does daily caregiving. The two roles are presented as being equivalent in terms of degree of
Art spends time with his daughters on a more regular and frequent basis than any of the non-custodial fathers interviewed. His relationship with his former wife is so strained that he will not communicate with her directly. In Art’s talk about his experience as a father, he expresses intense frustration about not being able to be the good father he believes himself capable of being. Although the judge ordered interim joint custody, the girls chose to live with their mother. Asked whether this is the way he wanted it, Art says:

I wanted joint custody, only because I didn’t want HER to think that SHE could make ALL the decisions that she felt she wanted to make without any input from me. I also knew that the reality of the situation was that the custodial parent, or the residential parent, is the one that makes the vast majority of the decisions.

He tells the story of the marriage as a series of stages in which he made different — and ultimately unsuccessful — attempts to relate to his wife. He says that the marital issues interfered with his functioning as a parent, especially when he ultimately became depressed.

I was NOT the kind of father that I WANTED to be, because I was AFFECTED by what she was doing to me... And after eighteen years, when I finally found myself sitting on the couch, watching TV, and reading the newspaper, and SLEEPING, and doing absolutely nothing ELSE, because it didn’t matter what I did, it wasn’t GOOD enough. I realized I was DYING here. And I had to get out. ‘Cuz there was nothing else I could DO. And obviously it affected the way I handled — dealt with my CHILDREN, because if I couldn’t do anything else right, how could I possibly deal with my kids properly? I wasn’t ALLOWED to spend the day with them, and do whatever they LIKED to do, because I got criticized for it by HER. No matter what it WAS! And when I’d tell her that, “That’s what the kids asked to do”, it didn’t matter.

I ask him whether he now has more of an opportunity to be a father in his own way, to which he replies:

I have an opportunity, except that she is being very vindictive, and very angry, and she is using the children to get back at me, because that’s all she has left.

He claims “a couple of psychiatrists” have told him that his daughters will undoubtedly be psychologically damaged by their mother.
I would like to try and SAVE them from that, but I CAN'T at this point, because it's just not possible. Also, at this point, they prefer to live with their mother and I'm not about to DRAG them through that kicking, scratching, screaming and yelling kind of scenario....

Asked “How are your children managing?” now that he is no longer making support payments, Art says:

I added up the amount of money that she received up until July and basically she received the a -- OVER the amount of money that a judge would have ordered based on my '94 income.... I cannot do anything about the fact that she may or may not have managed that monies [sic]. Because if she went through the entire year EXPECTING the $2300 a month to CONTINUE, I can't do anything about that. Things are very tight on both sides. As I said, I don't know from month to month if I'm going to be able to maintain my apartment, -- y'know, I, I, I'm imagining that she is getting money from her mother if necessary, if that's the case. Unfortunately, she --

Q. -- But you have not been paying any support.

A. No. I'm under NO order, and the amount of money that she received up until July is the amount of money that she would have normally received over the course of the twelve MONTHS! If we were ABLE to GET into COURT!

Q. So are you saying that in a sense, you feel you've paid a year’s worth --

A. [shouting] I've PAID my year’s support out of quote, MY half of the sale of the HOUSE!

Art’s construct of his responsibility as a father during the marriage was to spend time with the children doing things they enjoyed (father as pal); now it focuses primarily on his perceived obligation to ensure their healthy psychological development by mediating the effects of an emotionally destructive mother. His ability to be a good father has been interfered with by his wife in both modes. Talk of control, the children’s best interests, and money slip in and out. Eventually, Art’s sense of responsibility as a parent gives way to talk of financial responsibility as a creditor, and the children disappear from the picture.

*                        *                        *

Of the six fathers in the group who have been involved with FSP, Neil’s meticulousness about payments has made him the only one who has never been deemed ‘in arrears’; on the other hand, he is the only one of all seven fathers who has had no contact with his children of any kind for an extended period of time (six years). There are a number of ways in which Neil conveys that
his relationship with his children is important to him. "I always wanted to be a father," he explains. His own father left his mother and he was raised by a stepfather who "did his BEST to fulfil the father role. I mean, he WAS my FUNCTIONAL father. But, it's not the same." For this reason, he says he is sensitive to the meaning of losing a father. "I mean, My KIDS are losing BIG TIME." He says he remained in a marriage that ultimately "would have KILLED me," because "I was waiting until the kids were older." Once separated and involved in struggling to hold onto the relationship he wanted with them, he realized his children were suffering. He tells the following story:

Let me tell you about what happened. I had a dream... [I knew it had something to do with] the wisdom of Solomon and I couldn't remember what that was about... [so] I asked one of my clients who knows a little bit more about the Bible than I do and they came up with this story of the baby. And I realized at that point that the pressure that those kids were under not to maintain their relationship with me, that the younger daughter, K., uh.. who's so much like me, she collapsed... I really missed [her] because I was REALLY bonded with her. But I ALSO understand they have to chart their own life pattern... I REALLY don't know what to DO at this point.

Neil believes that the state ought to protect both the need of children for their father and the rights of the father to his children.

There HAS to be SOME way that two parents who have given birth to these children need to have some kind of say -- legislated input . if you have to, into their LIVES.

He later makes a statement, however, that renders parental rights contingent upon one's level of caring.

Now, in cases where a parent has NO interest . OK? In cases where there has been abuse . then they're out of the RULE. It's the children we need to look out for.

Neil gives high priority to being a father. He perceives that at times the needs of the parents and the needs of the children do not coincide, and his idea of a good father is one who cares enough to put the children's interests before his own. In this excerpt and throughout his interview, he talks most consistently of all the fathers about the children's best interests. Neil also
talks about the rights of children and of parents. He speaks of parental involvement as the right of both child and father, but the parent’s right must be earned by demonstrating caring. Justice and relationship are juxtaposed in a significant way: one’s rights are undermined if one is a ‘bad parent’.

* * *

Randy has maintained a home for his former common law partner and their child, and has paid regular support. According to him, access has been interfered with frequently, and now threatens to be seriously disrupted by the mother’s plan to move to another city with the little girl. He is considering stopping all support payments if this should happen. Following the standard introduction to the interview process, including the hope that it will be a helpful one for the participant, and before the interview has actually begun, Randy says, “I want to know who determines the best interests of the child.” When I ask him to explain his current situation, he outlines the terms of the agreement:

It specifies “primary residence and primary care with the mother but parents will confer regularly with each other re day-to day matters and take each other’s concerns into account”.

He indicates that things have not worked out quite the way he expected, given the terms of the agreement.

Q. If you could work out some kind of ideal, what would it be?
A. The ideal was to agree to a separation agreement. [W.] should stay where we bought the house and continue in her education, her activities, I should have full access, she continues getting support and she gets free training. I agreed to give her enough money that she could go to school full time the first two years. Not have to work outside the home at ALL, you can tell from that figure that she can do that if she wants to. She has not chosen to pursue that at all. She has a.. a.. a person move in two weeks after meeting them, to a house where my daughter is. That’s wrong. I think that’s wrong. Legally that might not be wrong but morally I think it’s wrong for the child.

Randy had expected that a formal agreement would protect the interests of all concerned. Protection of his child’s stability and access to both parents and extended families was intended to protect his role as her father, but he now perceives that only the mother’s interests are being
protected. Being a good father meant to him the protection of his daughter’s developmental well-being, and being actively involved in her life. He weds the child’s best interests to issues of justice and morality in a way that makes perfect sense to him, but that creates a perplexing dilemma when developments pry them apart.

* * *

As they talk about themselves, the participants reveal various constructions of the meaning of fathering. They tend to see being a good father as either active caring in the context of an emotional attachment to their children, or as accepting responsibility in the context of a moral or societal obligation. Some participants talk about both meanings. Every father interviewed identifies an entity which might be called a ‘bad father’, which is always defined as a father who does not care or is not responsible, and about which all but one of them (Donald) express disapproval. Each father clearly distinguishes himself from such fathers, and does not identify with the construction of ‘bad father’. Most make an effort to differentiate a truly bad father from the majority of fathers whose behaviour appears to be negligent but in fact is explainable in terms that reflect on the wife or the system or on circumstances, rather than on the father himself. In short, each father works at establishing his own credibility as a good father, and is distressed by any perception that he might be judged otherwise. Although some of the fathers are critical of their own parenting during the marriage, the failures are attributed either to the effects of an unhappy marriage, the direct interference of the mother, and/or limitations resulting from being absorbed in work or career. Finally, each of the fathers paints a picture of a former spouse who is now (if she wasn’t always) in some way or another a bad mother. Whether it is her childrearing methods in general, her failure to protect the children’s relationship with their father, or her unstable personality, each of the mothers is constructed as a bad parent, as if to balance the perception of himself.

Various themes and discourses appear alongside one another, often incongruously, sometimes producing tension or contradictions that give some insight into the struggles fathers may be experiencing and how they deal with them. We can hear the co-existence of contradictory logics
and see gaps where certain discourses unexpectedly appear or disappear. Although every father refers to himself as a *responsible* father, this discourse is often in tension with the absence of any discussion of relationship with the child. Love, concern, worry for the child, even the child itself, at times disappear from a father’s talk, while discourses of responsibility and of morality (e.g. commitment) regarding fathering remain. Sometimes the discourse of responsibility is in tension with the absence of key behaviours which constitute common social constructions of ‘responsible parenting’.

The question “Are you concerned about the effect on your children if support is not paid?” is consistently responded to in terms *other than* relationship, i.e. caring or feelings. For example, the following excerpt comes from Donald’s interview:

Q. Did you worry at all, during the time when you were not paying the bills, and you didn’t know that your mother was, were you worried at all about how the kids were doing?
A. Oh, absolutely! ABSOLUTELY!
Q. Can you tell me about that?
A. Absolutely. Deena, there’s no doubt in my mind that the kids are the PRIME focus and importance in my life and in my wife’s life, and they have to be provided for. No doubt ABOUT it! But, again -- common sense has to prevail. If we’re living a life style that was supported when I was making in excess of $120,000 a year, now I’m making $42,000. Again, you don’t have to be a Philadelphia lawyer to realize that the nut you’re trying to crack is too big. OK?

He goes on to say “If it’s not there, it’s not there. Now, if we were together as a FAMILY, what would I have done?” and he proceeds to outline a number of possible pragmatic solutions to the financial dilemma caused by the failure of his business. In other words, the financial problem would be resolvable in the context of marriage, but in the context of separation there is no will to work it out. Even when a father is emphatic about his concern for the children’s welfare, as Donald is above, there is an abrupt shift into the subject of finances (e.g. not enough money; I have needs, she/her parents have the means), or equality (Why should I have to have all the financial responsibility?), etc.

My question as researcher is, how does the father process these discrepancies? The answer appears to lie in the nature of the particular discourse which the individual has relied upon to
present himself as a father. If, for example, the meaning of fathering is shaped by the discourse of father as pal, i.e. of male bonding and/or having fun, then a responsible father could well be construed as one who makes sure his children get to have fun times with their father. If the meaning of fathering is about a nurturing relationship and providing a sense of emotional security, responsibility may entail regular visits, loving contact, or protective intervention. If fathering is about exercising control, in the sense of influencing the child’s upbringing and development, values and experiences, then a responsible father may be one who continues to have adequate control and decision-making rights. In cases where fathers perceive of themselves as being subject to the power of the former spouse, a discrepancy between one’s identity as responsible or caring on one hand, and self-described behaviour that suggests an absence of responsibility or caring, seems to be explained by the absence of control. In other words: ‘I am a good (responsible/caring) parent, but I can’t control my wife/my work/lack of income, which interferes with my good parenting.’ Thus the discourse of control tends to mediate the discourses of morality and of relationship.

The shifting of discourses around fathering is particularly illuminating in Randy’s case. He has generally been satisfied with the arrangement because he has considered it to be just (fair, right). It established reciprocity between support and access, and the plan was for spousal support to end within a few years when the former partner completed her education and went back to work. This discourse is compatible with the discourse of the child’s best interests because it allows for the child’s continuing relationship with both parents, stability, security, and financial well-being. However, with the wife’s move to another city threatening both reciprocity and the promise of equal financial responsibility in future, Randy is threatening to stop paying support and to give up his relationship with his daughter, “to close that chapter” of his life. He expresses distressing confusion about how to protect himself from being victimized by his “ex”, for if he chooses to put the child’s best interests first, he will have to tolerate unjust and painful emotional conditions for himself. The consequences of a non-reciprocal arrangement represent not only injustice to Randy,
but the continuation of the couple’s previous relationship. He had disliked being controlled by her and had intended to end that when he left. Now he finds it has not ended. He clings to the discourse of justice at least in part because it positions him as having rights and a degree of control which he deems fair. From this position, he has been able to keep the child’s interests in the foreground. When he perceives himself to be positioned under the control of his “ex”, however, he has to struggle to keep the child’s best interests in view.

[The psychologist] recommended actually that I back off. .. That I NOT show interest in [the child] purposefully.
Q. For what reason?
A. The reason would be... to try to get it so that [child’s mother] can’t exert so much control over me, but I think... I’m thinking that I REALLY don’t want to abandon my child. And I don’t want that feeling in her mind that Daddy hasn’t called for four weeks, maybe all that stuff that [her mother] is saying about him is true. You know what I mean? That’s a very difficult decision....

He does not wish to abandon his child and become a bad father; yet he expresses great distress about his perception of becoming the victim of injustice. But when the child’s needs (for financial support and emotional continuity) threaten to compete with his own (for control and self-esteem) he expresses intense inner conflict about what to do, as we shall see in the next section of this chapter. The number of professionals with whom he has sought consultation (a mediator, two lawyers, a psychologist, and the researcher) have not helped him; he is very disillusioned with the whole justice system, lawyers and other ‘helping professionals’. Caught between contradictory logics and values, he is unable to find a discourse that resolves his dilemma satisfactorily. He has derived considerable comfort, however, by seeking out other single fathers, who have reassured him that fathers “can’t ALWAYS be at fault.” The desire to escape the identity of bad father emerges once again.

Neil has a very different perspective, because for him being a father is about the morality of relationship and responsibility (being a ‘good person’), rather than the morality of rights and fairness. As much as he resents the way his role as father appears to have been devalued by his
former wife, the courts, the school, etc., the meaning of fathering for him is almost entirely about caring and commitment. Having lost his own father at a very young age and admiring the stepfather who emphasized (and exemplified) commitment and responsibility, he himself is determined to behave like his ideal of a good father, whether it is reciprocated or not. The dream story he tells, in which he voluntarily gives up his half of the child in order to save her is his way of putting the children’s interests ahead of his own while still maintaining his sense of self-respect. In the Bible story on which the dream is based, the mother designated by the wise King as the real one was she who put the baby’s life before her own desires. Neil has another way of continuing to see himself as a ‘good father’ in spite of the loss of contact:

Because I don’t want my kids to suffer. And they would. ...If there is ANYTHING good that they’ll say about me, it’s that I never missed a support payment. ...Those would be the biggest reasons.

In spite of the absence of contact, he has in fact come to see fulfilment of his support commitment as his sole remaining way of relating to his children, so that the focus on responsibility becomes a substitute for a focus on children and feelings that is necessarily missing. Whereas Randy perceives paying without adequate access as an intolerable loss of control, Neil constructs it as “the only thing over which I still have some control.” The discourse of enforcement appears briefly as well:

The other reason is, I have no doubt. what, what would happen if I didn’t pay.

Here and elsewhere, Neil indicates that fear of civil authority -- in other words, his relationship with the state -- is an additional motivating factor.

Father as non-parent.

Regardless of how they construct fathering, all the fathers express an experience of profound loss (or threat of loss) regarding their marginalization as parents (or a fear of it) at some point. Morris explains that prior to the separation, in his children’s eyes he was “this guy who walks on water”. At the point of separation, when he feared his wife would turn the children
against him, he “strategized” how to

- stay front row and centre as a father [in order to] mitigate this. And uh. so I STAYED front row
  and centre as a father.

Ultimately, he gained custody of both children.

Neil, Art, Gary and Keith all speak quite poignantly about recognizing that whatever role
they ought to have played or would have liked to play in their children’s lives is no longer
possible. Keith and Art regret that they cannot offer a stabilizing, nurturing influence to their
children to counteract an unstable, destructive mother. Each believes his relationship with his child
has been profoundly damaged by the separation. Gary believes his wife “poisoned the children”
against him and feels betrayed by them; yet he misses having an easy relationship with them and is
stung by their anger and distance from him. “They SHOULD be part of my life,” he says, but they
resist. Ironically, when they were young, he was often away and accepted a marginal role. Now he
finds it unacceptable. Neil describes how he was slowly edged out of his children’s life after the
separation. He sensed his children allying with their mother against him, and grieves for the loss of
his close relationship with the child who had always been “Daddy’s Girl”. Randy fears that if his
daughter moves away, being a father will be unbearable because there will be no meaningful way
to live it without sacrificing his own emotional integrity. Any possible outcome feels unfair, which
leaves Randy with the perception that there is no justice.

Donald, who admits to leaving his wife for “greener pastures” and “to live the Molson’s
beer commercial”, tells of finding the sexual adventures he sought, but now he is alone again. He
concludes his interview with the following admission:

I don’t think that too many in my position would say it is worth it...
Because the bottom line is -- if it’s important, y’know. I should say THAT -- that you are not going to
have the family life with your kids that you should have had.
Q. That’s true.
A. No matter what.
Q. That’s true. However --
A. -- Even if you have access -- as a FATHER -- even if you have access. Because the juggling now, the
weekends back and forth, the this and the that, is no way to live.
Husband/ Provider

The extent to which the fathers talked about their marriages was surprising. As well, the relationship between the role of husband and the role of provider was striking in the case of the five fathers with an order or agreement that includes spousal support. The social construction of identity as husband/ provider, and the perceived consequences of that identity cluster around a number of issues.

Competing needs

When the fathers talk about providing for their families, they tap into a number of discourses which are related to their identities as fathers and as husbands, and as moral beings. A few illustrations follow.

Art describes how his battles with his wife over money now extends to his teenage daughters:

And she fills my kids’ heads with all kinds of things, that your father did this, and your father did that, and your father should buy you THIS, and he should buy you THAT, and if he doesn’t buy it for you he just shows you that he doesn’t love you. So I wind up with this constant war that, No, I can’t AFFORD the $25 track pants this weekend. “If you love me, you would do it.” And yes, part of that is . teenage hormones . but . they’re doing -- especially the older one -- is doing the same thing to me that their mother did to me.

Loving the children, in their eyes, equals spending money on them. Caring, to them, means being a good provider. To Art, this feels like the marital relationship.

In other examples, he focuses on his responsibility as a provider.

I moved out of the house in May, I paid EVERY bill . on the house, the taxes, the maintenance, the insurance, the -- every food bill, every car expense, every nickel that . had to be paid while they still lived in the house until the end of June -- I PAID [heavily stressed]. OK?

*     *     *

My intention is NOT to-- My intention is NOT to uh, shirk my responsIBILrY of paying SUPPORT. The PROBLEM is that SHE feels that it should be an amount that SHE DECIDES! REGARDLESS of how much I MAKE! And it doesn’t matter how much it is -- It could be ordered at nine THOUSAND
dollars a month, she still would not be HAPPY. ‘Cuz she will NEVER be happy. . . It doesn’t MATTER how much it is.

Art tries here to establish the logic of presenting himself as a responsible provider in light of his default status. Two things get in the way of his ability to provide at the level which is demanded of him. One is that provision will never be definable as adequate so long as his wife gets to do the defining. The second is his inability to earn enough income to support all of them. This was true in the marriage, and it is aggravated now because having established his own household, he has needs that are separate from theirs.

Fathers have needs too, y’know!

This declaration on behalf of fathers as a category suggests that Art is defending himself not only as an individual, but as a category of person whose needs require acknowledgement.

The theme of competing needs is particularly strong in Randy’s interview, but in his case it is once again tied to the concept of reciprocity and fairness.

Well, there’s uh, there’s two major factors here. One is access and one is support. And I’ve always paid my support but I’m not gettin’ any access.

So I feel like I’m drifting away from my child even though I made all these decisions to make it very EASY to continue a relationship for my... with my daughter.

Q. And when... so it... it sounds like you feel like it’s not fair.

A. It’s not fair at all... It’s not fair to the child either.

I’ve had very few holidays. I’m just paying and uh.. working. and that’s it. There has to be some sort of reward here.

A. I would support [the child] FOREVER.. But I’m not going to support her if Mommy’s going to take rash decisions .. and NOT in the best interest of the child... [Former partner]’s already told me, she has to do this FOR HERSELF. She’s number one, as she said. She told me that to my face. That means the child is not number one. Your CHILD should be number one.

Q. OK. So .. if [Former Partner]’s saying the child’s not number one --
A. -- Mmm hmm
Q. --and if you stop paying support and then she's no longer number one for you, what happens? I'm just wondering -- You obviously care very much about your child.
A. Mm hmm.
Q. ...I'm, I'm tryin' to understand .. how you.. get from here to there. You care about what happens to this child very much. If she's with her mother in [the city], and you're not paying support, you worry about what will happen to her then.
A. Mm hmm.
Q. So then, what happened? There's a gap there?
A. Well, the only chance I have of achieving custody of my child is that if [W.] doesn't get support she has to get off her butt, get a job, and we'll both be in the same situation for time restrictions on taking care of C. In that case I maybe have a better argument on my side for gaining custody. So I basically cut my own throat at this point by giving her that much support. She can sit at home and sunbathe and be around for [the child] ALL the time. I can't.
Q. So, .. cutting back on the support or eliminating the support in a sense would force her hand.
A. It would force [W.], to grow up and have to get a job.
Q. So do you think about withholding support in order to get back some of the control, or.. to get some--
A.-- NO!
Q. --bargaining power?
A. That's not why. If I discontinue the support it would be because she was going to [the city]. And I would think that that was a breach of the contract.
Q. Ah, alright. So, "You're breaching the contract, then I don't have to fulfil my part--"
A. That's right.
Q. And does that mean spousal support only, or the child support as well?
A. Spousal support -- if I don't have access, child support also.

There is in these examples a complex mix of themes, issues and discourses. While a 'good parent' is constructed in terms of the 'best interests of the child', and the best interests of the child are constructed in terms of selfless caring, the parent-child relationship is reframed in contractual terms, and the issue becomes justice instead of the child’s well-being. The interpersonal dynamic that occupies the foreground switches from that of parent-child to the spousal one. Randy’s need for reciprocity and some sign of being valued threatens to take precedence over his caring for his daughter.
Gary explains that when he first left his family, he felt guilty about the pain caused to his wife and children, and therefore he was "generous" with support in the initial agreement. Besides, he says, "I could afford to be generous," because business had been good the previous year, and he was in the midst of a "tax holiday" after joining a new partnership. Afterwards, however, as income and guilt both diminished, he was unable to keep up with the payments ordered by the court.

I couldn't pay it. I mean it's IMPOSSIBLE. How'm I supposed to LIVE?

He feels the court expects too much from him and not enough from his wife, who is not earning any income.

I'm being beaten up and she's . doing NOTHING.

The sense of competition focuses on a struggle for recognition and consideration. The issue of needs and means is supported by the discourse of equality: the fathers reject the idea of 'women and children first'. Again, we see themes and discourses shifting back and forth, slipping in and out, at times making us wonder whether the father hears himself talking. What is consistently absent (except in Gary's case) is acknowledgement that there are differences in earning power between themselves and the wives who have been home with children or working part time throughout the marriage. As well, concern about the effect on children of having a single parent who works full time is never expressed by any of the fathers. It is perhaps less surprising that none addresses the difficulty of being a full-time single parent who works.

**Explaining non-payment of support.**

Donald accounts for non-payment of support by the kind of fathers "you read about in the paper every day" by explaining that the courts fail to recognize the needs of fathers, setting support too high, and bringing fathers to "the verge of financial ruin'.

A-nd it's no WONDER, because CLEARLY . . you HAVE to look at a situation where NOW, the male has left the matrimonial home, has a responsibility, yes, to his children. I'm gonna say LESS so to-o, to
the wife, only because, in the eyes of the COURT, she does have to become self sufficient — and whether she does or not is irrelevant, BUT, that's the PREMISE — and you ALSO have to maintain your OWN residence, Y'know?

In Donald's view, the courts share the responsibility for non-payment of support with lawyers and with women themselves. He declares himself completely unsympathetic to women who do not receive support because

they have CAUSED their own PROBLEMS. They've GONE to lawyers, they've made FALSE accusations” to lawyers, who pass the misinformation on to judges, who accept it and make what he considers to be punitive orders.

When Neil is asked what he would think of a father who would stop payments in circumstances like his own (i.e., no contact for a prolonged period), he says:

My feeling about that would be, they let their anger get in the way.
That's just based on MY feelings...
Q. Is that a position that makes any sense to you?
A. Sure.

All the marriages in the sample can be characterized as traditional, in the sense that the father acted as primary financial provider. This is true even in the two cases where the wife had worked during the marriage. The role of primary breadwinner was accepted by all of the fathers during the marriage; in most cases, having a wholly dependent spouse was also accepted. After separation, though, the meaning of father as provider changed in every case, though the nature of the changes is not consistent. In general, each man comes to expect that a separated or divorced custodial mother is no longer entitled to be a stay-at-home mother. The fact that being primary caregiver following separation is more, not less, demanding outside the context of marriage is never addressed. In the context of separation, the fathers consistently focus on the legal or moral obligation of mothers to contribute to the financial support of their children or themselves. Most of them also focus on the inherent practical difficulties of trying to support a wife and children when two households must be managed on the same amount of money previously relied upon for one. In
every case where the problem of ‘not enough money to go around’ is raised, the problem is posed in terms of competing needs. When the fathers talk about their own needs, the needs of the children tend to disappear from their talk; yet, they do not present themselves as uncaring or irresponsible when this happens. Only the father who has custody of both children and is himself a support recipient is able to hold both the needs of the father and the children in view and acknowledge the contradictions without any distress.

The fathers have a number of ways of talking about their role as material providers. Their construction of the role of provider consists of more than just talk of work and money, even if one includes in this category issues of financial ‘needs and means’. It is shaped as well by discourses of equality, relationship, and morality, and is closely associated with the spousal relationship. Rarely, the discourse of the child’s ‘best interests’ is used, but this tends to be restricted to contexts where ending contact is involved, not only reducing or ending material support. There are suggestions that withholding support may, depending on the individual, be an expression of anger, or a desire to regain control, or resistance to the perception that one is expected to sacrifice oneself for others. Sometimes these expressions are directed not only at the former spouses but at judges and lawyers as well.

In several cases, the roots of the current conflict over support are shown to be traceable back to the troubles that, from the father’s perspective, plagued the marriage. Money is intertwined with relationship and unmet expectations. All the fathers present a puzzling ingenuousness regarding their expectations of post-separation family life. Each one talks as if he fully believed the transition from intact family to separation and divided family living would be pain free, would be characterized by co-operative parental relations and would, above all, allow him to “move on” in whatever way he had hoped for. There are indications that those fathers who recognized their parenting had been less than optimal during the marriage anticipated they would become better fathers once separated. The one father who claims to have achieved this improvement (Donald) nevertheless describes a relationship with his children that is quite marginal. For the others,
separation brings alienation from the children, loss of contact, involvement or “input”, and emotional struggles with wives portrayed as angry, irrational, vengeful, and controlling.

Gary traces his former wife’s current financial dependence on him to his disappointment in her refusal to work outside the home in order to broaden herself. Art establishes how, from the very beginning, nothing he could do seemed to satisfy his wife; no matter how hard he worked to provide the things she wanted, she always wanted more. Randy tells how his partner controlled him even when she was still pregnant by threatening to prevent him from seeing his child if he ever left her. Since separation, he has tried to maintain control by holding the purse-strings.

In every case except Donald’s, there is a report of actual or threatened interference with the father’s relationship with the children. Ironically, Donald’s former wife is the most co-operative, and he demonstrates perhaps the most limited commitment of all the fathers in the group; he is also the father whose story makes it clear that fatherhood was a secondary, rather than a primary attachment for him. He talks at great length about why he left his wife for another woman: when she became a mother, he lost his central role in the household and felt sexually and emotionally neglected. Having initially identified himself more as a lover than a parent, he continues to carry this identity now.

While all of the fathers endorse the principle of being responsible for the material welfare of their children, there is considerable resistance to the perception that they are expected to bear sole responsibility. (This is actually an inaccurate perception in the case of Donald and Art, where the former wives are both caregiver parents and work part-time. Donald’s wife has two part-time jobs.) It is at this point that the discourse of equality is brought in. What is particularly striking is that fathers who describe themselves as willing to accept the role of sole provider during the marriage are not willing to do so once the reciprocity of marriage ends. Donald describes himself as a willing breadwinner in the early days of the marriage. He was raised in what he portrays as a patriarchal household, in “old fashioned ways”. His mother always had dinner on the table when his father returned from work; she doted on her sons. Hence, Donald was “very happy” to have
his wife stay at home, so long as she actively demonstrated appreciation (verbal and sexual) for him as provider. Once she turned her attention to the children and he came to feel unappreciated, he turned his attention to another woman; once he left home, he expected his wife to start being a breadwinner too.

Art describes many years of working hard, even changing to a higher income occupation, in efforts to meet his wife’s expectations of him as a provider. Now that he has left her and concludes there is no way to meet her expectations because they are always excessive, he is unwilling to have her as a dependent. Randy was quite willing to continue being the sole breadwinner so long as he was able to maintain the semblance of a co-operative family living in two homes. Gary, on the other hand, always encouraged his wife to go back to work once the children were no longer little; not because they needed the income, but because he worried that she had stopped growing as a person, and would consequently be an unsatisfying partner when the children ceased to be the focus of their existence. He grants the legitimacy of compensating a woman for the financial setback incurred by full-time child-rearing but rejects the notion of owing his wife “a pension for life”. He describes how she filled the gap when he could not be present for school concerts, or daily activities because of the extensive travel his career demanded. He had clearly grown accustomed to her serving as the mediator of his relationship with the children. In fact, it is her refusal to continue in this role that particularly angers him.

**Husbands as bad guys**

When Gary’s expectation that with his wife’s support his relationship with the children would continue was shattered and the children grew distant and critical, Gary experienced a painful and unanticipated loss. When he could not afford to fulfill the dream of sending his son away to college in the U.S., his image of himself as a provider of broadening opportunities for his children -- established when they were little -- was also shattered. Finally, when he was unable, as he claims, to continue paying the amount of support ordered by the court, and he experienced
criticism from the court as well as friends and family, his image of himself as a ‘good person’ was severely shaken. A successful professional in his own right, Gary gives this summation of how it felt to be at his court hearing:

[T]he judge just doesn’t wanna LISTEN. And it starts: Well maybe these people are all RIGHT. Maybe I really AM a creep. Y’know, and . and a terrible supporter and father.

Echoing this sentiment, Keith explains his anxiety about having to return to court, even though he is reasonably certain the matter with FSP will be easily settled in his favour.

Because I know the power they have! And uh, if I say the wrong thing, they’re gonna JUDGE me. It’s their job to judge people. It’s, it’s disgusting, but --

Q. You mean the judges.
A. Yeah, the whole system judges you. And uh --
Q. So you don’t just mean the judges.
A. The whole SYSTEM. The whole legal system is uh, making judgements about you when they don’t KNOW you. And that makes me mad too.
Q. How do you think you were judged?
A. Well, first of all, that I left. So I’m the bad guy. Um. That’s like a leg -- That’s a MORAL judgment that they’re putting into LEGAL terms. I’m the deserter! Bullshit! I didn’t WANT to desert my son. I had no IDEA it was gonna happen like that. Um.

Keith’s perception that the system turns fathers, particularly “deserters” and men in arrears, into bad guys emerges again when he tells of the difficulties he has encountered with FSP. He describes a scenario in which he fell into arrears because he was waiting for a cue from FSP that never came to resume payments which they themselves had previously suspended.

...see, I think it’s almost -- the philosophy is almost, We want to catch you being a bad guy.

Donald bluntly declares that he was treated as “scum” by the judges he encountered, presumably because he was perceived as deserting his wife and children.

Q. How did they make you feel like scum?
A. Just strictly by the order they granted. That they put UPON you.

And Randy conveys his surprise at discovering that the men he met at the Single Fathers’ group did not fit his preconception of dissolute bachelor fathers.

They don’t SEEM to be bad people. They’re not misfits, and negligent people you read about in
the paper. They’re still making their payments, they’re living in a spare room in their parents’ basement, they’re not drug addicts —

Q. Where do you suppose “the guys you read about in the paper” go? Like, where are they?
A. I dunno. I dunno.

The preoccupation with moral identities seems to emerge to a significant extent from the experience of the process of being judged. Donald and Art perceive that they have been judged by the court as persons and found wanting. Gary also refers to being judged by others as a “terrible person”. And Neil claims that not only the judge, but the police, the representative of the Official Guardian’s Office, the children’s school principal, and even his own lawyer, had judged him to be “strident, neurotic” and “controlling” whenever he insisted his wife’s plan was to separate him from his children. In Randy’s case, he himself had adopted a popular negative stereotype about single fathers. His relief when he found that single fathers do not all fit the construction he has encountered in the media suggests his desire to distance himself from that construction, to avoid identifying himself as a ‘bad guy’.

Morris, himself a support recipient rather than a payor, nevertheless puts himself in the shoes of a single father with a limited income who is obliged to pay support and incurs access costs as well. He describes the dilemma when such a parent is faced with personal sacrifices, such as liquidating assets.

Uh, you’re asking a LOT. And uh, and uh, in EMOTIONAL terms you may be. y’know, confronting a guy who really DOES wanna see his kids and and and AND! And you say, Give up these THINGS. y’know, to pay the SUPPORT. Y’know, he’d say, Well, I’d rather have the ACCESS than pay the SUPPORT. I’d rather have the ACCESS that the car allows me to have. Eh, so it’s very tough. It’s a very, very difficult situation.

In this excerpt, the tension between relationship, morality, and finance emerges particularly sharply. (This was precisely the dilemma he indeed faced at the time of separation, when he believed his wife would obtain custody.) Here, access and support are not constructed as reciprocal, but as mutually exclusive. Morris’s way of resolving this dilemma was to get custody
An unanticipated finding of the analysis was the social identity of citizen, which was present in virtually every interview. The identity of citizen is about something different from being a 'good person'; it encompasses one's rights and obligations as a member of society, and one's relationship to the state. Because a father's performance as a provider is subject to public scrutiny and institutional judgement, the moral aspect of the provider role serves as a bridge from the private to the public domain. Whereas the identities of husband/provider and father focus on the intimate relationships of the family, the social position of citizen centres around one's standing in the community. Each father also tells how some flaw in the system has contributed to his loss of status or rights. Examples from each father follow:

Randy says that in the midst of the emotional crisis he is experiencing,

I have to keep a focus on my practice and my staff has to not think that I'm losing it. My patients can't think that I'm losing it.

Describing a recent altercation with his "ex" in her driveway (with the child present), Randy explains his mounting concern about the consequences of the conflict between them:

And what would have happened if I said Boo, and she slipped on my truck? This is a person who's already threatened to call the police. She knows the rules in and out. How would that have looked on me if the police came and I was in her driveway and she had a bruise on her elbow?... What—what happens to my life? I-- I KNOW right there, I won't see my daughter EVER again, and I think you know that too, AND, my reputation would be shot, my practice would be shot.

He talks at length about his disillusionment with the entire justice system, which he perceives has failed to protect his rights as he had faithfully expected it would. He recalls an earlier experience with civil court where he lost his case against a dishonest contractor because the judge just "played with his pencil", showed no interest in the facts of the case, and didn't know the relevant legislation very well.
Donald also complains about his treatment as a citizen by the justice system as a whole:

Y’know, the idea of a democratic justice system is that everyone is dealt with fairly. Well, there’s no such thing as FAIRNESS!

He calls the system “archaic” and says it “doesn’t serve the needs of the people it’s supposed to, and who NEED it!” He compares his treatment to that of serial murderer Paul Bernardo, whose infamous trial was underway at the time of the interview. He claims that even Bernardo was treated fairly, while he was not.

I’d like to think that I’m a law-abiding citizen, and if I come to court filing a document that says that’s what I MAKE, well, then, I think you should BELIEVE it! OK? As opposed to, believing when someone says that he’s got a safety deposit box filled with cash, and makes over $100,000 a year. Well, she says THAT, and I say THIS, there’s a pretty big discrepancy there.

Art strongly criticizes the adversarial justice system and makes a strong plea in favour of mediation, though he concedes the point that when people are as unreasonable as he claims his wife is, even mediation may not succeed. He then talks about how he had previously never been anywhere near a court before, “not even for a parking ticket”. Prior to the separation, his only encounter with the court system had been as a witness, and even then, he says he did not have to testify. Echoing Donald and Neil, he claims he has always been a “law abiding person”. Asked what effect his involvement with the court system has had on him, he says

A. Back then, I thought the system worked!
Q. And now?”

His response is an expansive, contemptuous shrug. Elsewhere, he emphasizes his honesty and openness in making his financial disclosures during examinations for discovery.

Gary claims that he was treated punitively by a judge who has been on the same bench for so long that his professional distance from the lawyers who appear before him has been compromised. The judge, who Gary perceives has become “too palsy walsy” with the lawyer who represents Gary’s wife, “has got a bee in his bonnet” about Gary because of stories he probably heard about him being “a homewrecker” and a “fat cat Bay Street lawyer who put his wife on the street”. Because of this impression he thinks the Judge has of him as an immoral person, Gary
believes the judge did not “follow the rules” in applying the law to his case. Consequently, he says.

I’m concerned that judges have LOST their . . independence....

I’m saying the law’s inconsistant. ... You should be making this more objEective than Subjective...

Accordingly, he preferred an open trial to having matters settled in chambers, because an open process was likelier to ensure fairness. He worries that the less public process bypasses issues of accountability. He questions the lack of due process in the action taken by FSP prior to a default hearing in court. Gary also resents being pursued aggressively by FSP when he is paying a large sum monthly, while others who pay nothing are frequently not bothered by the Plan.

Why are they coming after a guy like ME?

Here’s a guy who’s paying $6,000 a month and who’s considered a deadbeat. I’m lumped in with everyone else. There’s no distinction....

I’m a lawyer with a good reputation and I’ve been turned into a deadbeat.

He consequently finds himself in a difficult position. On the one hand, he claims he is unable to pay the full amount that the judge ordered; on the other, he is worried about his reputation in the community as a “deadbeat”.

I really don’t wanna breach this judge’s order... anymore than I HAVE to. afterall I AM a lawyer.

I’m an officer of the court. and how does it LOOK?

The logic is this: The judge’s distorted perception of him as a bad husband and “terrible supporter” leads to personal judgement of him as a bad person, which leads to public treatment of him that is unfair and does not respect his rights. His personal identity and social status in the community are thus diminished; he now perceives himself to have been transformed from respected lawyer to bad husband to “creep” and “deadbeat.”

Like Gary, Keith also worries about due process. He refers to the unacceptable “hallway justice” he experienced in provincial family court, where decisions were hastily made by lawyers and social workers whose recommendations the judge accepted without hearing the facts of the case. He perceives a lack of concern for individuals and a dangerous lack of accountability in this process. In describing the unresponsive nature of FSP’s contact with payors, Keith seems to be
saying that he felt he was being treated as inconsequential at best, a ‘bad guy’ at worst. They neither talked nor listened to him, and his frustration is palpable:

You can’t even phone them [FSP]! You CAN’T PHONE them! I, I TRIED! You get a tape recording, um, they will NOT talk about your case. Um. When you DO get an agent, he’s some guy way off somewhere. He doesn’t know about the case. And all you get is wr-- is correspondence! Like, Come to court, um. --

Keith also talks about being particularly vulnerable within the judicial system because he is “low class”.

Class is everything. [laughs ironically] And I’m low class. Well, that’s what I got. That’s what my son got.

He believes that if he had money, “it would have been totally different”. He could have hired a better lawyer and fought against sole maternal custody. He might have been able to stop his wife from removing the boy to another town.

Neil contrasts his own approach to professional practice with the lawyer who billed him for work Neil had not authorized him to do:

When I make a mistake, I EAT it.

Nevertheless, he chose to pay the lawyer, explaining

Well, I didn’t know what else to DO! . I want my credit rating, I don’t want any more court action[laughs]. Y’know? I guess I was kind of afraid.

Although being dis-credited is a substantive outcome, the discrediting effect of being perceived and treated as a dishonourable/irresponsible person by an institutional authority seems to be almost motivation enough for Neil.

Morris seems to capture the very public perception that the other fathers claim they have encountered when he characterizes defaulters who “can afford to pay and don’t” as social pariahs:

You DECIDED to become a father. Uh. when you decided to divorce your wife that was completely independent. You can’t decide NOT to be a father. So. [contribute] SOMETHING!. Um .

Living in this society, we support our children. If you don’t WANNA live in this society you can leave the COUNTRY. If anybody else will let you IN. WE won’t.

In other words, supporting one’s children is not only one of a parent’s personal responsibilities, but one of his or her obligations as a member of society. If (s)he fails to fulfill it, (s)he forfeits
rights to being a citizen of that society.

All of the fathers make a point of presenting themselves as good citizens and worthy members of society. They do this either directly or by talking about the perceived unfair challenges to their credibility, honesty, decency, etc. This self presentation is related to encounters with an institutional system that is perceived by them to be, at best, unsupportive or incompetent, and at worst as depersonalizing, devaluing and criminalizing. The relationship of each father to the justice system, and to institutional authority in general, has been significantly altered by his encounters with the divorce system. As a result of the perceived flaws in that system, the expectation that the system would protect them -- and in some cases, the children -- that it would stand up for them, as it were, has not been met. The fathers are unanimous in perceiving that they have been the victims of unfairness and/or incompetence, and sometimes of outright hostility on the part of a judge, lawyer or other individual. There is a strong sense of cynicism and lack of faith in a system that was previously held in esteem. In fact, Art, Neil and Randy express an almost naive trust in the justice system prior to the separation experience. Even Gary talks about his abiding faith in 'the law' (as opposed to the judges who interpret it or some of the lawyers who manage the procedures). The adversarial orientation of the system is seriously questioned, and mediation is strongly preferred by every father. In each case, the faith in mediation is not unlike the faith previously held in the judicial system; i.e., that it would be "fair". This corresponds in each case, probably not coincidentally, to the father's belief that his own interests would be better protected.

*     *     *

The theme which emerges most strikingly is that of justice, constructed in a discourse of fairness and rights. The emphasis is on distinguishing 'good' citizens from 'bad' ones, so that individuals who have met their civic and moral obligations are not criminalized along with those who have not. This preoccupation with one's public identity as a social actor is an unexpected finding. It stems from the men's behaviour as fathers and husbands, yet is very much about behaviour vis a vis institutional authority as well. This identity takes the father outside the realm of
his personal relationship with his former spouse and his children, beyond his circle of friends to those with whom he works, does business, has social encounters of various kinds, and to all those who represent the state in matters of family law. Behaviour which has hitherto been considered a private marital and family matter is now publicly judged. An order to pay support signifies the power of the court to label and to punish. When the obligation to pay support is not reciprocated by satisfactory custody and/or access arrangements, justice is perceived to have been denied. The invocation of one’s status as a deserving citizen, as well as one’s rights, appears to represent resistance to the perception of being designated an undeserving citizen who need not be treated justly. The identity of ‘bad guy’ is rejected and the consequences of this social positioning are bitterly resented.

In the solutions proposed or inferred by the fathers, we find a particularly interesting contradiction. All want to see more fairness, objectivity, and equality in the system; at the same time, most also want a more personalized, problem-solving approach which takes the specific circumstances into account. They complain about the “legalistic”, “adversarial” and bureaucratic nature of the system, in which neither their own nor their children’s best interests are ever really known prior to decisions being made. Randy is the most obvious exception to this: He believes strongly in the power of the legal contract to regulate human social behaviour and keep everything fair. If the contract is respected, and the legal principles followed, then the outcome will be as it should be. It is not coincidental that Randy is also the only father in the sample whose original agreement was mediated without the involvement of opposing lawyers. Having been satisfied with the original agreement, all he asks is that it be enforceable; however, he has found that access is in fact not easily enforceable.

Complaints about being silenced, ignored, disbelieved, or simply not being considered in the context of one’s particular circumstances, express a sense of depersonalization or negation that the fathers react to strongly. The language of being judged without being ‘known’ or, worse, misunderstood, conveys a sense of being disregarded or unrecognized that seems to have the effect
of effacing identity. The ultimate statement of this comes from Gary when he tells how his bank accounts, credit and bank cards have been "kind of frozen and locked out".

Q. What has that been like for you?
A. My girlfriend, my mother, and even my secretary all say to me "How can you, sort of, manage to LIVE? How can you even have some kind of a PERSONALITY with all this stuff?" He goes on to say he has contemplated leaving the country because "Who cares about me? My kids do, but they have their own lives". On the other hand, he has decided to stay and is losing his fear of the consequences:

The more you're pushed to the wall the less you feel you have to lose...

[The Judge's] decision was like an anaesthetic... it's like you died once and now you're resurrected and can't be killed again.

A sense of resistance emerges here. Feeling trapped in a no-win situation with respect to money, the court, and his relationship with his children, he has taken up a position which counteracts the powerlessness he otherwise finds overwhelming.

Victims

The various experiences of loss and disempowerment along with charges of injustice, bias, criminalization and depersonalization by the system lead all the fathers to perceive themselves and/or their children as victims. The only exception is Morris, who expresses grave concerns about the fate of children under the current system, and who pre-empted his own feared victimization by gaining custody. The presentation of themselves as helpless, disempowered and victimized is particularly curious and compelling in a sample of mainly middle class, non-immigrant, white men. In the section on Husbands and Providers, I looked at how the fathers talked about feeling controlled by their former wives, particularly in relation to access and support. In this section I will focus primarily on the fathers' perception that the system has supported the mothers' control, thus further disempowering the father.

Keith actually uses the term "victim" when referring to the outcomes for his child:

It all comes down to my son is the victim of it all. He's a victim of the adults fighting. He's a victim of
the stupid court system --
He claims he was and continues to be “intimidated” by the power of the system (including FSP), and mistrustful, particularly since he perceives it as a system hostile to fathers.

Because I know the power they have! And uh, if I say the wrong thing, they’re gonna JUDGE me. It’s their job to judge people.

Keith also feels “screwed” by his wife, not financially but in terms of his relationship with his son. He describes her as irrational, selfish, irresponsible, inflexible and vengeful, but points out that it was the court’s bias in favour of mothers, “no matter how unfit she is”, that made it possible for his drug-addicted wife to keep his son from him.

The accusation of bias in the system against men is repeated by Donald, who claims that his own lawyer warned him he’d get “cremated” because “you’re not wearing a SKIRT”. And Neil takes a similar position. He feels the court’s accession to all his wife’s demands and its essential lack of consideration for him as a father made it possible for her to eventually disappear with his children.

The belief that the law is protecting children is fundamentally WRONG. And I’m gonna say something that I know is controversial. I lay this at the foot of the woman’s movement.

As a male, Neil sees himself and his children victimized by a system biased in favour of women. He feels he was personally victimized as well by an unreasonable judge who he claims has a reputation for incompetence. As for the two lawyers, Neil perceives he was dependent on them to protect him, and they failed to do so.

I didn’t know anything about the law. OK.? It’s a black box... I’m just a simple . health professional. I understand how bodies work, and I’ll talk to you for six weeks on anything on how the body works. But I don’t know about the law.

Towards the close of the interview, after I comment on the picture of two little girls on his desk, Neil says there is a “wall full of photographs” in his home showing his daughters at the age they were when he last saw them. He then says:
I feel so powerless.

- Q. That’s the first time you’ve actually used the word “powerless”.

  A. Yes. I DO feel powerless. TOTAL. ABJECT powerlessness. Y’know?

- Q. That’s what I keep hearing over and over again.

  A. Yes, yes. ABSOLUTELY. You’ve heard the expression, The system
treats fathers like wallets...

  It USED to be biased towards men. And that’s not right. And now it’s biased towards women and that isn’t
right -- toward the custodial parent, I guess -- and THAT isn’t right EITHER.

Gary also conveys a sense of powerlessness that is focused on the unpredictability and lack
of accountability he perceives in the system. Like Randy, he feels he has no control over the
outcome.

  I haven’t got a choice. I just have to sit back and wait.

  Art explains that he and his wife have fallen into “a legal black hole” from which they have
been unable to extricate themselves due to the judge’s incompetence, the inefficiency of the system
and the venality of the lawyers. Art makes the point that if those in the system can’t figure out
what to do, how could he and his wife be expected to manage a trial without legal counsel?

  I have NO IDEA what to do.

To make matters worse, his wife has reached the limit of her Legal Aid and although Art is eligible,
his lawyer refuses to undertake Legal Aid work because of the complications entailed.

  Randy also talks about feeling helpless and controlled by others who don’t necessarily have
his best interests at heart:

    Well I don’t know if [my lawyer] just didn’t do the initial agreement properly or was tryin’ to just
shuffle it off to the side or what. I’ve got no idea. I’m not a lawyer, I’m a dentist. It took me four
years to learn how to drill little holes in little teeth. And I’m talking to all these people who can
determine your life .. and I’m thinkin’, Where’s the balance here?

The presentation of self as disempowered and victimized is important not only for the
subjective experience of the fathers that it suggests, but to the perception of oneself as passive in the scenario. There is a consistent tendency for the fathers (other than Morris) to present themselves, in all aspects, as reactive rather than pro-active. Having taken up the position of victim, they are no longer able to see themselves as agents on their own behalf or as initiators of behaviour that may have affected others. The only exception to this is that all of them see the money owed for support as a vehicle for regaining some control, or at least of resisting control by the former spouse and/or the system. The dual emphasis on victimization by the former spouse as well as by various institutional representatives is consistent with findings in the literature and in my own earlier study of conflation of the wife and the system by fathers.

Ironically, Art, Neil, Keith and Donald all tell how they have managed to beat the system (or at least fend it off) by sticking to the letter of the law. Keith figures the ‘‘loophole’’ in the system that keeps his payments low, while giving his wife social assistance, may actually have been put there so fathers can express their caring and autonomy as parents through discretionary supplemental spending on their children. Donald explains how he beat the system by limiting his payments to exactly the maximum garnishable amount, knowing that the arrears would mount up but that FSP could not legally take any more from him. Neil, whose control is exercised in the reverse way i.e. by paying support and maintaining his identity as a good father and good person, also maintains the identity of good law abiding citizen by being absolutely scrupulous about getting payments in on time, and notifying FSP in writing annually of what the Cost of Living increase will be unless he hears otherwise from them. In other words, he feels he is in control of FSP so long as he stays a step ahead of them.

Art takes up the identity of a ‘‘bankrupt’’ to declare repeatedly he is not in a legal position to meet his ex-wife’s demands, nor even those of the incompetent judge.

Here I’m an undischarged bankrupt, he’s demanding that I indemnify her to the bank for the bank loan -- which I cannot legally do, because I’m an undischarged bankrupt -- . It would mean NOTHING.

And it says right on the front page of the letter than I am an UNDISCHARGED
BANKRUPT! I'm BROKE!

It is significant that Art had initially resisted this identity and sought the advice of several professionals before conceding that bankruptcy was an advisable, though regrettable step. Now he takes it up avidly as a resistive device.

Randy tries to regain control by “looking for black and white answers” even though he realizes the system is anything but black and white. He is looking for certainty, predictability, of the kind that all the fathers claim is lacking in the system. As Gary puts it,

145 Queen -- which is General Division (Court) -- is like the OK Corral ... there is NO consistency, there is no following the rules.... It's a gambling casino.

It is an image of vulnerability in the midst of chaos, danger, and ill will, and it sums up the feelings of all the fathers except Morris.

Summation

A complex assortment of subjective positions is discernible in the fathers’ interviews which helps to understand how fathers are able to espouse one view while contradicting it with another (or with their behaviour) without apparently recognizing the discrepancies. No father maintains a single position at all times; each moves in and out of different subjectivities, sometimes presenting two or more alongside each other. Some have unexpected prominence while others seem less significant than was expected. At times these multiple identities, and fragments of identities, support one another; at times they seem incompatible or actually undermine one another.

We can see in these contradictions the tension between competing constructions of couples and families, fatherhood, and the role of the state in regulating certain aspects of the separated family. The central social identities, or subjectivities, that have been examined are the fathers’ presentation of themselves as fathers, as husband/provider (breadwinner), as members of the community, or citizens, and as disempowered victims of a flawed system of laws and institutions. They talk about unwanted identities that they perceive the justice system has imposed upon them. They talk about
identities that they value and perceive have been devalued or removed. Some create inner struggle as the fathers try to hold onto the preferred identities; some are rejected outright, and some are adopted. The dominant struggles around subjectivity focus on the following:

1. 'good' fathers vs. 'bad' fathers,
2. 'traditional' patriarchal marriage/family vs. 'modern' marriage/family,
3. competing needs of family members (emotional and financial);
4. loss of status, control, and relationship, at both 'private' and 'public' levels;
5. criminalization and depersonalization, and
6. vulnerability and helplessness in relation to the state and to the wife.

I understand these themes related to competing subjectivities as sites of resistance to the way fathers are positioned and characterized by the state when parents separate. Resistance is expressed in a number of ways:

1. non-payment as legal strategy,
2. no-one should be controlling me/ I'm not less important than anyone else,
3. rejection of 'bad guy' or 'criminal' identity/ holding on to positive moral identity,
4. this isn't fair, and
5. there isn't enough money.

As the fathers seek to explain their perceptions of changes in subjective position, they look outside themselves for answers. One consistent explanation is the marriage and in particular, the wife. Former wives are portrayed as angry, vengeful, self-centred and therefore destructive to their husbands and children. In most cases they are portrayed as unstable or emotionally troubled. A second external explanation is found in the justice system and the procedures which govern separation and divorce. The main complaints are:

1. Bias is perceived in the law itself and in the institutions favouring mothers and disadvantaging fathers.
2. The system is seen to treat all non-custodial fathers obliged to pay child support as if they were
criminals.

3. The adversarial nature of the system pits former spouses against each other, promoting hostility instead of helping to resolve issues for everyone's benefit.

4. The system and procedures are depersonalizing, with substantive as well as subjective consequences.

5. The people who administer the justice system tend to be corrupt, incompetent, biased, or acting out of self-interest.

   The chapters on *Legal Texts* and *The System* will examine some of the ways in which law, policies and institutional practices contribute to this positioning of fathers. The Discussion chapter will consider the ideological, economic and social context in which this takes place.

**NOTES**

1. I use the term “themes” as it is used in the tradition of naturalistic enquiry, in the sense of “categories of meaning” or “conceptual categories” taken at face value as they emerge from the data (Taylor & Bogdan, p. 136-140). “Discourses” are regulatory patterns of talk which are part of the larger, contextual arenas within which the themes are constructed.
IV. FINDINGS: LEGAL TEXTS

I turn now to the line of inquiry which examines how fathers are constructed by the statutes and case law relevant to custody, access and support in the context of family separation or divorce, with a view to discovering how they fit into the dynamic relationship between fathers, institutions, and law as the separation/divorce process unfolds. The preceding chapter examined the primary areas of social identity found in the fathers' interviews, both those which they have taken up as separated fathers and those which they reject. In this chapter I present the analysis of the relevant statutes and case law on fathering, marriage and family, and the role of the state in the family to find how separated families are constructed, and non-custodial, support-obliged fathers in particular. The emphasis will be on identifying the social identities made available to fathers through these constructions. I will be examining how separated and divorced men are constructed by as parents, husbands, and as members of society by the body of law represented in the sample of legal texts selected. The role taken by the state as it intervenes in the family will be considered throughout this part of the analysis.

Sample of Legal Texts

The sample includes three types of texts:

1. The relevant statutes themselves, which are the expression of the provincial or federal legislature regarding the state of the law. The legislation in question includes the Divorce Act, 1968, and Divorce Act, 1985; the Ontario Family Law Act, the Ontario Children's Law Reform Act, the Family Support Plan Act of Ontario, and Bill 124: An Act to amend the Children's Law Reform Act. The sections referred to in the analysis can be found in Appendix G.

2. The relevant case law, based on published case law reports, which reflects the interpretation and application of the statutes to the facts and circumstances of individual cases. Case law decisions may be at the level pertaining to motions (pre-trial), trials, or appeals and therefore
involve different courts at different levels. While ‘higher’ court decisions are considered binding upon ‘lower’ courts, the converse does not hold; nor are decisions binding on courts at the same level. When a lower court judge finds distinguishing facts in the case before him/her, an applicable decision of the appellate court is not necessarily binding. All decisions, at any level, become part of the body of law which will be considered in future cases.

3. A selection of textual materials prepared by legal scholars for practitioners of the law. These include two widely recognized annotated editions of the Divorce Act and the Ontario Family Law Act, respectively, and legal analyses of custody, access and support enforcement prepared for students of the Ontario Bar Admissions Course, 1992.

**The Legal Construction by the State of Divorced Fathers**

In the process of terminating a marriage, all parents lose some of their usual control over the right to determine the issues related to their children’s welfare. This happens in a number of ways: through regulation of custody determination, arrangements for access to the child, support of the child, support of the former spouse where appropriate, and enforcement of all these arrangements. In its function as parens patriae, the law gives the state the responsibility to withhold a divorce decree until "reasonable arrangements" for the support of the children has been settled. Parens patriae, literally, ‘father of the country’, refers to “the sovereign power of guardianship” over the welfare of children, hence to the state’s obligation to protect the economic and physical well-being of children (Vayda & Satterfield, 1989, p. 84fn). The following two excerpts from case law decisions pertaining to s.11 (1) (b) of the Divorce Act 1985 illustrate different judicial positions regarding the state’s role in support arrangements.

1. Even in the absence of independent legal advice, where the parties understand the terms of a support agreement, and such agreement is not unconscionable, it should be respected by the court: *Fanning v. Fanning* (1989).

2. Under the Divorce Act, 1985, the court has an obligation to satisfy itself that reasonable
arrangements for child support have been made. The reasonableness of arrangements must be determined in the context not just of the spouses but in all the circumstances which include such items as assistance from other family members or friends, social assistance, and other relevant circumstances. In such instances, the court should not simply 'rubber stamp' an application for a desk order divorce: *F.(R.D.) v. F. (S.L)* (1987).

The same applies to any agreement regarding custody.

1. It is the court's position that the agreements... may well be a reflection of the thinking of the parties and to that end are instructive to the court in considering the issue of custody of the infant children, but that in no sense is the court bound by whatever the parties may have heretofore agreed to themselves when dealing with the custody of the infant children. per Green Prov. J. in *Henderson v. Henderson* [1977].

2. Where the custodial mother wished to relocate with her children to British Columbia for no particular reason, the court allowed the father's application for an order restraining the mother from removing the children from the jurisdiction. As the move would disrupt the children's lives and interfere with their relationship with their father and their family, it was clearly not in their best interests *T.(K.A.) v. T.(J)*, (1989).

These examples show the courts' attempt to balance the state's supervening legal function as *parens patriae* with respect for what is normally defined, in liberal ideology, as the private domain of the family. Although parents might expect the court to take over the decisions for the children's welfare in a contested divorce case, the above rulings indicate that even in cases where parents are in agreement and the proceedings are uncontested, the court has the responsibility of assessing the suitability of the agreement and of intervening accordingly. If parents do not seek a divorce, however, arrangements which might be considered unsatisfactory by a court remain private and therefore unchallenged.

An additional and quite different justification for intervention is offered in the following case decision:

The requirements of s. 11 (1) (b) of the Divorce Act are entirely for the benefit of the children...

However, where the non-custodial parent can well afford to pay more, the burden should not be
A support agreement must meet not only the needs of the children, but, to some extent, those of the state as well. Thus, the state is in several respects not a disinterested party in these matters, and the issue of state financial support is added to the mix of competing considerations to be weighed by the court.

**Custody and Access**

The interpersonal relationship between separated fathers and their children is defined by the laws regarding custody and access. Custody and access issues are dealt with under Section 16 of the Divorce Act, 1985, and where variations of custody and access orders are concerned, Section 17. Two important changes to the 1985 Act are the introduction of joint custody as an option available to the court, and the determination of custody *solely* on the basis of the “best interests” of the child. These principles, along with a number of additional key principles (i.e., the principle of “maximum contact” and associated ‘friendly parent rule’, the principle of gender equality, separation of access from support), shape the ways the court may exercise its responsibility to protect the child on behalf of the state.

**Joint custody**

MacDonald and Wilton (1992, p. 250) point out that the new *Divorce Act* does not, however, make joint custody mandatory or presumptive. Canadian divorce law implicitly assumes that collaborative parenting is not the norm after separation and so, except in the case of “a limited category of separated parents” (*Baker v. Baker* (1979))4, the major responsibility for care and upbringing of the children is assigned to one parent. This parent becomes known as the *custodial parent*, and is normally the parent with whom the children primarily reside; the other parent is henceforth known as the *non-custodial parent* and is the one who has *access* to the children.

*Custody* is defined in s. 2 of the *Divorce Act, 1985*, as including “care upbringing and any other
incident of custody”. Access is not defined specifically in either the 1968 or the current Act, but under the current legislation, would at least include the right of the spouse with access to obtain information about the health, education and welfare of the child: s.16(5). The spouse with access may also request an order that he or she be notified of anticipated changes in the child’s residence: s. 16(7) is viewed as “contact” with the child: s.16(10). MacDonald & Wilton (1991, p. 222).

It is not without significance that access is undefined in the Divorce Act. It is left in uncontested cases for parents to establish according to what suits them and their children; in contested cases it is determined by the judge. Formally, however, the role of the non-custodial father is limited to the right of access to the child and to specifically delineated areas of information about the child. It is important to note that while the non-custodial, or access parent has the right to information pertaining to these key areas, he does not retain the right to participate in making decisions about them. He “is not entitled by the access order to make important decisions having a long-term effect on the child’s life” (MacDonald & Wilton (1991, p.258) re: McCutcheon v. McCutcheon (1982). The access parent is thus removed from a position of direct influence over the child’s development and welfare.

Section 20(5) of the Ontario Children’s Law Reform Act establishes similar rights for the access parent:

The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.

The language of this section of the statute is interesting in several ways. First, the articulation of the “same right as a parent” draws our attention to this person as someone who does not have the status of parent. In other words, the comparison highlights the difference. Although the reasoning behind this is that access may in fact be granted to someone who is not a parent (say, a grandparent), the inclusion of a parent with more distant relatives or even non-related persons serves to categorize the non-custodial parent as non-parent.

The second aspect of the language in section 20(5) of the Children’s Law Reform Act is
the phrase "entitlement to access." While the Divorce Act refers to "access," s.16 does not use the phrase "entitlement to access" or "right to access." This is the language of property relations, in which property is that to which one has the right or entitlement of access. This discourse accomplishes a shift away from the focus which the legislation intends to put on the best interests of the child, to the rights of the parents as owners of the child. The application of the language of property rights to parent-child relationships (particularly the terms custody and granting of access) serves to sustain vestiges of patriarchal family relations, which now competes with the discourse of the child's welfare. Moreover, although the legislation uses terms such as granted and determined, in common legal parlance custody is talked about as being awarded, suggesting that there is a winner -- and hence a loser -- in each case, especially contested cases. The child is positioned as a prize in the contest between the parents over rights to its ownership.

The best interests of the child standard.

A crucial change in the 1985 Divorce Act is the clear, stated shift to the best interests standard in determining custody. In the previous Act, the best interests of the child constituted the "paramount" rather than the "sole" consideration. (This change is mirrored in the Ontario Children's Law Reform Act). Whereas the earlier Act required the court to review "the conduct of the parties and the condition, means and other circumstances of each of them," s.16(8) of the current legislation states that the court consider "only the best interests of the child." However, the best interests are qualified in the same subsection by reference to "the condition, means, needs and other circumstances of the child..

S. 16 of the Divorce Act does not offer a specific list of other "factors" or "circumstances" to be taken into account in applying the "best interests" standard. Section 24(2) of the Ontario Children's Law Reform Act offers a statutory definition of best interests of the child; however, the list of factors set out "is not exhaustive, nor is any one factor determinative." This vagueness
in the statutes is intended to create flexibility so that judges may use their discretion to assess each case individually. The point of the best interests test is that it must be assessed on an individual case-by-case basis. A sample of additional factors which have been considered in making an order for custody which I have culled from the federal legislation and case law are:

1. that the child “should have as much contact with each spouse as is consistent with the best interests of the child”: 16(10);

2. “the sex, the age, and the environment of the child”: Dykes v. Dykes (1977);

3. “the child’s psychological needs” (deemed in some cases to be “more important than financial concerns”: K.(M.M.) v. K.(U.) (1990);

4. with which parent the child “will be happier and most likely to attain her highest potential as a person” Re (G.) (1973);

6. “the claims of affection of the respective parents and the social and moral upbringing of the child” Re Peddle (1975);

7. material conditions such as “a beautiful home, ... plenty of money and ... the services of a full-time housekeeper:” Grant v. Grant (1975); and


This list indicates not only the uniqueness of each case which comes before the judges, but also the wide range of individual positions which judges may take through the discretion they have in determining the best interests of the child. The following decision clearly expresses the value placed by our system on the flexibility to judge each set of circumstances separately, without binding presumptions:

But Parliament did not entrust the court with the best interests of most children; it entrusted the court with the best interests of the particular child whose custody arrangements fall to be determined. Each child is unique, as is its relationship with parents, siblings, friends and community. Any rule of law which diminishes the capacity of the court to safeguard the best interests of each child is inconsistent with the requirement of the Divorce Act for a contextually
sensitive inquiry into the needs, means, condition and other circumstances of “the child” whose
best interests the court is charged with determining: per McLachlin J. in Goertz v. Gordon (1986).

A factor excluded from the 1985 Divorce Act as a consideration in the assignment of
custody is past conduct, except as it may bear on the individual’s “ability to act as a parent.” The
removal of past conduct as a factor in determining the child’s best interests has two main results:
first, the parental role is rendered separable from the marital one; i.e., an individual’s behaviour as
a spouse does not affect consideration of him or her as a parent; second, the emphasis in
considering an individual’s suitability as custodial parent shifts away from previous conduct to
likely future functioning as a parent. This is a particularly perplexing decision for judges to make,
given the findings in the literature about the unpredictability of fathering behaviour following
separation.

Judge Norris Weisman has observed that the best interests of the child standard is a
“person-oriented rule” rather than an “act-oriented rule.” The primacy it has in the 1985 Act
requires that the court evaluate the litigants as unique social beings and predict the future outcome
of their interdependent personal relationships. 36 R.F.L. (3d) 35 at 66.
The complexity, and in fact the very nature of the decision the court makes under such a mandate is
quite different from before. In Judge Weisman’s opinion, this is not the kind of decision for which
judges are best equipped.

Gender neutrality.
Consistent with the trend towards gender equality in family law, previous presumptions
about the suitability of mothers as custodial parents for young children (under the doctrine of
tender years) are now displaced by the best interests standard; so, in theory, every father and
mother are entitled to equal consideration in the evaluation of who will be the most suitable
custodial parent. The courts have been careful in recent rulings to invoke the ideology of gender
neutrality with regard to evaluation of the parents. Nevertheless, mothers continue to be far more
likely than fathers to become custodial parents (Crean, 1988; Vayda & Satterfield, 1988).

Following are several examples of the way the issue is expressed in case law.

1. The "tender years" principle should not be given much weight in custody applications, considering the substantial changes in society's attitude toward the ideal family situation. For many families, the idea that a mother is intrinsically better suited to care for a young child is anathema. In light of changing attitudes, each custody case must be decided on its own merits: R v. R (1983)

2. It is now well established that there is equality in the claims of the father and mother as to the custody of their infants. There is no principle of law that the mother is prima facie entitled to the custody of children of tender years. This is particularly so in the case where both parents work. The rule that children of tender years belong with their mother is a rule of human sense rather than a rule of law. It is only one factor to be considered with all the circumstances: Desilets v. Desilets (1975)

3. In Donnelly v. Donnelly (1988), the "tender years" doctrine was applied in awarding custody of the parties' 4 year-old daughter to the mother: (MacDonald & Wilton, 1991: 232)

4. Neither the "tender years" doctrine nor the argument that the needs of female children are best met by their mother are of any validity today: Williams v. Williams (1989)

Whereas the tender years principle guided decisions in an earlier era towards maternal preference, these examples indicate considerable ambivalence in this regard in current case law. The discourse of equality attempts to neutralize the reality that mothers are most often primary caretakers, in order to minimize the appearance of favouring mothers as custodial parents.

Parenting is in theory no longer considered to be a necessarily gendered activity. The emphasis on judging each case individually allows, in principle, for the equal opportunity of each father to make a case for himself. The variations in the formulation of the above decisions reflect the reality that, in spite of the position the law has taken, ideology about families and parenting is not uniform on the bench, any more than in society as a whole.


Separation of access from support.

Given the removal of rights discussed above and the curtailment of normal day-to-day contact with the child, the role which remains for the non-custodial father is to demonstrate interest in his child by exercising access, or 'visiting', participating in permitted activities and special events, and by paying child support. The functions of maintaining contact with the child (access) and supporting the child are formally separated in the legislation, handled separately by the court system, and followed up through different institutions. Support obligations are thus institutionally separated from the actual interpersonal relationship of the father and child.

1. Access is not to be suspended simply because the non-custodial parent is delinquent in meeting support obligations. As the sole criterion on an access application is the best interests of the children, access and support should not be tied together: *H. (F.V.) v. O. (D.A.)* (1988)

2. In theory, child maintenance should not be linked to any other form of relief but must stand alone and independent of all other rights and obligations vis-a-vis the parties. To permit even the slightest erosion of such principle is to create, potentially, a situation where the children of a marriage will suffer.... [I]t matters not, in my view, that the wife who has custody of the children can support them independent of any financial contribution from the husband. If he has been ordered to pay child maintenance, then under no circumstances should such be ordered withheld or rescinded because of interference with his access rights by the mother: per MacDonald J. in *Twaddle v. Twaddle* (1985)

The moral underpinnings of this separation are clear: The child’s right to support from the parent is independent of the right to see that parent; the denial of one right does not justify denial of the other. On the other hand, the imposition of the obligation to support does not confer on a parent the right to spend time with the child; nor does denial of the parent’s right to see the child justify withholding of support. Nevertheless, though they are exceptional to "the general rule", there are legal precedents indicating that a father who fails to fulfill the access and support functions may indeed forfeit his rights to access altogether.

...the father, who had seen his child only on the date of its birth, was denied access on the hearing of the wife's divorce petition... Furthermore, the fact that the father had never
contributed to the child’s support, was a factor cited by the court in denying access: Plume v. Plume (1981).

There is an implied assumption that a father who doesn’t pay, doesn’t deserve a relationship with the child. The inherent contradiction is immediately apparent: If access to the parent is the right of the child, then the denial of access to the parent for negligent behaviour is problematic.

There are instances where child support has been reduced or suspended in order to pressure a mother into cooperation who interferes inappropriately with access considered valuable to the child.

1. It is the responsibility of this court to try and ensure that its orders are not thwarted by the parties to an action and the only effective method that I can use to have the access continued is to use the payment or non-payment of maintenance as an inducement to the wife to assume the responsibility outlined above. I am therefore ordering that all maintenance payments set out in my original judgment will be suspended for such length of time that the husband fails to obtain access to the children. I am also changing the terms of access from the original order: per Bowen J. in Tassou v. Tassou (1976)

2. As a general rule, the court should not link child support to access. A parent may not reduce or withhold child support because of access problems. The particular facts of the case, however, justified deviating from the rules regarding the apportionment of child-care costs and the method of payment. It would be unjust and contrary to public policy to allow custodial parents to frustrate access orders without making these parents account for their actions. Welstead v. Bainbridge (1994)

Judges are clearly uncomfortable making this link either way, but find themselves without other available means to enforce access or, conversely, to see the child supported. In Lee v. Lee (1990), a father’s application to stop support until the mother assisted with access to the children was upheld. An appeal was subsequently allowed on the grounds that the trial judge erred in confusing access and support. The annotation of J. McLeod to this case provides a discussion of the problem that influenced the trial judge:

The reasons for judgment and conclusion reached in Lee v. Lee are technically sound and legally correct. However, are they realistic? Quite simply, the Court of Appeal refused to link access and child support and refused to reduce/suspend child support in the face of a consistent
denial of access.

Faced with similar applications to reduce or suspend child support, the courts have regularly held that support and access are separate obligations and neither is dependant on the other. However, there is no denying that the parents link the two issues. A parent may find it difficult to understand why it must honour its obligation while the other parent may openly flout the court order. Symmetry and mutuality of obligation and right are commonly held views. The reality is that access orders are not enforceable...

Access and child support issues involve the adults as well as the children. Child support indirectly benefits the custodial parent and rightly should compensate for some of the child care burden assumed: Russo v. Russo (1988), 15 R.F.L. (3d) 243 (Ont. H.C.). It does not seem unreasonable that child support should somehow take into account "fairness" between the adults so long as the child's reasonable needs are met. This is the analysis adopted by many courts in deciding whether to override the child support provisions of a settlement agreement: see Dickson v. Dickson ...

So long as the children's needs will not suffer, a court should consider removing the child support burden in whole or part and shifting it to the custodial parent in the face of a consistent and wilful refusal to facilitate access. If there is a reason to deny access, the custodial parent should be encouraged to let a court deal with the matter. Self help should be discouraged... Lee v. Lee (1990).

This commentary introduces a new line of logic to the problem: (a) the acknowledgement that in parents' minds support and access may indeed be linked and that the separation of them may work only in theory; (b) the acknowledgement that people tend to expect social arrangements that are "fair", in the sense of symmetrical; (c) the absence of effective ways to enforce access makes support and access arrangements inherently asymmetrical, or unfair; and (d) that if it can be done without harming the child, fairness may be achieved by revising the arrangements. (Although not stated, the inference is that unfairness will have to stand if the child might suffer.)

Another instance in which access and support are linked is where a father assumed he was not obligated to pay because the child had been removed from the jurisdiction. This is distinguished from the father deliberately withholding support on a retaliatory or strategic basis.

A husband, who arbitrarily discontinued maintenance payments to his wife and children when she moved out of the province, thereby depriving him of his access rights, was held not to be in contempt where the court was satisfied that he discontinued his payments in the
honest belief that he was justified in so doing and that the thought of contempt had not even entered his mind. *Pickard (Coffin) v. Coffin* (1980)

This rather odd case applies the conception of access as the right of the *parent*, and accepts as reasonable the father’s “honest belief” that the requirement to pay support is somehow tied to the availability of access.

Sometimes the court itself uses withholding or reduction of support for leverage purposes. In a 1986 case where a woman moved away with her child and refused to reveal to the husband the child’s whereabouts, the court reduced the monthly maintenance to $1.00 pending resolution of the access difficulties: *Blackmore v. Blackmore* (1986). A similar example has the court reinforcing a father’s perception that his obligation to pay support is nullified if he forfeits access:

> Where the parties had agreed after their divorce in 1974 that the wife would not enforce maintenance payments if the husband did not exercise his access rights, the court favourably entertained the husband’s application to vary the decree and cancel all arrears in 1985. The husband had not been trying to avoid his legal obligations but rather legitimately believed that such obligations had ceased and that he was free to start a new family: *Remillard v. Remillard* (1986)

The legal and institutional separation of support obligations from exercise of access rights reflects an attempt to prevent the construction of support as exchange for a proprietary right of access. It is meant to avoid the perception that support is money paid for the privilege of access to the child or conversely, that access is denied if money is not paid. The intention is to discourage fathers who may have access difficulties from using this as a justification for stopping payment, and conversely, to discourage mothers from withholding access from fathers who are not paying support. Unfortunately, this construction is at odds with the discourse of child as property which we have seen is also to be found in the law. Where a gap is created between the two discourses, or between the legal construction of support and access as separate entities vs. the social reality of their connectedness, judges find themselves compelled to intervene. Invariably, tension arises between the rights of the parent and the best interests of the child; sometimes, the issue is fairness
(focusing on the parents) or even the perception of the court as an authority. Always, because of the best interests standard, the deciding factor is meant to be whether the child is likely to suffer as a result of linking access and support. Since relatively few custodial mothers can adequately support their children independent of the father’s assistance, in most cases the linkage is indeed likely to lead to suffering.

The ‘friendly parent’ rule.

In interpreting s.16(10) of the Divorce Act, the principle of maintaining as much contact with each parent “as is consistent with the best interests of the child,” judges have emphasized access as the “benefit” and “right” of the child, rather than of the parent (Mac Donald & Wilton, 1992, p. 259). This ‘maximum contact’ principle gives rise to the so-called ‘friendly parent’ rule, which favours as custodial parent (when the two parents are “otherwise equal”) whichever parent is “more willing to encourage access” (1992, p. 257). An important implication of the ‘friendly Parent’ rule is that it recognizes the degree of control which a custodial parent is in a position to exercise over the children’s relationship with the non-custodial parent. A non-custodial father finds that his former wife is the mediator of his relationship with his children; she is the gatekeeper on whose good will and co-operation he must depend. In cases where parents are unable to co-operate regarding access, the court will make an order which sets forth specific access times and conditions. Although this ultimately tends to be a more workable arrangement for many parents, it is another instance where the state intervenes to achieve the reordering of family relationships.

Enforcement.

The fact that payment of support is enforced by the state through a wide range of mechanisms while access of the non-custodial parent is virtually unenforced is another indicator of ambiguity in the law about the father’s role as an active, involved parent. The imbalance in attention given to the principle of financial support as opposed to the principle of continuing
parent-child contact tends to devalue the latter and undermine the principle of "maximum contact". The emphasis on enforcement of support but not access is tantamount to an emphasis on the father’s obligations, but not on his rights nor on the rights of the child. Under pressure from fathers’ rights groups, Bill 124, An Act to amend the Children’s Law Reform Act, was introduced in the Ontario Legislature in 1988 by then-Attorney General Ian Scott. The Bill’s primary aim was to establish “a speedy remedy for access difficulties.” The underlying principle of the motion was summarized in the explanatory notes as follows:

Denial of access is wrongful unless it is justified by a legitimate reason. Criteria are provided to assist the court in determining whether a reason is legitimate.

Although the Bill was not ultimately passed into law, it evoked a tense debate around the issues of access rights vs. rights of the custodial parent, fears that custodial mothers could be harassed in court by angry fathers, and so forth. The difficulties of enforcing access are obvious: The discourse of ‘best interests’ and ‘continuing family relationship’ does not seem compatible with the logic of ‘rights’ and ‘enforcement’. How is enforcement to be carried out, and who should do it? The use of police to facilitate the emotional relationship between father and children strikes one as inappropriate, counterproductive and unwieldy. Determining the punitive consequences of withholding access for the custodial parent is difficult to imagine without harming the welfare of the child. The dilemma is acknowledged by Justice Weisman in his article on the difficulties related to access decisions.

Traditional remedies for contempt of court, such as fines or probation orders, are blunt instruments and will not ensure future compliance in the majority of cases. The drastic remedies of incarcerating the custodial parent or transferring custody to the non-custodial parent are often threatened; but neither solution may be feasible or in the best interests of the child, and is therefore rarely used. Spousal support, if any, can be suspended for denial of access, but child support, which is much more frequently ordered, is usually required for the child’s sustenance. How, then, should judges deal with denial of access after parental separation? When should access be ordered over the objections of the custodial parent? (Weisman, J.N., R.F.L. 36, (3d ed) 35 at 41.)
In addition, the principle of access as the right of the child — carried to its logical conclusion — ought to mean that access should be enforced when fathers fail to visit their children. No applicable model exists for regulating this complex emotional and psychological relationship. In contrast, an available model for enforcement of support payments has been adopted: that is, the debtor-creditor relationship (Bennett, 1992).

Child Support

The question of who should contribute how much to the financial support of children has been a subject of much debate in case law and policy. Under the Divorce Act, 1985, the law outlines several important principles with regard to this:


2. “Child support is a parent’s first obligation and the court will not subordinate that obligation to any other,” including business obligations:

   Accordingly, where the father used all of his available income to maintain his farming operation, he was nevertheless found obliged to pay child support of $200 monthly. Mitchell v. Mitchell (1988)

3. Both spouses “have a joint financial obligation to maintain the child.” Divorce Act, 1985 s.15(8);

4. Quantum, or amount, of child support is to be decided based upon “the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought:” 15(5). The court is to consider the “relative abilities of each spouse to contribute to the performance of the obligation” in apportioning that obligation. s.15(8)(b).

5. The child’s post-divorce standard of living should not suffer as a result of the divorce. However, the court will generally respect agreements settling child support where the agreement provides the same level of financial support which the children could reasonably have expected if the family had remained united. Currie v. Currie [1988]
Each of these principles involves a number of assumptions and implications. The gender-neutral inclusion of mothers in the expectation of "joint" financial support of children by "both spouses" recognizes the advances women have made in the labour market, but ignores the reality that women tend to earn less, or that many are out of the labour force while raising young children. This is accounted for in the "apportioning" of the support obligation; but the "means" of custodial mothers are likely to be less than those of non-custodial fathers due to gendered division of labour and inequalities in the market. Consequently, the brunt of financial support will in most cases fall to the higher earning father.  

The *needs and means* principle establishes a competition of needs between children and parents, and between biological children and stepchildren. Several examples follow:

1. In determining child support, the children's needs should be given priority over those of the parents: *King v. King* (1990)

2. In *Pedersen v. Pedersen* (1984), 39 R.F.L. (2d) 449 (B.C. C.A.), the husband was ordered to pay child maintenance despite the fact that he was unable to find work and that his own monthly expenses exceeded his income.

3. Where the husband, subsequent to separation, had commenced living with another woman and was contributing to her support as well as that of her two children, his application on divorce to reduce the support payable for his own children was dismissed. Given that the husband had misconceived his priorities, and that the wife was unable to meet the children's needs adequately, the amount of child support was increased. *Routley v. Routley* (1988)

4. In assessing needs and means, a court should take into account a potential payor's settled, new relationship and the demands which that places upon his or her resources. *McNeilly v. McNeilly* (1987)

In these examples, the judge is faced with competing needs, or needs and means that appear to be incompatible. It seems inevitable that in weighing needs and means, not only judges, but parents as well, will have differing assessments of each. The custodial parent is likelier to be aware of and focused on the day-to-day material needs of the children and the attendant costs,
particularly if she has normally been the primary caretaker and household manager during the marriage. The support-paying parent, on the other hand, is likelier to be focused on the details of income and expenses which determine available means. When parental assessments are at odds, it is left to the court to make the determination. The absence of legislated support guidelines until very recently has left this determination to the discretion of individual judges. This means that in cases where the amount of support is in dispute, or where the court considers that parents have made an ‘unreasonable arrangement’ regarding support, it is the individual judge who determines the disposition of the father’s income and the lifestyle of the mother and children.7 There is a presumption in the expectation that the child’s standard of living remain unchanged either that a family wage can accomplish this or that adults and new families come second.

Although child support is owed by the parents to the child under the law, case law does not always frame the obligation this way.

Arrears of child support should not be reduced where the evidence discloses that the payor spouse had the ability to pay during the period when the arrears were accruing. It would be unfair to the custodial spouse to thus allow the payor spouse to avoid all obligation toward the children. Lake v. Lake (1988)

The examples above highlight not only competing needs, but competing discourses as well: These variously focus on the child’s best interests, the parent’s moral responsibility, individual rights, and fairness. Each has its own logic and values, and they are not all compatible with one another.

**Variation of orders of support**

Once an order for support has been made, getting it varied is difficult. The law allows for variation “to relieve economic hardship arising from a change” in “conditions, means, needs, or other circumstances” with respect to either of the parents or the child, assuming that if the changed circumstances had existed at the time of the original order, a different order would likely have been
made (s.17). The interpretation of economic hardship and the legitimacy of the claimed change tends to vary, as shown in the following examples of decisions regarding motions to vary a spousal support order.8

1. On an application to vary support, the court should take the amount originally ordered as correct and consider the extent of any changes since that order. In particular, consent orders made with legal advice ought not to be lightly disturbed: Friedman v. Friedman (1987)

2. A court may vary a support order based upon a final settlement agreement where there is a radical unforeseen reduction in the payor’s ability to pay. A reduction in the payor’s ability caused by a stroke qualifies as valid grounds for variation. Smith v. Smith (1990)

3. Although the court may temporarily reduce a support award based upon a settlement agreement where the payor is out of work, such an order should not be interpreted as meaning that the original settlement will not be upheld once the payor is again employed. Sobstyl v. Sobstyl (1989)

4. Where the husband’s business was cyclical in nature, a temporary decline was found to be an insufficient ground on which to base an application for reduced support: Gresham v. Gresham (1988).

The economic dependence of children and custodial mothers makes the court very reluctant to reduce support awards. Their need is weighed against the claims of the father with regard to inability to pay, and he is judged not only on the basis of the actual monies available to him, but on his lifestyle, priorities, and level of responsibility. However sympathetic a court might be under different circumstances to a father’s claim of inability to pay, the requirement to consider the interests of the child primarily may at times rule out a sympathetic response.

To sum up this far, non-custodial fathers are constructed by the law essentially as non-parents, at the same time as their value in the child’s life is formally -- but not necessarily substantially -- protected. The identity of ‘good father’ is held out initially under the principle of the child’s best interests and the presumption of gender equality of parents; when custody is given to the mother, being a good father consists in paying support and fulfilling the terms of access according to the agreement or order. The identity of valued parent is embedded in the ‘maximum
contact’ principle but there are few institutional supports for it. Under the best interests standard, the rights of the parents -- particularly the non-custodial one -- are given less weight than they might in other circumstances; however, to argue with the best interests standard is to pit one’s own perceived needs against the child’s and be a ‘bad’ parent. A father who consciously relates to the child as property by linking support and access violates the law and its moral underpinnings; a father who does so unwittingly is seen to have made an understandable mistake. It is deemed understandable, or “reasonable” because it is otherwise a common way to view children.

The Legal Construction of Divorced Husbands

We have seen how separated and divorced fathers are constructed by the various discourses in the law. In this section, I will discuss the ways in which the law re-orders relations between spouses, thus reconstructing wives and husbands as non-family. The relationship between former spouses is re-framed exclusively in terms of finances, i.e. in terms of debtor and creditor. Although it is separate under the law from child support and virtually never linked by the courts to access, the restructuring of the spousal relationship is included in the analysis because of the prominence it was given by the fathers in their interviews. This prominence was unexpected, given the legal and procedural separateness of the two issues, and the intended focus of the interview on the father-child relationship. Essentially, I have searched in the legal texts for clues that would help to understand the degree to which the fathers struggle in their interviews with the role of husband.

As discussed above, the spouse who becomes custodial parent gains control over the children and over the non-custodial parent’s relationship with them. At the same time, as the recipient of child support payments, the custodial parent remains indirectly financially dependent on her former husband until the children are no longer eligible for support. The law also provides for direct economic support of a former spouse, although the terms and conditions of spousal maintenance changed with the 1985 legislation. The current law introduced the goal of economic
self-sufficiency or independence “within a reasonable amount of time” for the spouse receiving support 15(7). Other changes introduced are summarized by MacDonald and Wilton (1992, p. 87):

In addition to the “condition, means and other circumstances” of the spouses that the old statute required the court to consider in determining entitlement to, and the amount of, support, the court is now called on to consider the “needs” of the spouses and any children for whom support is sought (s. 15(5)), the length of time the spouses cohabited (s. 15(5)(a)), the functions performed by the spouse during cohabitation (s. 15(5)(b)), and any order, agreement or arrangement relating to the support of the spouse or child (15(5)(b)).

Conduct, which was included under the Act of 1968 as an element to consider, has been cut down...

The concept of “need,” left vague in the legislation, has been further qualified by subsequent case law, about which some controversy has arisen.

Some recent cases influenced by [a trilogy of appealed cases] in the Supreme Court of Canada have extended the concept of causal connection to a general support principle applicable on any support application, including original applications. According to these cases, in order to obtain support, the claimant must not only establish need, but also that the need is causally connected to the marriage. However, this connection arises, it seems, only where the marriage has prevented the claimant from becoming financially self-sufficient after the breakdown (MacDonald & Wilton, 1991, p. 129).

Nevertheless, the following important decision regarding a request for variation of a support order was made by a Manitoba court:

Where at the time of the parties’ divorce in 1980 the wife had limited education, job skills, and English language proficiency, an order obtained by the husband terminating her support rights nine years later was reversed on appeal. Although the wife had worked part-time during the marriage, this was merely to supplement the husband’s income and did not contribute to her long-term potential. Given the disadvantages resulting to the wife from the parties’ 25-year traditional marriage, she could not now be expected to achieve self-sufficiency: Moge v. Moge (1990)

Following the change to a goal of economic independence for women in the legislation, judicial rulings have shifted in their construction of the dependent spouse. Two examples of rulings based on the 1968 legislation, followed by two based on the 1985 legislation, illustrate this shift.
Divorce Act, 1968

1. In determining the quantum of maintenance payable to a wife, the court may consider the undesirability of allowing the husband to walk away from a marriage of several years' duration in a substantially better economic position than his wife: Redl v. Redl (1983)

2. In my view, the proper consideration for the court is what is the appropriate amount of maintenance having regard to the income of the husband and to the needs of the wife and children and to the other obligations of the husband, not only to live month by month, but to meet living expenses and other commitments: per Macdonald J.A. in Lohnes v. Lohnes (1980)

Divorce Act, 1985

1. There is nothing in the Divorce Act which indicates that the purpose of support is the equalization of income. The real factors are need and the ability to pay Strutynski v. Strutynski (1989)

2. A court would not award spousal support unless there is a causal connection between the hardship being experienced by the claimant spouse and the breakdown of the marriage. It is the economic hardship created because of the marital relationship that creates entitlement: Winterle v. Winterle (1987)

The first two examples refer to the "children," the "needs of the wife and children," and the "obligations of the husband." The new legal construction of the wife as a "claimant" with both "entitlement" and 'causally connected needs' differs from the earlier legal construction of a "dependent spouse" to whom the husband remains morally obligated even after the termination of the marriage. The husband is no longer responsible for his spouse on a continuing paternalistic basis by virtue of his privileged economic position; he is now a debtor. Whereas the prior legislation recognized the pattern of economic dependency of women in traditional marriages, section 15(7) of the new Act both acknowledges the disadvantaged economic position of women in traditional marriages and expects that they will overcome it "within a reasonable amount of time". If they do not, "[t]he Act expressly empowers the court to order support to be paid for a 'definite' period as well as an 'indefinite period:' 15(4) (MacDonald & Wilton, 1991: 87). The effect of these contradictory discourses is evident in the case law. Among the "general principles for
determining support” included in MacDonald and Wilton’s annotation to the Act (1991, p.127) is the following:

A judge, in approaching a maintenance order, should continue to recognize the distinction between the traditional and the modern marriage. Upon dissolution of a modern marriage the goal should be that of placing both parties in a position of economic self sufficiency at the earliest possible time. Although as a general rule marriage does not entitle one of the spouses to a pension for life, there may be circumstances where, due to the length of the marriage, the age of the parties and the marketability of their employment skills, permanent maintenance is required. This course should be the exception and every effort should be made to sever the relationship between the spouses to the greatest extent possible so that each spouse can pursue his or her own independent life: Heinemann v. Heinemann (1989)

In this ruling, the ambivalence of the law and the courts about self-sufficiency is evident. The distinction that a judge is called upon to make between ‘traditional’ and ‘modern marriage’ is based on features of the couple vis a vis the marketplace. In ‘modern marriage’, which is assumed in the above passage to be the norm, any economic disadvantage to the wife is deemed to be temporary and reversible. Once again, there is a shift from discourses of economic dependence and relationship to one of entitlement and individualism, and from family relations to market relations. The language of this passage takes us far from the interpersonal dimensions of marriage and parenting. As well, negating spousal support as a “pension for life” both depersonalizes it and deprecates any woman who expects it as a perquisite of marriage. The term maintenance objectifies the one who receives it; the spouses are parties; the goals are economic self-sufficiency and pursuit of an independent life.

As in the obligation of both spouses to support the child, the goal of financial independence for both spouses recognizes the fact that many women, including primary caretakers, are active in the labour market. However, in situations where a woman has stayed at home in a traditional marriage or worked only part-time, foregoing education, training and/or career advancement, economic self-sufficiency may be a difficult or unreasonable objective. This creates a gap between the expectation established in the law and the reality experienced by individuals. The creation of
this gap has been permitted in the interest of finality. A trilogy of separate cases, in which a spouse had applied to vary the original order (seeking to have support continued or resumed) was brought before the Supreme Court of Canada on appeal in 1987 (Pelech v. Pelech, Caron v. Caron, and Richardson v. Richardson). The appeal decision defined the test for resolving “the conflict between the court’s overriding jurisdiction to make support orders, on the one hand, and upholding agreement dealing with support on the other” (MacDonald & Wilton, 1991, p.128).

In the Pelech decision, the court weighed the need to compensate for systemic gender based inequality: that is, the general condition of the lesser earning capacity of women than men as opposed to the need for finality in family law disputes, where the parties themselves had agreed upon the terms. The court came down on the side of the importance of finality in disputes, where the parties have negotiated their own agreement with independent legal advice. They should take responsibility for their own lives and their own decisions (MacDonald & Wilton, 1992: 189).

The trilogy of cases has influenced subsequent decisions by the Supreme Court, so that “the concept of causal connection” has been extended “to a general support principle applicable on any support application, including original applications.” In these cases, the causal connection of need to the breakdown of the marriage “arises only where the marriage has prevented the claimant from becoming financially self-sufficient after the breakdown” (MacDonald & Wilton, 1991, p.129). The odd fusion of discourses -- of financial claims, relationship, individualism, and legal technicalities -- yields a hybrid of inherent inconsistencies.

The Ontario Family Law Act holds out similar expectations regarding support and self-sufficiency. Section 30 of the Act states:

Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

“Finality,” however, does not have the same place in separation orders and agreements as it does in divorce settlements, and there is debate within provincial case law regarding the applicability of the causal connection test to support orders and variations under the Family Law Act (MacDonald & Wilton, 1992, p.192-197). Thus decisions regarding spousal support may vary
even more between federal and provincial courts than they do within either given court level.

In many instances, despite the judicial emphasis on "need and ability to pay", no actual symmetry exists between the need of one spouse and the ability of the other to pay. A woman who is either unable to become financially independent, or whose level of financial self-sufficiency has been disadvantaged by her role in the marriage, may experience a level of need for which the husband is unable to pay. In some cases, a former husband may be able but unwilling to pay. "It then becomes a matter of comparing the respective abilities of the competing obligees to satisfy their own needs": Aitken v. Aitken (1984). Some examples of how such comparisons turn out follow.

1. Where the husband was working over 80 hours per week, his application for a reduction in the maintenance payable to his former spouse was allowed. As he was working far in excess of the norm, it was fitting that he be allowed to enjoy some benefit from his extraordinary effort: Clarke v. Clarke (1986).

2. In Baker v. Baker (1983) the court refused to grant the wife an increase in maintenance after she had lost her job.

3. Where the husband was involuntarily unemployed and consequently decided to return to school, the wife's application for an upward variation in maintenance was refused: Hastings v. Hastings (1986)

In order to accommodate the competing claims of husband and wife, of means and needs, a judge may impose a "modern" arrangement on a woman who had originally chosen or agreed to a traditional one.

Where the husband had no means to pay spousal support and the wife chose to delay her re-entry into the work force at a high income position to remain at home with the parties' five-year-old child, her application for support was refused. Storey v. Storey (1987)

Determination of whether support should be paid, or of the quantum of support, may involve additional considerations. The concepts of "need" and "economic hardship" are sometimes supplanted by the concept of a "standard of living".
Once entitlement to support has been determined, the court must consider the appropriate standard of living for the dependent spouse. There is no consensus in the cases on this issue. The traditional view that the standard of living should be the same as during the marriage, where funds permit, is still being ordered. In addition, the courts are ordering support according to a new standard of living that corresponds to what the dependent spouse would have earned if she had followed her own career objectives instead of marrying (MacDonald & Wilton, 1991, p.139-140).

The lack of judicial consensus around establishing “appropriate standard of living” means that judges are likely to differ significantly in the decisions they come to on this basis. Case law indicates that judges may consider numerous factors, from the number of hours a man is working to afford spousal maintenance to the cost of long-term care for a dependent former spouse to the impact of the payor spouse establishing a new relationship. How competing claims are viewed and weighed is likely to depend on the individual hearing the case, as well as the circumstances or ‘facts’ of the case per se. The often contradictory rulings found in the case law and the reversal of some decisions on appeal are testimony to the differing interpretations of law and evidence, and to the variations in preferred discourses or logics by the members of the judiciary.

In keeping with the differing objectives of spousal support and child support, the two are clearly separate from each other in the legislation. This means that a woman receiving support does so on the basis of her status as a man’s former wife, not as the mother of his children. This is somewhat ironic, given that the spousal relationship has been terminated, virtually nullified, while the parental relationship often continues, sometimes quite actively. In the discourse of the debtor-creditor relationship, any notion of family relationship has disappeared and been supplanted by financial and legalistic discourse.

The State’s Construction of Divorced Men as Citizens

I use the term citizen here with respect to fathers for the sake of continuity with the fathers’ presentation of themselves as good citizens. In fact, the law does not actively construct them as such, in the sense of social individuals with rights and obligations under the law; rather, the laws
pertaining to child and spousal support heavily emphasize the obligations of separated and divorced parents, particularly non-custodial support-paying parents, and display considerable ambivalence about their individual rights. Since he is, however, removed from the discourse of family and relationship, and transplanted to the discourse of debtor and creditor, the father is reconstructed as a civil entity who owes money to an impersonal claimant, rather than as a father and former husband who owes sustenance and protection to his dependants. The laws and procedures to which separated and divorced fathers are subject in the capacity of support providers thus produce a set of identities that are distinct from the provider/protector identities normally associated with fathers.

The law, as we have seen, positions former spouses in a debtor-creditor relationship similar, but not identical, to that of any other two individuals in the community. The enforcement of support payments by the state reinforces the construction of child and spousal support as a monetary obligation like any other except that it has priority over other financial obligations and is subject to enforcement measures not available to creditors of any other sort (Bennett, 1992). This is accomplished through the *Divorce Act*, the *Ontario Family Law Act*, and the *Ontario Family Support Plan Act (FSPA)* expanded by the *Family Support Plan Amendment Act*, the legislation by which support enforcement is governed in this province. In addition, administrative procedures for enforcement by the Family Support Plan were developed outside of the legislation, and enforcement is further supported by enabling and complementary legislation at the provincial and federal levels.9

In this section of the chapter, I consider the enforcement legislation and procedures in Ontario, as well as legal commentary on both, in terms of the construction of the person paying spousal or child support as a *citizen* (i.e. in the civil role as a debtor or defaulter), rather than as a former spouse or parent. The themes involved in this construction are:

1. the treatment of the relationship between supporter and children and/or former spouse exclusively as a debtor-creditor relationship external to any relational context;
2. the contradiction between the establishment of the ordinary debtor-creditor relationship on the one hand and the extraordinary nature of the support creditor’s position as compared with other creditors;

3. the ‘criminalization’ of the support payor.

**The Debtor-Creditor Relationship**

Enforcement legislation picks up where the legislation governing the making of support orders leaves off. Enforcement is carried out at the provincial level, whether the support order itself was made under federal legislation, provincial legislation, or under comparable family legislation outside Ontario under the *Reciprocal Enforcement of Maintenance Orders Act*. In other words, when support has been ordered as either spousal or child support or a combination thereof, the *support creditor* referred to in the legislation is clearly designated as the *spouse*. This language accomplishes two things. First, the discourse directs us away from family relationships or responsibilities; it focuses attention on monetary obligations and entitlements that might exist between any two unrelated persons. Second, it directs the attention of the debtor, the court, and the FSP to the former spouse as the creditor, even when support is owed partly or wholly to the child. The former life-partner is now a creditor much like any other creditor: an impersonal claimant upon the resources of the debtor. In the new status of debtor, the payor is required to demonstrate good citizenship, not good parenting or concern for his children, by complying with the law and with the method and timing of payment. On the other hand, there are aspects of the debtor-creditor relationship as it pertains to former spouses which differ from other ordinary debtor-creditor relationships. The most obvious difference is the automatic and universal nature of enforcement procedures, which is “novel in creditor-debtor law” (Bennett, 1992, par.9-2).

Every support order made by an Ontario court after July 2, 1987, contains a provision for its enforcement by the Director of the Family Support Plan on behalf of the person to whom support is owing (Bennett, 1992, par.9-6). The support creditor has the option of withdrawing the
order from the enforcement program at any time through submission of written notice; however, support creditors are discouraged from enforcing a support order directly by the availability of collection and enforcement services free of charge from the Director, and by the relative difficulty of obtaining access to information about the debtor from data banks if one acts independently (Bennett, 1992, par.9-8).

Garnishment of wages for salary-earning support-obligors is instituted automatically by the Family Support Plan, unless the order has been withdrawn by the recipient. This means that enforcement measures are instituted before default has actually occurred.

In other words, the Family Support Plan Amendment Act stresses compliance rather than remedies after default. (Bennett, 1992, par.9-7)

These practices create implicit negative moral identities for support payors. By establishing an oppositional system of enforcement that presumes intent to default, an intent to shirk responsibility or duty is also presumed. The emphasis on coercing compliance, rather than waiting for default, positions every support creditor as a potential defaulter.10 I have called this creation of a negative moral identity ‘criminalization’ because it reflects the way in which the identity is found to be taken up by the institutional actors and resisted by the fathers in the study. It is not intended to describe technical conferring of criminal status on the fathers as defaulters -- in fact, that is a civil, not a criminal matter.

If a support creditor decides to remain enrolled in the Plan, she must complete a filing package with detailed information about the debtor. Once the filing package is received, FSP will forward cheques to the creditor monthly for the amount it receives from the debtor through garnishment of wages under a Support Deduction Order (SDO). Along with every support order issued by the court, a SDO must also be issued under the legislation. The employer is notified of the SDO by the Director and obliged to deduct support payments. The maximum amount which may be deducted is different from the maximum which may be deducted for other kinds of debts. Whereas 80% of an individual’s net wages is exempt from seizure or garnishment under the
**Wages Act**, in the case of support debtors, the exemption is reduced to 50% (Bennett, 1992, par.9-16).

Other features of the FSPA which have been “designed for the benefit of support creditors [and] that are otherwise not available in other legislation” (Bennett, 1992, par.9-2) are:
1. The Director has access to information from all provincial and some federal data banks regarding the debtor’s place of employment, address or location where he may be found. The Director has powers and means of investigation that “ordinary judgment creditors either do not have or must obtain through the court if there is an available remedy” (par.9-7);
2. recognition of a garnishment process from outside Ontario;
3. the creation of a “statutory charge against the debtor spouse’s real property”, enabling the creditor spouse or the Director to sell the property as though it were a sale under a mortgage;
4. monies owing to the debtor by the Crown may be intercepted and distributed to the support creditor;
5. the support creditor is given priority over other creditors. An amendment to the *Creditors’ Relief Act* in 1985 provides that an order for child or spousal support has priority over all other judgment debts, including the Crown. (Bennett, 1992, par.9-12); and
6. the amended definition of a support order operates to attach or garnish moneys owing by a third party, to the debtor, without waiting for default to occur (par. 9-2).

In short, the alliance of the former spouse (or support creditor) with the Director yields a powerful, intrusive enforcement entity unlike any the debtor is likely to have encountered elsewhere. In addition, the procedures of FSP require that the support creditor participate in the monitoring and locating of the debtor. The support creditor is relied upon to provide detailed information regarding the debtor in order to facilitate tracing, locating and enforcement. Creditors and their lawyers are also expected to supply any information about bank accounts or other sources available for garnishment, employment which the debtor has not declared, and so forth. In fact, the Director may inquire about the debtor’s whereabouts from the latter’s own lawyer, in spite of
solicitor-client privilege and rules of confidentiality.

- The Director may obtain information without an order from any person or public body
  that is shown on the record in a person’s or public body’s possession or control.... Where the
  person or public body refuses to supply that information to the Director, the Director may move to
  the court for an order directing compliance. (Bennett, 1992, par. 9-7)

The most recent measure introduced in July, 1996, to enhance enforcement capabilities is
the withholding of passports and licenses of various kinds (new and renewed) from individuals
until their arrears have been paid.

A debtor in default may be brought to court for a hearing by either the Director or the
support creditor in order to ‘show cause’ why support has not been paid. If the court is not
satisfied that the support debtor is unable to pay (rather than merely unwilling to pay or finding it
difficult to pay), then

The court has power to punish by either or both fine and imprisonment if there is willful contempt
or resistance of its orders. (Bennett, 1992, par. 9-10)

To some extent, the employer is threatened with criminalization as well. Failure to report
employment or to deduct support subjects the employer to the risk of being found in contempt of
court.

**Summation**

The state’s role in divorce is as *parens patriae* on the one hand, and on the other, as
regulator/enforcer of civil matters pertaining to economic relations between former spouses. As it
formally restructures the family relationships and arrangements for care of the wife and children
through the application of relevant legislation, the state intervenes actively in the normally private
domain of the family. Judges are given very broad discretion in order to accommodate the
uniqueness of family circumstances and children’s needs; the discourse of child welfare focuses
the judge’s attention on matters that might otherwise be addressed in a therapeutic or quasi-
therapeutic setting. Tension arises between public and private law as the effort to protect family
members who are psychologically and economically vulnerable competes with our tradition of trying to keep families responsible for themselves.

The Divorce Act and the provincial Family Law Act construct the family as "modern" and child-centred. By "modern" is meant egalitarian and non-patriarchal. The discourse is about equality, gender neutrality and individualism. Women are constructed as not only capable of independence but obliged to be self-sufficient. Attempts to compensate for residual effects of ‘traditional’ marriages reflect some attempt at equity, although equity is not a recognized aim of the legislation. Since divorced women are seen as either self-sufficient or dependants and claimants, divorced men are constructed as either financial providers for their children alone, or for their former spouses as well. There is also considerable confusion about how to determine the amount of support, for how long it is owed, and to whom (wife or children). Attempts to standardize or otherwise justify quantum and duration of support tend to rely on a variety of discourses, from equity to morality, to family relationships, to civic duty. Thus, competing constructions of the family emerge in the legislation which have crucial implications for gender roles, the division of parental responsibilities, and the power relations between former spouses.

Other tensions and contradictions which emerge in the legislation include the following:

1. A single formally recognized parental unit is substituted by the state for a previous unit comprised of two parents, and rights pertaining to a parent’s interaction and involvement with the child are concomitantly removed, while economic obligations are maintained both to the child and the former spouse.

2. The ongoing role of the non-custodial parent is variously framed in economic discourse of property and the discourse of family relationships and child welfare.

3. The relationship between the two adults is variously constructed under the legislation as parent and non-parent ("custodial" and "non-custodial"), co-operative ("friendly") parents, individuals with no relationship at all ("finality"), claimant and funder, creditor and debtor, informant and defaulter or potential defaulter.
Along with the separation of custody and access matters from matters of support, these contradictions lead to the fragmentation of fathers' identities under the law in ways that reflect multiple, often contradictory, social constructions of what a father is and is not. Defining aspects of masculinity and patriarchy seem to collide with discourses of equity, child welfare, and debt enforcement. Fragmentation and contradiction entails important shifts in power as well. Non-custodial fathers lose status and are disempowered as parents; on the other hand, their economic privilege as a group now carries with it an obligation to provide for the physical welfare of the children, and often of the wife as well. The father's identity as non-parent is reinforced by the lack of an appropriate model for enforcement of his involvement with his child. The former husband and father's identity as provider is reinforced under an economic model of enforcement producing the identities of funder and payor. The designation of the payor for enforcement purposes as a debtor, and potential defaulter or actual defaulter, produces for all fathers with child support orders an identity of 'bad father' and 'bad citizen'.

NOTES

1. The annotated statutes are:

   The materials prepared for the Ontario Bar Admissions Course are:

2. Although the legislation speaks in gender neutral terms of "parents", I will be referring to non-custodial parents and support-paying parents as "fathers". This designation is intended to acknowledge the reality that the vast majority of non-custodial parents are male, and that parents obligated to pay support are overwhelmingly male. The analysis will therefore not reflect the gender neutral stance of the statutes and will thereby hopefully not compound the problems inherent in that stance. Additionally, although the proportion of female non-custodial parents is relatively small, it is not insignificant, and my intention is not to deny the issues faced by non-custodial mothers (or custodial fathers). Given the gendered nature of parenting, divorce issues and non-payment, however, a focus on mothers' experience would, of necessity, constitute an entirely different study.
3. Section 11 (1) (b) of the Divorce Act 1985 states:
"In a divorce proceeding, it is the duty of the court, to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;...” R.S.C. 1985 (2nd Suppl.)

4. Judging from the selected case decisions in MacDonald and Wilton (1992: 251-252), this “special category of parents” includes those “where there is an agreement between all parties who are to share custody” (Donnelly v. Donnelly (1976)), and those “able and willing to co-operate with respect to the child” (Baker v. Baker (1979)). Joint custody is explicitly considered to be inappropriate “where there is hostility between the parties and a lack of communication” (Hume v. Hume (1989)) and “where the parties held disparate views on the religion, education and recreational activities of their children” (McNeil v. McNeil (1989)).

5. Citation from the Factum of the Intervener submitted to the court by the Children’s Lawyer of Ontario (par. 9) in the case of Goertz v. Gordon (1996).

6. New Federal Child Support Guidelines came into effect May 1, 1997. (Corresponding provincial guidelines will be introduced in the near future.) Under the new Guidelines, the income of the custodial parent is not taken into account in the calculation of support. The assumption is that there are built-in costs to having the child in one’s home most of the time. Once access reaches the 40% level, however, (how this is to be calculated is yet undefined), these costs are assumed to apply to the non-custodial parent as well, and the amount of support is reduced.

7. Although the new Federal Child Support Guidelines eliminate, in theory, the largely discretionary basis of the determination of quantum of support, the allowance for “special needs” and “additional expenses” (which defines a very common ‘extra-curricular’ layer of costs in middle class families that are not covered by the table), is expected to keep alive the issues of lifestyle and respective responsibility.

8. "Economic hardship" remains in the new Federal Child Support Guidelines as a basis for requesting a variation or for deviating from the tables in making the original order. (Department of Justice, Canada, 1997).

9. The Family Support Plan Act was formerly the Support and Custody Orders Enforcement Act. The enabling and complementary legislation include the Reciprocal Enforcement of Maintenance Orders Act, the Reciprocal enforcement of Judgements Act, the Creditors’ Relief Act, R.S.O. 1990, the Personal Property Security Act, Freedom of Information and Protection of Privacy Act (Bennett, 1992).

10. These moral identities are picked up and amplified by legal practitioners and scholars. In a book meant to educate the public about family law, legal analyst Michael Cochrane states: “If support enforcement is to be effective, support enforcement offices will need to be able to seize wages quickly and efficiently to impress upon a support debtor the need to pay. Only tough enforcement will form the habits necessary for ongoing compliance” (Cochrane, 1993:180).
V. FINDINGS: INSTITUTIONAL INFORMANTS

In this chapter, I report key findings based on analysis of the data collected from institutional informants. Their role as 'activators of text' gives an interpretation of the law, policies and procedures related to divorce and separation. The institutions and groups of professionals chosen for representation in the study are those which are most involved in interacting with separated couples around issues of support payment. These are: provincial family court (two white male judges); the Family Support Plan (FSP) (the male administrator and two lawyers -- one male and one female -- from the same Regional office); two lawyers from the community (one visible minority feminist and one white male lawyer with a reputation for fathers' rights activism); two mediators (one white male in private practice, one visible minority female who works for the provincial court). Figure 3 (following page) shows a brief reference guide to the nine institutional informants. Detailed profiles of the Institutional Informants are in Appendix H.

As representatives of their respective institutions, the institutional informants are able to represent the perspective from which each part of the system views and participates in the separation and divorce process. Since each individual occupies a unique social location, his or her resulting subjectivity shapes how the institutional perspective is taken up and represented.

Data from two sites of direct observation have also been included in this part of the analysis: a joint educational presentation by the Director of the Family Support Plan and a leading Family Law lawyer to a conference of family law lawyers; a day spent in family court where informant Judge T. presides and where informant Ms. P.L. represented FSP before the court. Excerpts from two FSP publications have also been included in the data analyzed for this chapter. These brochures are entitled, respectively, Tips for Support Payors: Help Us Help You (Ministry of the Attorney General, 1993) and Directions for Income Sources on Making Support Payment Deductions (Ministry of the Attorney General, 1992). They are included here rather than in the chapter on Texts because they are directed at the support payor and at his employer; as such, they
### Institutional Informants

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<th>Family Support Plan</th>
<th>Mr. P.A.</th>
<th>Plan Administrator</th>
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<td>Ms. F.M.</td>
<td>Mediator for the Court (female)</td>
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<td>Mr. M.M.</td>
<td>Mediator, private practice (male)</td>
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reflect the interpretation of support law by institutional actors (bureaucrats). The brochures themselves also act as a point of interface between the law, the institution, and the fathers and as such are distinct from the other texts examined in Chapter IV.

The focus of the analysis will be on how the institutional actors construct divorced men as fathers, as husbands, and as objects of state interest and involvement. Themes found in the previous two chapters of the analysis appear here in the section on institutional informants as well. These are: legal issues (legislative or procedural definitions, limitations, etc.); moral issues (responsibility, commitment, right and wrong); relationship (care, love, nurturance/providence); financial (creditor/debtor, support levels); justice (rights, fairness); private vs public law (relationship of the state to the separated family); administrative (bureaucratic structures, procedures, requirements); combativeiveness (adversarial relationships, winner vs loser, power); quasi-therapeutic (problem-solving, psychological interpretations); coercion (enforcement); and flawed judicial system (priorities, funding, incompetence, biases).

**How the System Constructs Fathers**

Several themes emerge from the interviews which help in understanding how fathers are constructed *qua* fathers within the system. These themes are:

1. non-custodial fathers’ loss of status and rights;
2. the meaning of fathering
3. good fathers vs bad fathers

**Fathers’ Loss of Status and Rights**

Judge C. expresses concern about the MacGyver ruling on mobility rights of the custodial parent. This was a landmark decision by the appellate court which ruled in favour of the custodial mothers’ rights to leave the jurisdiction with the child.
The message to men from [the MacGyver] decision was "You really have no rights and don’t try to control your wife through access."

He goes on to explain that

Since [MacGyver] the father-child bond is the most easily displaced bond that I know of in law. Even parents who abuse kids are ensured access.

The MacGyver decision, in this judge’s view, leaves non-custodial fathers “really powerless”.

In contrast, the custodial parent is imbued with full parental rights and therefore control.

Court mediator Ms. F.M. believes that having what the law calls “custody,” a term she wishes would be replaced by references to “parenting or SOMETHING,”

brings with it a sense of power and control that makes some people think that they can do whatever they please.

She goes on to say that non-custodial fathers, who are subject to this “power and control”, complain about it.

They feel “If you’ve got the power, why do you want my money?”

The power of the custodial parent is also inferred, though in a more positive light, when mediator Mr. M.M. says:

I believe there’s a greater openness today on the part of women and men to fathers being actively involved with their kids... I think the Women’s Movement has encouraged, maybe even forced men to be more involved with their families, with domestic life in general. Women are more willing to give up more of their maternal role. Fathers have a lot of feelings about losing their kids and it hurts more if they have been involved, BUT because women are willing to have them remain involved as key persons at key times, they feel they will be OK and the family will be OK.

In other words, when mothers are willing to use their power to permit men to remain involved with their children, fathers are generally satisfied with the outcome. The inference seems to be that it is not maternal power *per se* that threatens fathers, but the exercise of that power for the purpose of excluding fathers from relationships with their children.

Lawyer Mr. C.L. talks about the power that women gain following separation:

You often have a woman who didn’t have much power in the marriage, and when the marriage breaks down and the children are with her, she then has some power. Especially if he desperately wants to have a relationship with them.
He also elaborates on the ways in which he believes this power is often abused:

- [A]ccess is interfered with, denied, obstructed, or spoiled. The many options that are available to the parent who has custody.

After explaining that this power has come to custodial parents with the aid of the law and the courts, Mr. C.L. talks about high support awards as the badge of judges who are biased in favour of women and adds:

I never met a judge who was pro-fathers.

The implication is that such judges are allied with mothers against fathers. Being ‘pro-children’ does not appear to be one of the alternatives.

Ms. F.M. concludes that fathers need more “recognition” as parents. Asked whether this recognition needs to come from the children’s mother or from the state, she replies:

I think it has to come from the state. Right now it seems that the state is for women and not necessarily for men.

In the foregoing examples, mothers are constructed as being powerful in their role as custodial parent, fathers as not only lacking in power themselves but subject to the power of the custodial parent. This affects the father’s freedom to connect with his child, both in law and in lived experience. The power differential is acted out by many parents around issues related to access. Although most informants are careful to reject the resulting access difficulties as a justification for non-payment of support, nearly all of them acknowledge that it is a real issue for many fathers. Judge C. says,

As a judge I’m really disappointed to see the extent to which mothers seem to want to keep fathers out of their and their children’s lives. I admit that I get a skewed population in court, and so does the Family Support Plan, but I do find it discouraging.

Lawyer Ms. C.L. concurs that complaints about access are often “real, not trumped up”, though she is careful to note that often access is withheld “for legitimate reasons; sometimes even with the court’s agreement”. Mr. M.M., a mediator, says that sometimes vengeful mothers will actively use their control as custodial parent to keep fathers from seeing their children, while Ms. F.M., the
female mediator interviewed, says

Let's face it, not all mothers are angels.

The Meaning of Fathering:

How the System Constructs Fathers as Providers and as Nurturers

The societal message to fathers is not only about the loss of power but also about their loss of value as parents. This is conveyed in the informants’ discussion about the emphasis the system places on the fathers as providers, while their rights and control as parents are diminished. One major way that the split in relational and economic functions and their relative value gets talked about is in the relationship between support and access.

Mr. P.A. makes it clear that support payors are reminded by FSP at every turn about the fact that the agency’s sole function is to enforce payment, not to help them with problems of access or even with employers who may illegally fire them because of the support deduction order. Lawyer Ms. C.L. refers to this institutionalized separation of the two functions of support and access as problematic:

We have the Family Support Plan and the Official Guardian’s Office, which are two separate agencies, one which enforces support and one which makes determinations about access. And sometimes they are working in opposing directions.

As a matter of policy, FSP cannot consider the relational dimension of the family. Mr. P.A. explains:

Many people come in and say “Why am I paying if I’m not seeing my child?” The response to them is “Excuse me, that’s not up to us to decide. We have no jurisdiction over that. Take it up to court. Do what you have to do.”

The fathers’ question, “Why am I paying if I’m not seeing my child?” is essentially a complaint, in which payment and access are constructed in a reciprocal relationship. In contrast, the institution’s response emphasizes the structural separation of the two matters. Support is assigned to the realm of enforcement, while access is assigned to the courts or the Office of the Official Guardian. The former will deal with it in legal terms, the latter in a mix of legal and quasi-therapeutic terms whose
focus is on family relationships.

By the same token, when a father complains to the judge at an enforcement hearing of access problems, Judge C. acknowledges that some judges are likely to respond with:

Sir, that is COMPLETELY irrelevant.

What fathers in this circumstance find out, however, is that, as Ms. C.L. puts it:

Support is easy to enforce. Access isn't.

Or, as Judge C. says:

Access enforcement needs to be strengthened, but I don't know how.

Judge T. supports the separation of access from support in both law and procedure, yet he -- along with nearly every other institutional informant -- explicitly concedes that in the minds of non-custodial parents the two issues are connected.

Non-custodial mothers complain the loudest about this. They say: "He's got my kids. What more does he want?"

Judge C. says:

I'm certain I've read, or been told, that there's a direct correlation between non-access and non-payment. You know that there's a strong connection apparent between access and support payment in fathers' minds. Fathers who see the kids are likelier to pay, because they see where the money is going.

Ms. C.L. says:

I have to question whether the dichotomy we've established between custody and access and child support is realistic.

She muses about the problem from the non-custodial father's perspective:

If you walk in this person's shoes -- which we don't often do when we're lost in the mechanics of the law -- then you begin to understand why a father who has been denied access might attribute more weight to this than to money; whereas a woman who doesn't get support money is only being denied money. I wonder if I myself would question paying child support if I'd been denied access over an extended period of time.

She goes on to point out that the outrage over denied access is not always driven by a strong emotional bond with the children; rather,

It's that you're their father and you SHOULD be able to see them and they SHOULD be able to see you.
wonder -- with 20% of me, mind you -- whether it's reasonable to expect fathers who feel this way to buy into the moral obligation. For some of them it's a question of fairness, of justice. The question of access is [for them] a moral one too. My feminist students and I struggle with this.

Ms. C.L.'s own struggle with the issue, from a feminist point of view, is sensible if the connection between access and support is understood as a proprietary relationship. When support is constructed as payment in exchange for access rights, the connection seems repugnant. For example, Judge C. understands it as a willingness to pay support only if one can "see where the money goes". However, Ms. C.L. understands the connection differently. She develops an understanding of it which allows her to see the moral argument underlying the father's position, though the morality may be different from her own.2 Another way to think of this might be that the desire to nurture the child monetarily might be fostered by experiencing the opportunity to nurture the child emotionally. Ms. C.L.'s comment about how difficult it is to to 'walk in someone's shoes' -- that is, to experience empathy for an individual's position and thinking -- when one is immersed in legal procedures draws our attention to the effect of competing discourses. Legal discourse may be inimical to discourses about relationship and morality.

Mr. C.L.'s response to the relationship between access and support is dramatically different and yet makes the same point about competing discourses. When Mr. C.L. postulates that withholding of support is a strategy used by many fathers in order to get the issue of access addressed, I ask him whether these fathers worry about the effect on the children of support not being received. Mr. C.L.'s response to this is to emphasize that each case is "about a legal dispute, not about feelings". Thus framed as a legal issue, or a matter of justice, it appears that all questions of relationship and feeling become irrelevant and inadmissible, not only within the court or legal argument but within the very consciousness of the father. In this sense, the function of linking support with access is the antithesis of the connections reviewed above: it is done here in order to suppress or negate relationships and responsibility in the name of legal matters. Ironically, although the "strategy" is ostensibly undertaken in order to strengthen the parent-child relationship, in actuality it appears to undermine it in several essential ways. Mr. C.L.'s rationalized version of
the access-support connection, i.e. which uses the law to justify the lack of a concerned parental response, is the one where a moral orientation based on relationship and responsibility is most clearly excluded.

In any case, the informants stress that the connection between parent-child involvement and obligation to support exists mainly in the minds of the fathers. This is particularly intriguing in light of the way most of the informants talk about how the most effective way to get a father to pay support is to appeal to his caring for his child. The following examples illustrate this point.

Judge C.:

I take the time to explain things kindly, I say I’m sympathetic. I ACKNOWLEDGE how they feel. I say “It’s the CHILDREN’S right to see you, and that right is being violated. Are you going to compound that by depriving them of their right to eat? You’re telling me in one breath that you love your children, but in another breath you won’t help them to live.” Then I talk to them about what they can do about access. I try to focus the conversation onto the kids and their caring for the kids. This works with 95% of fathers.

Elsewhere, he says:

I remind them that they surely don’t pay support because it’s a judge’s order. You do it because you LOVE them... That embarrasses them.

Judge T. says:

Well, I agree with giving more recognition to the rights of non-custodial parents, but I also think it’s important to stress parental responsibility. Sometimes, when I have a father before me who’s asking for more access but hasn’t been paying or isn’t paying very much, I try to talk to them about becoming more responsible and involved in the day-to-day care of the child. You know, share some of the tasks, such as take the child to the dentist, or spend more time with the child. And by the way, you know, some fathers become much better parents after they separate than they ever were before.

Ms. F.M. says:

I avoid labels because people can’t negotiate when they get caught up in labels. I prefer to use language like ‘parenting’ instead of ‘custody’ or to talk about how they’re going to manage while living separately, and continuing to parent the child. When people hear those words they respond more constructively. I make them spell out what they personally want, too, instead of using terms like ‘joint custody’. I want to make them think. I want to get that father to verbalize what he’s thinking but maybe hasn’t even understood himself.

Q.: Given what you have said, do you usually know you’re in trouble when the guys start talking about
Q: How do you move them out of it?

A: Well, I usually would see them individually to get an understanding of where this person is coming from. I don’t take that talk about rights at face value. I assume it stands for other concerns or interests and I try to find out what they are. Sometimes rights are the only way a person knows how to express what it is they want.

In each of these examples, the individual tells how he or she actively demonstrates recognition of a father’s potential contribution to his child as an active, nurturing parent, not only as a source of financial support. This positions the individual father strategically as a valued parent, a position in which he is presumed to have an interest in and concern for the child. The father’s own claims as a caring parent, whether direct or indirect, are taken up and used to extend the expectation that he will follow through with the behaviour of a caring parent. In so doing, each informant attempts to move the father from a discourse of rights and/or legal arguments to a discourse of caring and responsibility, and finds that progress is much easier in this context.

Another way to understand this is that the institutional actors are offering an identity position to the father which they hope he will take up; it is the identity of ‘good father’. This is entirely consistent with Mr. C.L.’s contrasting adherence to legalistic arguments in order to rationalize a position of non-payment. In his case, by holding to a discourse of rights and justice, concerns about the child are kept at bay. The identity of legal disputant is given the foreground, while the identity of concerned father is put in the background.

A second element in gaining compliance, according to the informants, is acknowledgement of the father’s concerns, of allowing him a ‘voice’. Ms. F.M.’s approach as mediator is to help the individual express underlying, perhaps unformulated, “interests”. Judge C. approaches it this way:

I bend over backwards to demonstrate fairness towards the payor. I know from my prior dealings with them [at FSP] that if I don’t listen to them, I won’t get anywhere.

There is more than pragmatism behind the judge’s approach. His statement acknowledges the significance of the individual father’s perception of equity. In a related speech, he reiterates the
value of acknowledging an individual’s need to be ‘heard’. I remind him of a conversation I had with him during his tenure at FSP, in which he had said “I don’t care WHY they don’t pay. I just want them to pay!” and ask him whether being on the bench has changed his attitude regarding this issue. His response:

Yes, I have changed on this. Legally I DON’T care, and when I was at FSP, I COULDN’T care. As a judge I’ve changed my attitude. The MOST IMPORTANT thing when a person goes to court is to come out feeling like they’ve been heard and understood by an objective person. They want the judge to hear. Legally it may not matter but they have to feel that as judge I DO care. I’ve softened since FSP.

The judge’s post-FSP recognition of the need to combine justice with allowance for individual identity and recognition differs sharply from the description of FSP provided by a number of the informants, by my own direct observation, and from a number of FSP publications. The deliberately legalistic, bureaucratic and depersonalizing stance of FSP personnel will be discussed at length in the section below on *Citizens*.

**Categorizing Fathers as ‘Good’ or ‘Bad’**

There are several ways in which fathers are categorized as either ‘good’ or ‘bad’ within the system. The informants who talk about appealing to the concerned father inside the support payor are talking about what they consider to be ‘good fathers’ in the sense that they are able to respond in a caring, responsible manner. The construction of a ‘bad father’, on the other hand, is one who does not care, as demonstrated by an absence of genuine interest in the child as well as an absence of financial support. Such a father cannot be induced to pay even by strategic appeals employing the discourse of loving family relationships.

Following are several examples of how these two categories of fathers are distinguished from one another:

1. Ms. C.L. explains that in her experience, many more fathers refuse to pay when they first consult with her than “as the process evolves.” The process to which she refers is one that
includes presenting both legal and moral arguments to her client, and addressing the arguments which the client presents in turn. Although there is a proportion who continue to “out and out refuse,” she finds most can be persuaded that their concerns about access or about money misspent by the children’s mother should not prevent them from paying support. Even those who continue to refuse invariably offer some sort of rationale. “And all of them have SOME moral point of view,” she claims, except for those who argue, “She’s got someone else now; let him take care of that.” Ms. C.L. calls the latter “the closest thing to a non-explanation” that she has encountered. (This questionable rationale will be examined more closely in the section Fathers as Former Husbands below.)

Ms. C.L. focuses on judging the moral basis of her clients’ arguments, rather than the clients themselves or even their behaviour. Being able to perceive moral reasoning behind a father’s position makes it possible, as we have seen, for her to empathize with him. The perceived absence of moral reasoning leaves the client’s position essentially unexplained and presumably, therefore, difficult to relate to sympathetically. Seeing a non-payor as someone with a moral position also prevents him from being relegated to the category of deadbeat or criminal. He is seen as someone with a moral identity.

2. Judge C. distinguishes explicitly between the “95% of fathers” who respond positively when he appeals to their sense of caring and responsibility and those who do not.

You get these fathers with huge arrears, but have new cars, they live well, they’re supporting a new family. I ask them “If you were told now that all arrears would be wiped out on condition that you never see them again, what would you say?” There’s usually a pregnant pause and then they say “Yes” [i.e. I accept that offer]. I could count on one hand the number of fathers who say “No, it’s not about that.” Many women will waive arrears to get the former husband to back off and get out of her life, and most fathers accept this...

Often the guys who say “Yes” have just finished using access as a reason they don’t pay.

He goes on to say that sometimes, even after access has been litigated and settled, “the guy still doesn’t show up [for visits].” The judge concludes that:
Parents who genuinely care keep trying to stay in contact with the child SOMEHOW, or send Christmas presents, or SOMETHING.

What happens here is interesting. The most striking aspect is the flagrant linking of support to access in the Judge’s first excerpt; it constitutes an offer, in essence, to suspend payments if one will forfeit the goods. More subtle is the Judge’s attempt to engage the father by offering him the subjective position of ‘good father’. The judge uses a father’s desire to maintain contact with his children as his ultimate measure of ‘genuine caring’ and finds that this normally is accompanied by some desire to give to the child materially as well. Where a father is unwilling to pay, he is not interested in maintaining any level of relationship with the child either. A good father is thus constructed, through the linking of money and relationship, as someone who expresses relationship through caring and material provision.

3. When Ms. F.M. says “Let’s face it, not all mothers are angels,” she implies that normally mothers are considered to be “angels”, which leaves fathers in the role of devils. She herself has mixed feelings about fathers who don’t pay. Like Ms. C.L., she has found that many fathers argue the money is being misspent. Like Ms. C.L., too, she finds that going through “the exercise” of examining the actual costs of feeding, clothing and caring for a child “gives some reality” to the father’s perspective. She understands the father’s position in these cases as being based on a lack of comprehension of the real day-to-day costs involved.

Usually they were the ones who paid the rent and other things, but they didn’t do the spending related to the child specifically. It’s sort of similar to the wife who is not aware that there’s a pension fund that she is entitled to. Both are examples of areas that are totally outside the person’s normal mind-set during the marriage. As far as fathers’ awareness of budgetting for children is concerned, it’s just not there. They also often have not realized that supporting the same number of people from two separate homes is always more expensive than when you can combine costs within the same household.

It appears from this excerpt that the denial of the child’s needs is only sustainable at the abstract level and is likely compounded by deeply engrained resentment over the control the wife has over the money to be spent on the child. Once the father is asked to imagine how he would
spend the money, he is apparently able to be more realistic about the amount of support required. This undoubtedly demonstrates issues of control at several levels; control issues are particularly predictable in the case of men who may have previously controlled the money, the decisions about how it is spent, the children and the wives. Ms. F.M. perceives that when a father persists in seeing the money as supporting his former wife or her household rather than the child, he may continue to resist paying even though he has the ability to pay. He may permit himself and a new family to live well yet see a similar standard of living in his wife’s household as evidence that the support was misdirected. Asked what she thinks the issues are in such cases, Ms. F.M. says:

It’s partly about fairness, I suppose. I don’t know whether it’s more a matter of what you want for your children and the lifestyle that you want them to have or whether it’s about having so much resentment for this person that you’re prepared to let your children suffer.

For her, then, the test of a good father is whether he is able to recognize his child’s needs and put caring for the child’s welfare ahead of the animosity he may have toward the former spouse. She offers her “personal theory” about the connection between this ability and a given father’s initial level of commitment to spouse and child: She identifies three categories which range from live-in life partner to a “visiting relationship;” in the case of the latter, there was initially no expectation of continuous connection and responsibility. As she and Ms. C.L. both note, the state’s expectation that the commitment will be there after the relationship has ended comes as a complete surprise to such fathers.

4. Mr. M.M. perceives that: the majority of fathers are interested in being involved with their children, but their rapport with the kids is rarely the same as the mothers’. For him, there is less complexity surrounding the question of ‘good’ fathers and ‘bad’ fathers. Mr. M.M. simply says

I don’t believe that men on a grand scale set out to diddle their kids. I think it’s usually something that evolves through circumstances.

He establishes a standard for fathers that is different from the standard for caring mothers; fathers
are expected to feel/demonstrate a measure of interest in their children, but the closeness, communication and understanding that presumably make up “rapport” are not as developed between fathers and children as they are between mothers and children. By implication, this leaves more latitude for a father to be remote or lacking in understanding of his children without being considered a failure as a parent. A ‘bad’ father is one who would knowingly, deliberately “diddle his kids”; ‘bad’ fathers are the exception, ‘good’ fathers are the rule. Mr. M.M.’s assumption of good intentions allows for the possibility of a moral identity for most non-supporting fathers.

5. Mr. C.L., on the other hand, distinguishes between fathers who withhold support as a stratagem (albeit illegal) and those who do it simply because they are “deadbeats”. For him, as for Mr. M.M., it is not non-payment, but the intent behind it that distinguishes the good father from the bad one. Interestingly, Mr. C.L. claims not to be personally familiar with any such “deadbeat dads”. The social identity of the deadbeat father, i.e., without moral intent, is not one Mr. C.L. acknowledges as being real; rather, he believes it has been created by “the media”. Mr. P.A., of the Family Support Plan, comments that politicians and the media foster a public perception of fathers as “deadbeats”.

* * *

In spite of the distinctions made by the informants between financial provision vs caring, negligence vs evolved circumstances, FSP is not mandated to consider the existence of any parent-child relationship other than the monetary one, and -- as some informants make clear -- there are judges known to take the same position. Judge C., for example, in trying to make the point that “it’s [fathers’] PERCEPTION that they’re treated as bad fathers,” as opposed to reality, concedes that:

The only time I could say he’s being treated like a bad father is when a judge summarily dismisses his concerns about access. Because really, half the order is being ignored.

He believes that dismissing a father’s concerns about his relationship with his child as “completely irrelevant” and focusing exclusively on enforcement of his monetary obligations conveys the message that the non-paying father is a bad father. In other words, when he is treated in a one-
dimensional fashion, considered only as what Ms. F.M. calls a “moneybag” and discounted as a caring parent, his failure to pay full support becomes the sole measure of his value or success as a parent. Thus, in these contexts, good fathers are those who pay, and bad fathers are those who don’t pay.

Intentions, feelings and relationship are not part of FSP’s domain or language. Matters are dealt with here “in black and white,” “word for word”. When I question Mr. P.A. about the validity of the claim that FSP statistics distort the problem of non-payment he replies:

From conversations at the counter with clients or support payers, I know they resent the term ‘ARREARS’ for ANY purposes, even if there is $500 outstanding, say, from $10,000. We call that $500 as arrears. People don’t like it.

He explains that the way the system works, by the second day of the month, a payor is deemed in arrears if the payment hasn’t been received. He concedes that there is resentment about this.

One thing people complain about is. “Why am I being painted with the same brush?”

They complain about the wording of the letter. “You’re painting with the same brush. I’m not a deadbeat.”

These types of concerns have been sent to head office.

Essentially, these objections by payors are to FSP’s failure to distinguish between what the fathers themselves seem to identify as ‘bad’ fathers and ‘good’ ones. A ‘bad’ father is a “deadbeat”, i.e. one who shirks responsibility by not paying at all. A ‘good’ father is one who does not intend to shirk responsibility and has presumably demonstrated this through partial payment. Mr. P.A. expresses the fathers’ rejection of the identity of ‘bad father’ which they perceive is being imposed on them along with the designation of ‘arrears’ and the mobilization of enforcement measures.

Nowhere in the data gathered from FSP personnel is there any reference to ‘fathers’ at all, only to ‘payors’ or ‘support debtors’. The absence of any reference to payors as parents constructs them exclusively as debtors and restricts the domain within which FSP personnel may relate to them to a strictly financial one. The full implications of this will be explored in the section on Citizens.

Although the law and FSP rigidly separate from access and from all other aspects of the noncustodial parent-child relationship, the practices related to ‘activation’ of the law by lawyers
and judges often deliberately make the connection. The law and FSP separate the identities of loving father and responsible supporter. Only the latter is recognized in matters relating to money. A father who doesn’t pay is a bad debtor. Fathers are said to read into this a designation of ‘bad father’, and in fact so do judges, lawyers, and mediators under certain conditions.

A Note about the Subjectivity of Institutional Informants

The various institutional informants present mixed, often ambivalent, and sometimes contradictory perspectives on fathers. The particular social location of each informant appears to influence the way in which he or she understands fathers, and the attitude adopted with respect to working with them. For example, Ms. C.L.’s critical analysis of the moral claims made by fathers who feel support and access should be reciprocal is a response not only from her location as a black West Indian feminist lawyer but from an identification with the parental role. As such, it reflects a considerable degree of open-mindedness and suggests a focus on complex understanding as well as a willingness to tolerate contradictions. Since the nature of her practice means that her male clients are likely to be black (particularly of Caribbean origin), this approach may be part of a protective stance towards members of her own community. She acknowledges that she struggles with the contradictions between her allegiance to feminism and her allegiance to the black community. These two positions are clearly in tension for her around the issue of non-supporting fathers. Her social location as a black feminist is constantly being tested by her role as a black woman lawyer; i.e., when she takes on black male clients accused of breaking the law in a white, male-dominated justice system, particularly laws affecting women and children. Her approach of critical analysis appears to be a way of managing this complexity with integrity.

By contrast, Mr. C.L., as a white male lawyer defending male clients (likely mostly white) in what he appears to see as a pro-woman biased justice system, takes quite a different position. He is less interested in the fathers’ moral or parental position than in their legal one, and focuses entirely on justice in terms of fathers’ rights and legal principles. Unlike any of the other
informants, fathers as caring parents are explicitly excluded from consideration, and only strictly legal issues are admissible where support is concerned. On the other hand, Mr. C.L. employs the therapeutic discourse of "dysfunctional families" and "unresolved marital issues" to explain what he identifies as the abuse of power by custodial mothers over fathers' access to their children. Rather than use this language to get at the feelings involved, however, he uses it to build a case for mothers' "continuing power plays". Similarly, the discourse of loving fathers (for example, their "desperate desire to have a relationship with their kids") is used to support an argument for fathers' rights rather than for their emotional well-being or the best interests of their children.

**Construction of Divorced Husbands**

In the legal and institutional processing of marital separation or divorce, new relationships and identities are constructed for all family members. Fundamental, of course, is the reconstruction of the relationship between former spouses. This entails changes to the power relations between them, including economic power. Analysis of the institutional informants' data reveals four main aspects of the social identity of separated or divorced couples. They are:

1. the positioning of the former spouses as adversaries or contestants,
2. the positioning of the former spouses as debtor and creditor,
3. the husband's loss of patriarchal privilege and control, and
4. husbands as hostile and potentially dangerous to their former wives.

**Husbands and Wives as Adversaries or Contestants**

Throughout the institutional informants' data there are references to the former spouses as adversaries or enemies: Ms. F.M.'s observation that a man's resentment towards his former spouse may overshadow his ability to recognize and give priority to his child's needs has been noted above. She explains that "a very, very significant proportion" of her mediation cases involve "getting back at [the former spouse] with NO regard for what they're doing to the children." Mr.
M.M. says that sometimes a woman may have a "vendetta" against her husband and both judges refer to the potential for violence on the part of angry husbands towards their former wives.

Several informants suggest that people who are hostile are positioned by the adversarial nature of the system itself to act out their hostility. Judge T., for example, objects to the way that the Ministry of Community and Social Services, as assignee for a support recipient, routinely compels women to take their husbands to court for default of payment, or to demand increased support, for it positions the wife as adversary and often evokes a hostile retaliatory response from the husband. Ms. C.L., on the other hand, explains how she deliberately uses such situations to deflect the husband’s hostility from the wife toward the system, encouraging him to see the government as being behind his wife’s demands. Both informants are acknowledging the provocative nature of the situation and the hostility that is likely to be aroused in the husband by it.

Mr. M.M. says,

Separation and divorce are human issues with legal ramifications, NOT a compendium of rules. But the system is very set in its ways and some people are just naturally litigious, so they go at each other… No lawyer should be allowed to undertake a family matter until a mediator has certified them unmediatable… Lawyers create these situations where the conflict just keeps escalating.

Q.: So your feeling is --

A.: That’s the way it is. It’s not my feeling.

In contrast, he characterizes his own role in mediation at times as that of “a decoy” to “draw fire when people need to vent their anger.” He talks about the anger in a non-judgmental way; his goal in mediation is to prevent the anger from escalating or becoming destructive to the negotiation process. He does not view the system as able to achieve containment because of its structure; on the contrary, it tends to encourage expression of anger and hostility.

Judge C. speaks at length about the importance of taking a mediative approach in family law situations, rather than a hard-and-fast “legalistic” one, reinforcing his conceptualization of the underlying goal as the resolution of family problems. He is a staunch supporter of the recommendations in the Civil Justice Review (Ministry of the Attorney General, 1995) which are aimed at minimizing complexity, conflict, and time-frame in family law cases. He uses an
alternative to the adversarial discourse; it is a quasi-therapeutic discourse of conciliation and problem-resolution. Similarly, Judge T. refers to himself as a “problem-solver” who is flexible about procedural matters in the interest of helping parties resolve complex family issues in a timely way. The judges’ wishes for a process that emphasizes mutually beneficial resolution highlight the fact that they are concerned about the current adversarial framework which necessarily constructs spouses as contestants who will end up as ‘winner’ and ‘loser’.

In contrast, FSP lawyer Mr. P.L. explicitly rejects resolution or conciliation as an appropriate approach to support enforcement.

The Director is my only client. I don’t take direction or instructions from the recipient. It’s not my role to bring consensus to the matter. He points out that mediation resulting in flexible support orders based on consensus and designed to avoid court in the future is actually problematic in the context of FSP’s mandate. The explicit rejection of consensus implies the reliance upon force of law and an adversarial relationship between the debtor and the Director; the likelihood of inflamed hostility between the spouses is not considered problematic within this framework. This is consistent, of course, with the separation of access from support issues, and with FSP’s construction of divorced fathers exclusively as providers and debtors, rather than as former spouses or continuing parents. It permits one to ignore the toll that the financial relationship takes on other dimensions of the relationship.

An interpretation offered by Ms. P.L.. (FSP lawyer) about why judges tend to be “soft” on fathers at default hearings throws an interesting light on the relationship between former spouses. She says,

I think part of the problem is that the men appear in front of the judges without the women being there, so the judges are too sympathetic to the men. Her meaning seems to be either that the stories the men tell are only believable when the women are not there to challenge them, or that the men’s claims of hardship draw sympathy only when they do not have to compete with those of their former wives. In either case, this perspective highlights the contest between the parties for credibility and resources, as well as for the court’s sympathies.
Positioned as the ally of mothers/creditors, FSP seems to see itself as necessarily hostile to fathers/debtors.

The adversarial discourse harnesses mutual resentment and hostility; it inevitably produces winners, losers. In some cases, institutional actors see themselves as representatives of the state, joining the fray on behalf of one party or the other. The alternative favoured by other of the informants is a discourse of conciliation and ‘problem resolution’.

Wives as Recipients/ Creditors, Husbands as Payors/ Debtors

While FSP clearly labels the former spouses as “payor” and “recipient” and attempts to construct the relationship between them as debtor-creditor, the consistent effort to keep other matters out of the relationship is testimony to the fact that the relationship is not, in fact, one-dimensional. At the same time, the state enters into their relationship in an active, directive way.

Following are several illustrative excerpts from a brochure entitled *Tips for the Support Payor* published by FSP (Ministry of the Attorney General, 1993):³

a) You must never make support payments directly to the recipient. If you do, the Family Support Plan will not know about these payments. We will think there are arrears owing, which may result in costly and unnecessary enforcement action against you. (p.3)

b) We cannot change your support order or agreement in any way. If you want to change the amount of your support payments, or the COLA clause, reduce the amount of arrears owing, or make some other change, *this is a private legal matter between you and the support recipient*. Your lawyer can help you with these matters [italics mine] (p.5).

c) You may feel your obligation to pay child support under your court order or agreement has ended. *This is a private legal matter between you and the support recipient.* Unless we receive the written consent of the recipient or a court order stating that the child support obligation has ended, we must continue to collect support payments for the child. Your lawyer can help you take the necessary steps to have your support payments stopped... [italics mine].
The Family Support Plan cannot become involved in child access or visitation problems. This is a private legal matter between you and the support recipient. Under the law, support and access are two separate matters.... If you are having problems with access, you may wish to speak with a lawyer. [italics mine] (p.6)

There is obvious ambivalence in these excerpts about the public/private nature of the post-marital relationship. On the one hand, FSP’s role as state enforcer of support collection is emphasized, while payment as a private matter between former spouses is strictly discouraged (example a). On the other hand, other aspects of the support arrangement are treated as matters of private law. The repeated reminder to contact a lawyer acknowledges that the “private” nature of the relationship is nevertheless closely governed by law and advises the individuals to seek legal expertise in order to deal with each other. It also reinforces the adversarial nature of the residual relationship between the former spouses. It is particularly interesting that even in the fourth example above regarding access and visitation, the parents -- in their role as parents -- are referred to in terms of the financial discourse of creditor and debtor. While access and support may indeed be “two separate matters,” the juxtaposition of money and family relationships (including the rare reappearance of “the child”) to talk about support is jarring -- a demonstration of the tension among these elements. This underlining of the separateness between the two draws attention to the fact that the state takes an interest in enforcing support, but access matters are private legal matters, not of concern to the state unless the parties are unable to settle it privately.

Husbands’ Loss of Masculine Privilege and Control

I want to begin this part of the discussion by distinguishing between the notion of fathers’ loss of status and rights as discussed above, and the loss of privilege and control, which will be discussed in this section. The loss of status and rights signifies real disempowerment through the legal redefinition of fathers when they become non-custodial parents. On the other hand, the loss of masculine privilege and control signifies the loss of patriarchal dominance within the family. I
have previously discussed the way in which the law positions a wife as having power over her former husband by virtue of the control vested in her as custodial parent (see Chapter IV). In addition, she is granted other forms of power and control by the law and the enforcement process.

Ms. F.M. offers the typical father's perspective on this:

Sometimes after separation the woman is in control for the first time. She doesn't just control the money. She controls the kids too. She's not supposed to do that.

The issue of control is a common theme in the informants' interviews, although the perceived object of control varies. The struggle for control may be over the children, over the money, or over the wife herself. In focusing on the children, Ms. F.M. rejects the idea of presumptive joint custody, but stresses the need to recognize both these people as parents so the issue of control would be removed.

When Ms. P.L. says simply, in answer to my question about fathers' motivations for non-payment

It's a control thing.

she does not specify the object of attempted control. Both Ms. C.L. and Judge C. interpret the complaint commonly expressed by support payors that the money is misspent or "misappropriated" by the wife as "a control thing." Ms. C.L. explicitly specifies

control over the MONEY, not necessarily over the wife.

Judge C. is not entirely clear about whether he means the money, the wife, or both, when he says

Next to access, the other main excuse is not believing the money is being spent on the kids. It's almost comical. Even when the wife is on welfare. It's a control thing.

Mr. M.M. postulates the connective element between money, wife, and children in describing the negative effects on support payment of a new boyfriend entering the scene:

It's about control, not just over the money but over her and over the whole situation.

It's a question of him having set up this nice little world for the kids and the wife and he was willing to pay as long as it was his way. ... It's not a jealousy thing, it's a control thing. They're living in a house HE purchased for them, living on money HE provides.
When Ms. C.L. refers to the men who say “She’s got someone else now; let him take care of that,” she notes that this is the only rationale in which the man has no moral grounding; but that is because she rejects the morality and the logic of patriarchy itself. Both Ms. C.L. and Ms. F.M. say many men are willing to contribute to their children either “in kind” or according to their own decisions about when and how much to give. While Ms. F.M. sees this as a defensible way around the resentment a man may feel at the perception that “the money is being paid TO HER”, Ms. C.L. understands it as “paternalistic”, a way of keeping control of the money in his hands rather than hers.

These last few examples indicate clearly that the desire for control is essentially seen as a struggle to retain (or regain) control of a patriarchal nature. This kind of power comes as a matter of privilege to men within traditional domestic relationships, and is largely lost upon termination of the spousal relationship. Indeed, as we have seen, the most common outcome of separation is a reversal of the usual power relations between spouses. Most of the institutional informants are conscious and wary of the reaction many men have to this reversal.

Dangerous Husbands

Several informants refer to the potential danger that many husbands represent to their wives, either in terms of a threat of actual physical violence or of intimidation through their power in the pre-existing relationship. I have previously mentioned the references by Judge T. and Ms. C.L. to the adversarial positioning of wives against former husbands by the Ministry. Judge T. elaborates on the reasons this worries him:

The women get caught in the middle. Forcing her to come to court to file for enforcement is often to her detriment. Either the father will stop, or threaten to stop, seeing the children or she is afraid for her safety if he has been an abusive husband in the past. I get very upset about these cases.

Judge C. explains that a significant number of couples must rely on the court system because mediation would be contraindicated for them.
I had no idea until I became a judge about the extent of violence involved. The intimidation factor is so great in some couples that they just CAN'T sit down at the same table. The new legislation that made FSP involvement automatic was very important in this regard. It helped to protect women. Of course, the new government may repeal this, but I think voluntary filing is NOT OK.

The judge is opposed, in other words, to reverting back to a situation in which a woman might easily feel intimidated by her former husband into refraining from registering the court order or agreement with FSP for enforcement purposes. The current automatic nature of the legislation means that choice is removed from her, so she is rendered less vulnerable to her husband’s reaction to enforcement.

The few explicit statements about violence in the data come from the judges, whose quasi-therapeutic ‘problem-solving’ discourse encompasses aspects of family relationships, but whose role in the justice system mandates the protection of those who are vulnerable to violence. The threat of violence as a potential outcome of the separation process, serves as a rationale for state involvement. Automatic, universal enforcement is one approach to this involvement; mediation and problem solving constitute another, quite different approach. The first tries to keep the couple at arm’s length, rendering the relationship more impersonal; the second tries to personalize and resolve the transactions between the spouses.

In a contrasting reference to the violence of post-marital relationships, Lawyer Mr. C.L. refers to mothers’ use of their children as “weapons of choice” in the vengeful “power plays” aimed at their former husbands. In this case, too, the violence is not physical, but it is related to power. In this case, however, it is the acquisition of power (by wives), rather than its loss (by husbands), that is seen to generate the violence.

**The Construction of Fathers as Citizens**

Because of the fact that enforcement is dealt with separately from custody and access by the system, and because other bodies from various sectors within society (i.e., business, media and government) participate in the enforcement process, fathers are talked about as members of society
in ways that are distinct from their role as fathers and former husbands. These discourses focus on rights and responsibilities with respect to the law and society. The main specific themes which emerge from the institutional data regarding the construction of divorced fathers in their role as citizens are:

1. as objects of enforcement considered hostile to the system (criminals) and scrutinized by it;
2. as victims of the system.

**Fathers as Criminals Under Scrutiny**

There is evidence in the data that fathers are thought of and positioned as potential criminals, not only to the extent that they are thought likely to break the law, but that they are indeed considered a threat to society. To this end, they are subjected to scrutiny by the state and society in a number of ways suggestive of criminalization.

In the chapter on Legal Texts, we have seen that the law constructs fathers as support debtors in ways common to other debtors but at the same time, the enforcement powers available are unique. Additional distinctions arise between child support and other debts because of the particular moral obligation to one's children and the extraordinary dependence of the latter on the debtor. Several examples emerge from the informants' discussion of the enforcement system. In one instance, to explain his support of tougher enforcement measures, (FSP administrator) Mr. P.A. says:

People don't realize the effect of not paying child support on the family.

If these payments are being made, life would be much easier for everyone — payers, recipients, everybody else, taxpayers — in general.

Judge C. defends the practice of automatic wage garnishment by saying:

Compared to the benefits to society of support being paid, the humiliation or embarrassment of these fathers is not important.

In each of these examples, support debtors are positioned in opposition to society in ways that emphasize the potential risk they pose for society as a whole. The construction of the support
debtor as a citizen whose behaviour threatens the well-being of society is used to justify the mobilization of society in efforts to gain his compliance. This offers some insight into what appears to be the criminalization of fathers in the discourse of the informants.

There are numerous examples of the language of policing, in a way that implies criminals as its objects. Judge T. explains how difficult it is for a judge to determine how much a man actually earns if he is self-employed, which is crucial to establishing the amount of support. “We have no way to get the goods on them,” he says, and neither does FSP. Neither the courts nor FSP are mandated -- or funded -- to “investigate” properly. In contrast, Mr. M.M. (a police officer turned mediator) says in reference to fathers who default on support:

They CAN’T get away with it. I can’t fathom how they do it. I know from being a cop how easy it is to get information on someone and track them.

While it may not be surprising that defaulters are spoken of and responded to as lawbreakers, the fact that the support deduction order is automatically put into effect positions even payors as lawbreakers. Judge C. frames this as “normalizing,” a positive feature of the system insofar as it does not set the defaulting father apart from the compliant father. He does not appear to recognize that what has actually been normalized is fathers’ presumptive status as lawbreaker.

Mr. P.L. offers the most dramatic construction of the fathers as ‘bad guys’. He begins the interview by saying:

When this program first started, I thought I’d be perceived as the guy wearing a white hat. I was going to be on the side of the angels. That’s how I thought we’d be perceived by the courts, the lawyers, and the recipients. But I’ve been rudely disillusioned.

Q. What do you mean?
A. No-one likes us. The lawyers think we’re intrusive, the judges think they did it better before. They think we take too hard a position, because we used to not negotiate...
I believe in the program. I still believe what we stand for.

By positioning the enforcement agency as “the guys in the white hats,” we are left to infer
that there is an opposing villain in the scenario (the ‘guys in the black hats’); if enforcement is “on the side of the angels,” then what side are the fathers presumed to be on? Moreover, the reference to a stance of implied ‘right’ or ‘good’ for which the agency “stands” adds a moral purpose to FSP’s legal one; this discourse positions the fathers as somehow being immoral. In an interesting parallel, lawyer Mr. C.L. says he likes to think of himself as a “Champion” of “difficult family law issues”, by which he means issues which “happen to have been related to fathers’ rights.” The coincidental images of cowboy and gladiator, each battling for what he sees as the ‘good’ cause, revives the adversarial discourse and reveals the way in which some representatives of the system approach their roles. Now the adversaries are no longer just the spouses; the institutional agents take up the identity of contestants as well.

Several examples of institutional practices further illustrate the criminalizing discourse regarding fathers and child support. Mr. P.A. explains the extent to which the system relies on “outside information” from informants in order to “track and locate” debtors in default. A “hot tip” from a former spouse or her lawyer is normally the most helpful lead in this process, especially when there is no paper trail to a person’s money or property, i.e. no loans, debts.

And this is why we tell recipients: “You assist us with ANYTHING, we’ll follow up.”


• By law, it is your duty to notify, in writing, the Family Support Plan within 10 days of the name and address of your employer whenever you change jobs.

• You must also notify the Family Support Plan of any change of address so our records can be kept accurate in case we need to contact you. (p.3).

The forms which must be filled out and submitted by each creditor as part of the initial filing package include the request for identifying information about the debtor such as height, weight, eye and hair colour, distinguishing marks, etc.

FSP’s notification to support payors of arrears is in some ways problematic as well. As we
have seen, Mr. P.A. reports that fathers commonly perceive FSP’s notices as being “too rough” notices because they feel it addresses them as if they were “deadbeats”, i.e. as if they were irresponsible, ‘bad guys’. At the time this research was being conducted, the recorded telephone greeting at one Regional FSP office announced the following message: “If you are a support payor, your call will not be returned,” and a central number in Toronto was given where an automated system could be reached. “All others” were invited to leave a message. Mr. P.A. confirms that support recipients, lawyers, another enforcement agency, or an employer can expect an answer. The decision not to direct funding towards accommodating calls from support debtors is consistent with policy. The reason is that “There’s no point in [FSP] hearing what the payors have to say” according to Judge C., since FSP has no authority to address their complaints. This institutionalized dismissal of fathers contributes to a construction of them as somehow ‘less than’ or ‘not as good as’ other citizens, of negating their worth, and literally denying them a hearing.

Mr. P.A. and Mr. C.L. both claim that the media have promoted the “deadbeat” image of fathers. Under the NDP government, the province conducted a media campaign to influence public attitudes against tolerance of non-payment of support. The ads emphasized not only the deprivation of the children involved, but the extra burden on other taxpayers as a result of “deadbeat dads”. Given the absence of any direct constructive role for the public in this matter, the only discernible purpose of the campaign was to marginalize the non-payer, to create a social climate in which he is seen to be a bad father and a bad citizen. The creation of a negative social identity was to motivate fathers to avoid marginalization by taking up the identity of ‘good father’, i.e. one who pays.

To some extent, criminalizing discourse is applied even to the employers of payors with support deduction orders. They are referred to as “income sources” by Mr. P.A. and in all FSP literature. They are addressed in an FSP brochure entitled Directions for Income Sources on Making Support Payment Deductions (Ministry of the Attorney General, 1992) in the following manner:

If your regular payments to the payor terminate or are interrupted due to lay off, leave of absence or a strike, the law requires you to write to us within 10 days. The same applies if the payor goes on Workers’
Compensation or receives disability payments from another income source... If regular payments to the payor start again, the Family Support Plan must also hear from you in 10 days... An income source must give the Plan the name and address of a payor's new employer or income source if it is known.

AN INCOME SOURCE MUST OBEY THE LAW.

Non-compliance with these obligations is an offence and could result in prosecution and a fine of up to $10,000...

The language is authoritarian, coercive, and intimidating; resistance is anticipated and forestalled.

Mr. P.A. reports that small businesses are likelier than large ones to complain to FSP because they do not benefit from the mechanisms by which FSP keeps larger companies informed of changes in the law or FSP procedures, i.e. through bodies such as the Canadian Payroll Association.

The small businesses have to get their information by calling in and having things explained to them. Some of them complain 'Why is the government harrassing me?' Our response to that is to try to calm them down. Usually we get cooperation by telling them 'This is the Act and you have to comply'.

For the larger businesses, then, the involvement is collaborative in nature, whereas for the smaller ones it may be more coercive.

Similarly, employers are warned in the brochure made available to “Income Sources” that it is illegal to “dismiss, discipline, suspend, intimidate, coerce, or otherwise penalize an employee” on account of a Support Deduction Order (Ministry of the Attorney General, 1992, p.9). Mr. P.A. says, however, that when this law is broken by the employer, the employee is on his own.

We do get such complaints but usually it can't be proved. And anyway it's a legal question, and how do we go after them? Do we have that authority? It's not in our mandate. In those cases where there is ample proof, the support payor must take the initiative himself to follow up through the Ministry of Labour as a case of wrongful dismissal.

Both the language used by the speakers and the practices they describe depict a system in which fathers are impersonally processed, i.e. monitored, categorized, and labelled by a highly bureaucratic system with the co-operation of the community. This is most striking in Mr. P.A.'s interview. In two and one half hours, Mr. P.A. referred to fathers as "payors," "debtors," and
occasionally as "non-custodial parents," but never as "fathers." (The informants other than FSP personnel tend to use a mix of the financial categorizations along with "fathers" or "parents"). Mr. P.A.'s focus is solely on matters of institutional structure, jurisdiction, procedures, lines of authority and statistics, with the result that the problematic social context of divorce is obscured along with the identity of payors and recipients as fathers and mothers. He explains how computers keep track of remittances by payors or their income sources and indicate when a payment has been missed. An individual who defaults on part or all of a payment, or who pays late, is automatically categorized as being in arrears. Monitoring procedures are unable to distinguish between differing levels of default. Enforcement procedures can only be initiated against a person whose personal whereabouts or the location of whose assets is known. An individual who is in arrears for one or two payments may therefore be pursued aggressively while one who has never paid a penny will not be pursued, if information on the former has been reported by the creditor but no information has been supplied regarding the latter. It is obviously much easier and more practical to obtain information about a salaried employee (and to garnish his wages) than a self-employed individual. In other words, one is likely to be criminalized on the basis of employment status and available information rather than on the seriousness or persistence of the offense. It is administrative practices which produce the identity of criminal, not necessarily the behaviour of the payor/debtor himself.

Consistent with Judge C.'s call for "the machinery of the entire society" to be marshalled in the interests of support enforcement, Judge T. proposes a solution to the problem of self-employed fathers who avoid wage deduction and can hide part of their income:

The entire taxation system needs to be changed so consumers of services and goods share some of the burden by having a legal obligation to report individuals who offer to accept cash for work done, or who do any type of under-the-table deal. Because people who accept such conditions in their own interests are party to the problem and should have a legal obligation to bring tax-evaders to the attention of government. That way it would be easier to trace people's incomes and compel them to pay what they ought to be paying.
In Chapter IV I referred to the legislation which permits various government bodies to share data access with FSP to aid in locating defaulters and their assets. In addition, Mr. P.A. describes how a network of government, commercial and judicial entities already cooperate in the support deduction enterprise. Some large companies have a special payroll system designed to collectively handle monthly support deductions when there is a substantial number of employees under deduction orders, and remit efficiently to FSP. A variety of arrangements exist for simplifying mutual access to data banks including a pilot project in which FSP data is made available at local courthouses. FSP lawyers meet with local judges, lawyers and even provincial politicians, so that all can understand the enforcement process and support it as necessary. For example, a large number of individuals (both recipients and payors) contact local MPPs’ offices to enquire or complain about support. FSP hopes that if the MPPs are kept informed about FSP requirements, procedures, problems, etc., these calls can be responded to knowledgeably and effectively without ever having to reach overburdened FSP personnel. The enlistment of the wider community in aiding enforcement procedures intensifies the sense of a public threat requiring mobilization of public enforcement as a defence.

Despite the “machinery of society” already in place to deal with enforcement, both judges and all FSP personnel wish that additional powers were available to make monitoring and locating of individuals more effective. Judge C. wishes the enforcement agency had “REAL powers, like they do in the States or in Alberta,” such as withholding licenses.

Just the THREAT of withholding or suspending all kinds of licenses is generally sufficient. There have been some studies done and the statistics show that very few have actually had to be suspended. He hopes that at a minimum, the Department of Justice will make additional data bases, such as Revenue Canada’s, accessible to FSP. Mr. P.A. shares this hope.

Although the term ‘criminalization’ may seem like an overstatement in some instances, the general tendency to monitor, scrutinize, pursue, label, marginalize, and coerce fathers who are obligated to pay support belongs to a discourse that is normally associated with the policing and social control of those who are considered deviant and/or a threat to society at some level. Their
status as members of the society, their identity as ‘good citizens’ is challenged and displaced by the identity of ‘bad guy’.

**Fathers as Victims of the System**

In contrast to the coercive discourse of enforcement which tends to criminalize fathers, another prominent discourse emerges which constructs them as victims of the system. The institutional informants identify a number of problematic conditions in the system, many of which are perceived as having an effect which could be construed as disadvantaging support payors, particularly when they are fathers. These conditions can be grouped roughly as follows:

1. the complexity of the system,
2. its lack of responsiveness,
3. the lack of consistency in establishment of amount of support and in enforcement,
4. funding issues, and
5. biases in the system.

**Complexity of the system.**

The system itself is described as so complex, so procedurally regimented, and consequently so opaque to the untrained person, that lay individuals -- whether mothers or fathers, recipients or payors -- are highly dependent on lawyers to guide them through the process. Judge T. says that when individuals appear in his court without legal representation, his task as a judge changes. He must function in these instances

more like a mediator, because a family law trial is less about law than it is about mediation.

He goes on to say:

The court system doesn’t work for people who aren’t represented. An adversarial system can’t work for people who don’t have lawyers to help with the huge mass of procedural rules, and all the fine points of the law.

Similarly, Mr. M.M. explains why the “Do-it-yourself divorce kits” meant to allow individuals to
handle their own separation or divorce without having to yield control and money to professionals, are not as easy as they seem:

It doesn’t deal with the fact there are differences from courthouse to courthouse, and from judge to judge, let alone differences between provinces and local jurisdictions. One judge in this jurisdiction, just to give you an example, won’t accept photocopies. Only carbon copies. It means that people really do need some kind of representation or assistance or they are going to end up frustrated, confused, and ill served by the system.

Despite the dependence of lay individuals on their expertise, however, lawyers, and even judges, are repeatedly described as ignorant of the intricacies of enforcement law, unaware of the ramifications pertaining to other related areas of law, and even of the jurisdictional issues involved in the split between the two divisions of the Provincial Court and the Provincial/Federal legislation pertaining to separation/divorce, custody/access and support. Ms. P.L., Mr. P.L., Mr. C.L. and Judge T. all talk about how complicated this area of law is and how few lawyers and judges have actually mastered it.

As a direct observer, I witnessed FSP legal representative Ms. P.L. deal in court with a series of cases in which the defending lawyers had either erred in matters of law or had brought the matter (and the client) to the wrong court. I subsequently asked her whether she ever feels that she is in the position of having to educate lawyers.

A. Yes. Not only don’t they know FSP law, they often don’t know the law about jurisdictions generally. That’s a problem particularly in an area like this, where most of the lawyers are generalists.

Q. What about the FSP publications I’ve seen especially for lawyers?
A. None of these lawyers would have read those. But you know, not all the judges know the law very well either. I’ve had orders made in one jurisdiction that a judge in another jurisdiction said was ‘totally wrong’ and not within that judge’s power to make. He even called him to tell him.

When I comment to Judge T. that many of the lawyers in his court seemed not to know enforcement law and jurisdictional issues very well, he replies in a rather offhand way:

They don’t. Neither do judges.
After explaining the different levels of the court which handle different areas of the law, he goes on to say:

In the so-called ‘Higher Courts’ family law is considered the least appealing, the lowest type of law. The judges in General Division hate family law. They’ll do anything to avoid making decisions on family law matters. And they’re very bureaucratic, very formal. They really stick to procedure. I don’t like to do things that way myself.

Mr. C.L. concurs; he claims General Division judges are “snobs” about Family Court and enforcement law, and don’t bother to learn it thoroughly. On the other hand, Mr. P.L.’s explanation for the apparent resistance of lawyers to mastering enforcement law, despite FSP’s efforts, is:

They think it’s intrusive.
Q. Do you think it is?
A. Sure it is.

Another theme that is introduced indirectly by the informants in these comments is the difference in competence levels and practices among judges, and the suggestion that idiosyncratic factors play a part in the judgements ultimately arrived at in court. It becomes clear that the complexity of the roles each agent of the judicial system is called upon to play makes consistency and reliability difficult.

**Depersonalizing, unresponsive system.**

The court system and the bureaucratic, highly automated FSP system are characterized as depersonalizing and unresponsive to mothers as well as fathers, though in an apparently more deliberate way to the latter. The Director of FSP, at an educational seminar for family law lawyers which I attended, described FSP as “a volume agency” whose requirements must be closely adhered to in order for support orders to be enforceable and properly processed. The Director explained that “customized” agreements and orders are not interpretable because FSP has no mandate to “look behind the order;” nor can flexible agreements be processed by the computerized
system FSP uses. The sense of a volume operation is supported in the statistics Mr. P.A. cites in order to convey the enormous undertaking of FSP in his region:

Within this region there are nine judicial districts. They handle 30 Provincial Division courts and 9 General Division courts, 30 MPP constituencies and 23% of the area of the province. Because we cover such a large area, people do not get the service that they want like this [snaps his fingers] immediately. So they often will call their MPP.

He goes on to say that with only three staff lawyers and several local lawyers assisting, his office handles 275 to 325 court appearances monthly; each enforcement team of 4 or 5 people carries 1500 to 1700 cases at a time. Approximately 1200 enquiries and advisories come in each day, including an average of 1,000 pieces of mail and 200 faxes. About 700 pieces of mail go out daily.

The phone system which will not return payors’ calls and the Central Enquiry number (which often does not answer anybody’s calls because it cannot handle the volume) have previously been discussed. Mr. P.A. says that up to 200,000 calls may be received province wide in a “normal month”, with 9 staff persons to handle them. Judge T. says:

The fathers in default tend to be extremely frustrated with FSP, and often quite angry. I am actually sympathetic. I think FSP IS unresponsive and frustrating. I often hear the complaint that payors are unable to get anyone at FSP to return their calls when they have questions, or when they want to explain a situation when there is a problem.

Instructions to payors in the FSP brochure offer the following advice about communicating with FSP:

*... Always refer to your Family Support Plan case number...
*Automated information about your case can be obtained by telephoning the Central Inquiry Service...
*...If you have an urgent problem, speak with one of our operators and they can relay a message to the Family Support Plan Office where your case is registered.
* The Central Inquiry Service responds to more than 13,000 telephone calls every day. If you have difficulty reaching the 1-800 Hotline, please be patient and try again a little later. Better yet, send a letter of FAX to the Family Support Plan Office where your case is registered. We get many letters and faxes and we cannot respond to you in writing. However, all information is reviewed and acted on.

In spite of the attempt to offer sympathetic, helpful hints, this information conveys the message that FSP is overwhelmed and underserviced; individuals should therefore not expect to deal with
informed individuals nor expect any response or feedback regarding inquiries or complaints submitted.

Judge C. recalls that when he worked with FSP, the emphasis on demonstrating enforcement effectiveness dominated his perspective.

I used to worry about the statistics. I think I allowed it to cloud my ability to understand what a hardship a 50% collection rate on arrears could create. If the law allows you to take 50%, I used to feel, you take it. Now that I have closer exposure to it, I feel differently about it. I guess I’m more compassionate to the payors now. I understand what it costs to live. When you hear how hard it is for some people, my attitude now [as a judge] is to find SOME way to give him SOME relief.

In this segment, the Judge offers an important insight into how the bureaucratic, automated operation of FSP functionally supports its narrowly focused mandate of aggressive enforcement. Depersonalization and lack of responsiveness built into the system make it relatively easier for FSP personnel to take a hard-line, ‘uncompassionate’ approach to defaulting payors. Non-compliance ends up being addressed as an issue totally removed from the context of a man’s life and judged in “black and white” terms. The discourse of human experience is omitted, while the discourse of bureaucratic functioning and enforcement drive the process.

Judge T. claims that some FSP personnel, and some judges, treat fathers in default “with a lack of respect” when they come to deal with them personally. Judge C. also concedes that fathers may be poorly treated around support matters:

Let’s face it. There are a lot of tired, overworked judges who are poorly behaved. They’re tired of the whining, and they have lost patience with these guys. But you have to be careful about taking these fathers’ stories at face value. Remember, it’s their PERCEPTION.

This concession around ‘poor behaviour’ in the judiciary is immediately countered by the qualification that fathers may perceive such behaviour even when it is not actually present, thus casting doubt on any reports of poor behaviour at the same time as the existence of such behaviour is admitted. He is ambivalent about the fathers who appear before him, and he is ambivalent about the way they are positioned by the system. He tries to acknowledge the contradictions without being disloyal to the system, letting fathers off the hook, or being uncompassionate himself. In
short, he tries to juggle the conflicting constructions of father as ‘bad guy’ and father as ‘victim’.

As Judge T. and Mr. P.A. point out, FSP’s written communication with payors is particularly problematic. Mr. P.A.’s comments about the way fathers perceive the “rough language” of FSP letters has been discussed above, and we have seen examples of their tone. Judge T. has a different complaint about the letters:

Have you ever seen one of the letters FSP sends to these guys? [gesturing to show something long] It’s not just a few lines. It’s a whole complicated thing. They don’t know what to do with it. And it’s all in caps – I personally find caps very hard to read. And it’s in French and English. It’s very confusing. Some of the people in my court can’t even read. I think FSP documentation is a problem.

This comment is surprisingly concrete and pragmatically oriented. It conveys not only the impression of intimidating material which does not achieve its advisory purpose, but also suggests that FSP has failed to understand or respond appropriately to the needs of its clientele. In contrast, the judge appears to make an effort to identify with the people whose cases come before him. He explains that as the only family court judge in his town, he gets to “run my own show.” In this relatively small community,

I am working with lawyers who are part of the community together. It makes a big difference in my ability to exercise flexibility and take a problem-solving approach.

The lawyers here are receptive and cooperative about dispensing with unnecessary bureaucratic requirements that would prolong the time it takes to work things out. You can spare people a lot of unnecessary hardship and inconvenience if you’re willing to do that. That’s how I manage to bend the rules and get around some of the procedural things. I’m not a judge who crosses the Ts and dots the Is.

He distinguishes here, much as Judge C. does, between his own resolution-focused approach and the “legalistic,” “formal,” and “bureaucratic” approaches of other courts and of FSP. Both judges present themselves as resolving “central underlying conflicts” as opposed to impersonally processing people according to strict procedures, and each clearly perceives this as a preferable mode of practice.

Lack of consistency.

Another area of difficulty in the system is the lack of consistency in setting and enforcing
support. FSP lawyer Mr. P.L. says that “General Division judges are out of touch” and tend to set support too high; on the other hand, Ms. P.L. claims that when it comes to enforcement, family court judges tend to be “too soft.” Judge C. says:

Some judges are much tougher than others when it comes to support. There’s one in Toronto at 311 Jarvis St. who sends them straight into custody.

He notes, too, that in enforcing support, judges do not have the power to rescind arrears nor to vary the original order. The degree of ‘toughness’ apparently varies among FSP personnel as well. Judge C. wishes there were more “tough” lawyers like Mr. P.L. at FSP. Being male helps, too, he says; that way the payors in default “don’t talk back” as much. Mr. P.L. says of himself that he is particularly “cynical” and will not negotiate because

I put support ahead of everything.

As we have seen above, both Mr. C.L. and Mr. M.M. seem to feel that FSP does its job aggressively and adequately. On the other hand, FSP lawyer Ms. P.L. is described by Judge T. as “pretty soft,” while both Mr. P.A. and Judge C. wish FSP had greater access to information data bases in order to increase enforcement effectiveness.

A number of reasons for inconsistency in enforcement are offered. The simple availability/lack of information on which to follow up is one reason which has been discussed above. In addition, Judge T. stresses the difficulty a judge faces in knowing what the actual income of a self-employed person is. In the absence of what he considers to be adequate investigatory resources, “You almost have to guess,” he says. Mr. C.L. focuses precisely on this issue of judicial discretion. He complains that “unprincipled decisions” made by judges based on “personal bias” lead to inconsistency and unfairness in the system. Ms. C.L., on the other hand, targets lawyers rather than judges:

There’s only so big a pie that you have to divide up. In these recessionary times, judges divide the given pie, so orders get smaller and smaller. Their hands are tied by the size of the pie. It’s up to the LAWYER for mum to question the pie presented and to insist on full and accurate disclosure. In my experience, the judges’ distribution of the pie is fair. Now, maybe where mum’s counsel appears to have been remiss, the
judge should insist on it. Judges would argue, I think, that that would be going beyond their role. That’s counsel’s role... Before lawyers blame judges, they should think about what THEY’RE doing in court.

A primary underlying reason for the inconsistency has been the absence of uniform guidelines for calculating support, which have since been introduced by the Federal Government. The debate around guidelines or formula vs a case by case approach emerges from the data. Whereas both judges favour a standardized approach (though they differ on the details), the fathers’ rights activist lawyer prefers an individualized approach. Their views on this subject follow.

 Judge T.:

I wish there were one uniform formula in place for deciding on the amount of support. In my court we go by a rule which basically says support should be 1% of gross income. There are lots of formulas, but we need a single one, preferably where you could punch the information into a computer and it would generate the amount of support. Of course, it would have to take into account various conditions, but that would be better than a human being issuing the decision.

 Judge C.:

A lot of judges feel that support guidelines would reduce hostility on the part of fathers. I think that’s probably true, but I think that the initial draft guidelines are too low. But you should know that a lot of judges are opposed to guidelines because of how different people’s individual circumstances are in terms of their needs and their previous lifestyle.

Q. Where do you stand on this?
A. I myself feel guidelines would be great AS A STARTING POINT, but there still needs to be judicial discretion. What we call ‘a presumption that can be displaced with evidence.’

Mr. C.L.:

I think case-by-case is preferable to formulas.

Q. That doesn’t seem to fit with what you’ve said about the way some judges misuse their discretion on the bench.
A. Yeah, I suppose.
Q. Is it a trade-off, then?
A. Yes.
In weighing consistency against individualized consideration, the emergent elements that require balancing are fairness, equity, adherence to legal principles, responsiveness to individual circumstances, adequate factual evidence, and of course the needs of the recipients for the support. The reference of Judge C. to “previous lifestyle” and “individual circumstances” seeks to maintain flexibility and judicial discretion in the interests of accommodating differences among people. Judge T.’s eagerness for a computerized formula that would remove the offending human element from the decision seems to be at odds with his otherwise non-bureaucratic, individualizing approach. Whether judges and FSP personnel are considered to be too “tough” or too “soft” seems to have as much to do with the subjectivity of the speaker as with the behaviour of the individual him or herself.

**Funding issues.**

Another criticism levelled at various parts of the system is that of underfunding and consequent lack of resources. This applies mainly to FSP but comes up with reference to other supporting parts of the system as well. The ways in which underfunding is seen to affect the functioning of the system are:

1. A lack of resources at FSP for investigative personnel and adequate, responsive communication with the public. Judge T. claims the greatest major consequence of this is that FSP sometimes takes so long to “catch up” with some payors, that arrears have accumulated by then to an overwhelming degree. By that point, the individual in default feels that after not paying for so long, it’s unreasonable for them to come after him the way they do. Especially if there has been no access for some time or if the children have actually grown up or left home or otherwise are no longer entitled to support. I think that if they could intervene immediately, you know, after one missed payment, the accumulations would not build up in the first place. Mr. P.A. gives several statistics to indicate that his office handles an enormous and growing caseload on a limited budget, and Judge C. identifies the “communications problem” at FSP as a result of the agency being “underresourced.” He reasons that FSP is underfunded because “no-one
ever anticipated the volume” of clients, especially of those who would “need to talk.” He admits, however, that given the choice between hiring additional enforcement staff and extra personnel to manage the phone lines, his own choice in the past was to direct all additional funding into enforcement.

2. Lack of Legal Aid funds. Judge C. says this has become problematic insofar as there is less funding to pay for duty counsel to represent those unable to afford private counsel. Judge T. expressed the concern that Legal Aid funding would be directed increasingly away from Family Law.

Ms. C.L.’s concern about Legal Aid funding focuses on blood testing where paternity is in dispute.

It’s fair to say my client base tends to be dependant on Legal Aid and is very affected by cuts. Blood tests aren’t paid for anymore. So, disgruntled fathers who are questioning paternity, sometimes on a fairly flimsy basis -- Blood testing could make the difference between willingness to pay and non-willingness...
The bottom line for clients like this is that they feel the system has failed them. An essential component of his legal representation has been eliminated when funding isn’t given for blood testing.

3. The Ministry of Social Services' need to recover welfare expenditures. Shrinking public coffers mean that when Social Assistance is required for dependent children and their custodial mothers, the Ministry is likely to exercise its right as assignee to pressure the father to pay as much support as he can back to the Ministry.

4. Supervised access centres for families where a child’s visits with a non-custodial parent might otherwise be untenable are unlikely to survive social spending cuts. Judge C. says

If supervised access centres are cut, it means that a solution available to many fathers is no longer available.
At one centre the waiting list is already 9 months.
In short, as funds for Legal Aid, welfare, and support enforcement and supervised access become increasingly scarce, several things happen: Primarily, the quality of justice attained — or at least, perceived to have been attained — is affected for those who depend on that limited funding.
Biases in the system.

Finally, the data reveal several perceived major biases in the system which are of concern to the informants. These are biases based on class, race, culture, and gender. The class bias emerges most clearly around the funding issues. Obviously, those on welfare, those eligible for Legal Aid assistance, those who require duty counsel, and those who cannot afford the fee for blood testing (nearly $700, according to Ms. C.L.) are most likely to be affected. Even when Legal Aid assistance is available, there is a question about the quality of representation received. Ms. C.L. says:

The bulk of Family Law is Legal Aid cases at Provincial Court level, and the bulk of Family Law is provincial. Provincial court is market justice. It’s McDonald’s justice; it’s not well-considered.

Judge T. has previously referred to illiteracy among those who appear in his court, and the disadvantage they face in a system heavily dependent on legalistic documentation. The majority of people in his court, he says, are “not high earners and do not have advanced education.” He also worries about welfare-dependent couples who decide to separate in order to qualify for the higher rate of social assistance given when spouses live separately. In some cases, he says, siblings are split between parents to raise welfare eligibility even higher.

According to Judge C., all socioeconomic classes are represented among support defaulters, though he does not say whether they are represented proportionally to their distribution in society as a whole. He makes the point that “lawyers, judges and other professionals are on the FSP caseload too.” Similarly, Judge T. draws my attention to a default case that had appeared before him on the day I was an observer in his court, noting that the man in question is “the most successful [service industry agent] in town.”

Not surprisingly, cultural biases in the legislation are most prominent in the interviews of Ms. F.M. and Ms. C.L. As West Indian women whose client base tends to be West Indian (and, in the case of Ms. F.M., also Latino and other immigrant cultures) they are likeliest to be aware of cultural differences which may put some people at a disadvantage in dealing with the system.
Differences in definitions of family, such as the “visiting relationship” Ms. F.M. describes, differing sets of expectations regarding a father’s obligations and status, and accustomed reliance on extended networks of kin to assist single mothers in raising children are all important elements which may be at odds with the expectations placed upon a father by Canadian law and dominant cultural norms. The degree to which the state becomes involved in post-marital matters, especially support, also comes as an unwelcome surprise to many who are new to Canada.8

Only Ms. C.L. speaks directly about the issue of race. For Ms. F.M., racial implications are fused with cultural ones, and no other informant — all of whom are ‘white’ — refers to racial differences at all. Ms. C.L., on the contrary, is emphatic about the centrality of “a race and class analysis” to the enquiry I have undertaken. She refers to her client base being likely to feel “the system has failed them” when race and class intersect around the issue of Legal Aid dependency. She infers, too, that when the courts “sidestep” the issue of paternity, their belief that it is more germane to one racial community than another is a sign of stereotypes held within the system.

The suggestion of bias which comes up most frequently in the institutional informants’ data is that of a pro-woman bias in the system. Mr. C.L.’s view on this issue is the most extreme. His accusation of “unprincipled” decisions made by judges refers specifically to the MacGyver case, the ruling which favoured the custodial mother’s mobility rights over the non-custodial father’s right of access. He carefully makes the point that such decisions are primarily influenced by the judge’s personal biases — in this case, pro-mother — instead of being based on legal principle and judicial precedent. He insists that in his own practice, he operates without personal bias, working solely on the basis of the law, professional experience and judgment, and the individual client’s needs. Mr. C.L. also offers the example of a judge who he claims proudly admits that he makes the “highest possible” support awards; he then categorizes that judge as pro-mother. He declares he has “never met a judge who was pro-fathers.” (This recalls Ms. P.L.’s perception that judges are unduly sympathetic to men in default only because the women tend not to appear before them.)

In addition to the judiciary, Mr. C.L. blames politicians and the media for fostering a bias against
fathers amongst the public, and Mr. P.A. levels the same charge.

Ms. F.M.'s observation, cited above, that "Right now it seems that the state is for women and not necessarily for men," is made in the context of considering how the system treats fathers generally, and alternative approaches for getting fathers to pay. It follows a series of examples of how some fathers resist payment for irrational reasons, and how the system "just is not working. It's not working for the children." Her concern is that fathers often feel, with some justification, that they are not given adequate "recognition" by the system in their parental role, and only mothers are valued as parents.

Judge C. makes several illuminating comments about the orientation of the system to women. He observes that

the support issue didn’t become important ‘til women judges were on the Bench. Too bad the judges picked it up as a WOMEN’S issue. It’s a CHILDREN’s issue.

On the other hand, the judge himself talks about the impact of the MacGyver ruling as a father’s issue. (Recall that this is the ruling which Judge C. says renders non-custodial fathers "powerless" and contributes to ‘loosening the bond’ between fathers and their children). He acknowledges that judges who “summarily dismiss” access when fathers raise it in conjunction with support matters, are ‘treating fathers badly’. He refers to supervised access centres as a solution for fathers which is at risk due to funding cuts.

Ms. C.L., Mr. M.M., and Judge T. make no references to systemic gender biases. Mr. P.L. speaks from the position of a bias in favour of support recipients generally (“nothing comes before support;” “I still believe in what we stand for;” “we were gonna be on the side of the angels”), never identifying them as female nor payors as male.

**Summation**

The institutional agents who interpret or ‘activate’ the legislation governing separation and divorce draw on numerous logics and discourses in the course of their duties. They also employ a wide variety of practices. The nature of the logic or discourse employed by a given institutional
agent seems to depend partly on the institution he or she represents and partly on his or her own particular social location and subjective stance.

The FSP administrator focuses on the needs and functioning of the enforcement system rather than on the people who are its clients. This is accomplished by fairly strict adherence to bureaucratic discourse. He sees the nature of the institutional enterprise as primarily administrative and employs a highly bureaucratic discourse which is depersonalizing and objectifying. This acts to diminish or eliminate the discourses of caring, responsibility, needs, and so forth. The FSP lawyer does not speak as a bureaucrat and does not employ administrative discourse; rather, he uses mainly moral and combative discourses. He takes an actively adversarial approach and sees himself and the institution he represents as the ‘good guys’ in a contest which he understands as essentially moral. Fathers in default are the implied ‘bad guys’ and to some extent so are the judges and lawyers who criticize FSP for being ‘intrusive’. Parents are constructed as debtors and creditors; taxpayers are constructed as stakeholders in the matter of support. Children are virtually absent from the discourses of FSP personnel.

The family court judges see themselves as progressive, insofar as they employ the humanistic discourse of family relationships, family problems and a case approach, rather than formal, adversarial and legalistic discourses. There is considerable ambivalence evident in their attitude towards fathers: They demonstrate a certain degree of empathy and concern for the position of fathers when employing the discourses of family and family law, and in that context construct them as caring parents; but when employing discourses of debtor-creditor and enforcement, they talk about fathers as potential criminals who are trying to defraud the system and neglect their families. Competing constructions of fathers appear and disappear as they speak.

The community lawyers employ discourses of law and justice to focus on underlying “principles”, with some interesting differences between them: The fathers’ rights lawyer is similar to the FSP lawyer in seeing himself as a “champion” in the contest between spousal adversaries, not just on behalf of fathers but on behalf of the law and its fundamental principles. He talks
exclusively in terms of justice within a legalistic, adversarial frame of reference. Consistent with this stance, he makes not one single reference to the financial discourse of “needs and means”. Fathers’ inability to pay is excluded from the justice-oriented discourse of Mr. C.L. even though it is virtually the only legally acceptable reason for non-compliance with a support order. In short, he sees fathers fighting for their fundamental rights, not for their wallets. In contrast, the feminist immigrant lawyer from the Caribbean, whose social location is less ‘mainstream’ than Mr. C.L., mixes discourses of race and class with a discourse of justice that is grounded in a moral frame of reference.

Children are absent from the male lawyer’s discourse, as he focuses on the rights of the father; they are present in the discourse of the female lawyer as the focus of the fathers’ struggle for both justice and power. Both lawyers identify gender and power issues, although in strikingly different ways: The feminist talks of inequalities in terms of patriarchy, classism and racism; the male lawyer talks in terms of quasi-therapeutic interpretations of women’s power to wreak revenge on former husbands.

The mediators, as might be expected from their professional orientation, steadfastly maintain a focus on the children’s well-being, as well as on the subjective experiences of the parents, through a discourse of relationships, needs and feelings. The concerns they express with regard to the institutional system identify legalistic, adversarial and debtor-creditor discourses as being problematic for families. Both identify issues of gender politics, and the woman mediator who has immigrated to Canada identifies cultural issues as well.

These multiple logics and discourses sometimes overlap, and often are ambiguous or contradictory. In turn, they produce a number of identities for separated and divorced fathers which are also overlapping, and at times ambiguous or contradictory. These identities variously construct fathers as ‘good’ (caring) fathers or ‘bad’ fathers (neglectful, more concerned about money than their children), as dangerous or controlling ex-husbands; as debtors, and as ‘bad guys’ ("deadbeats", etc.). They tend to be marginalized as members of their own families and as
members of society in general. In addition, the institutional practices and discourses create a space in which perceptions of devaluation, injustice, bias, and criminalization could conceivably produce in fathers the subjective experience of being victimized.

There seems to be consensus that there are indeed ‘good’ fathers and ‘bad’ fathers, but there are numerous contradictions and tensions around what makes a father ‘good’ or ‘bad’. While all institutional informants agree that a good father is one who pays, and all espouse the moral intent of the law that separates support from access, considerable ambivalence emerges through competing discourses about the relationship between support and access in the lives of real fathers. Nearly all informants acknowledge a connection commonly made by parents between being able to see the child and being expected to support the child. When access is constructed as an opportunity to maintain contact with the child, it is seen as a sign of caring. When constructed, however, as a proprietary right for which support is the token of exchange, access claims are no longer regarded in the same moral light. The system is designed so that such demands are outside the law pertaining to support and cannot be considered along with support obligations. None of the informants is able to offer any way to resolve the moral dilemma created by payment where access is problematic.

A father who will pay regardless of access is constructed as occupying higher moral ground than one who demands reciprocal access. Fathers who resist support payment for the same reason they do not care to pursue a relationship with the child, i.e. a fundamental absence of commitment, are considered to be in violation of both the law and conventional morality. Thus, fathers tend to be constructed as providers whether they do it because they care, or despite not caring. In other words, whatever else they may wish to experience or not experience as fathers, they are expected to pay. The progressive view that fathers should be recognized for their potential as all-'round contributors to a child’s healthy development, and encouraged to make that contribution even after separation, is clearly in competition with the view that involvement is secondary to payment where divorced or separated fathers are concerned. At FSP, there are
neither ‘good’ nor ‘bad’ fathers, only debtors in compliance and debtors in default. The association of the latter with the term ‘deadbeat’ is attributed to the media and politicians, rather than to FSP itself.

In addition to being considered first and foremost as financial providers for their children, ex-husbands tend to be seen as financial providers for their former wives. The FSP informants, the feminist lawyer, and the two judges interviewed express great concern about the economic vulnerability of separated and divorced women who are raising children. The latter three also express concern about the physical vulnerability of these women. Their focus is on getting the ex-husband to fulfill his obligation to provide for the former wife, who is often unlikely to be able to support herself. All but the fathers’ rights activist construct a version of the ex-husband as a kind of bully, withholding financial support or threatening the woman’s safety because of his desire to regain the control he has lost over his wife, his children, and/or his money. The fathers’ rights advocate, on the other hand, sees the fathers who withhold support in order to regain control as victims of an unjust system employing a legitimate strategy to recover their parental rights.

State enforcement of child support represents a large part of the legal processing of family separation which transforms the private relationship into a public issue. The various informants implicate virtually the entire society in the task of getting fathers to pay. This is because all of society is seen to be threatened by non-compliant behaviour, as well as responsible for solving the problem. The construction of debtor fathers as a threat to society takes place through a variety of means, the most striking of which is the inability of the system to distinguish between ‘good’ and ‘bad’ fathers on any basis other than complete and timely compliance with the payment of support for both ex-wife and children. Identifying debtor fathers as marginalized citizens may help to enlist the support of the wider community in dealing with the issue of compliance. While the adversarial nature of the legal system positions former spouses and their lawyers as combatants, and the enforcement system positions FSP against anyone with a support order (and on the side of the recipient), marginalization of the fathers tends to make them the ‘bad guys’ in the contest.
Because children tend to disappear from the formal systemic discourses, the system then appears to be allied not with the children but against the debtors/fathers and with the creditors/mothers.

Each institutional agent finds some part of the system seriously flawed, but the source of problematic practice or discourse tends to be in some location other than the one he or she occupies. No part of the system remains uncriticized. In the aggregate, each is implicated as a contributor to conflict, mistrust, and the struggle for control between former spouses and ultimately to the problem of non-payment of support. Although FSP tends to construct non-custodial fathers as the ‘bad guys’, the other informants point out ways in which fathers are also victims of the system. The fathers’ rights advocate sees non-custodial fathers as victims of unprincipled judicial decisions and a system generally biased in favour of women; one judge and one lawyer see some fathers as victims of a seriously flawed justice system, particularly if they are poor. One judge acknowledges that non-custodial fathers have fundamentally (and unfortunately) been disempowered as parents by the law, that their attachment to their children and their potential as nurturers have been devalued. Inadequacies, gaps and inconsistencies in the system, as well as between the system and the law itself, leave room for the perception of injustice and hence, of victimization.

NOTES


2. It is a discourse of morality based on “fairness and justice”, rather than (presumably) one of “responsibility and care” (Gilligan, 1982).

3. The excerpts from FSP publications replicate the emphasis indicated in the original texts through the use of bold print. Where I have added emphasis myself, I have used italics.

4. There can be no question that mothers/creditors and children are also regarded as victims of a highly flawed system by the informants. Since my focus is on fathers, I limit the analysis to the emergence of the construction of fathers as victims.

5. Several of the conditions obviously have negative effects on recipients as well.
6. This situation has been greatly exacerbated by the closing of Regional offices and increasing centralization, with less staff, since the time the research was conducted.

7. These became effective in May, 1997.

8. In a presentation on support enforcement made several months after he was interviewed for the dissertation, Judge C. made the point that many members of immigrant groups from vastly different cultures appear in his court, and many are ignorant of, or confused and angered by the norms which Canadian law imposes upon them. The tendency to grant custody of children to mothers, rather than fathers, was offered as a prime example. (Justice Canada, Deputy Minister’s Workshop, Ottawa, February 1996. I was in attendance as co-presenter). See also Sealy Burke’s work on the support enforcement in the Caribbean, which helps to understand the different expectations many immigrants bring with them regarding the role of the state in family matters like support (Sealy-Burke, 1989).
VI. DISCUSSION AND IMPLICATIONS

Discussion

Overview

The question with which this dissertation began was: Why have we been unsuccessful in our efforts as a society to get non-custodial fathers to be responsible for the financial wellbeing of their dependents? How are we to understand fathers’ response to the identity of ‘deadbeat’ by taking up the identity of victims, rather than by behaving as responsible providers? The questions that guided the analysis were:

1. What are the themes and constructs through which the fathers in the sample present themselves?
2. What are the constructs of fathering and family that the state makes available in the context of divorce and separation?
3. How are these constructs viewed and interpreted by the institutional agents who interact with the fathers and represent the state to them?

The findings presented in the foregoing chapters have corresponded to each of these questions.

The final question, to be addressed in this chapter, is:

4. How do the constructs of fathering and family found in the fathers’ talk reflect the contest between competing discourses of post-marital fathering, and the attempt of fathers to adopt or resist the identities produced through the legal system and its interpreters?

The examination of legislation and procedures governing divorce in Canada (and in Ontario particularly) reveals that the judiciary is mandated to regulate the social and economic re-organization of the divorcing family, and hence its power relations. Emphasis has been placed increasingly on the extra-judicial enforcement of economic support for children of divorce and for any spouse unable to become adequately self-supporting.

In the context of existing social and market conditions, the relevant legislation, case law

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and enforcement procedures develop new meanings of fathering in relation to the couple and the family. The dualistic nature of these meanings -- 'good' father vs. 'bad' father, breadwinner vs. debtor, 'citizen', victim vs. 'bad guy' -- blurs our understanding of what a 'good father' is. These serve as fragments of identity available to fathers. There are inherent contradictions among them, some very obvious and some fairly subtle. In their 'activation' or interpretation of the law, institutional agents sometimes contradict and sometimes intensify these constructs, variously picking up on some as opposed to others. There are tensions between the idealized construction of marriage and family within the body of law pertaining to separation, divorce, support, custody and access as well as tension between the law and the way it is interpreted and applied.

Central Discourses

Analysis of the constructs of fathering and the themes that run through all the sources of data is found to be embedded in competing discourses relating to the family, parenting roles, and relationship between family or its individual members and the state. A summary of these discourses makes it clear that a significant degree of ambiguity and unpredictability is inherent in the system:

1. the private family vs. state/societal responsibility for the family,
2. family law vs. family problems,
3. abstract universal rules vs. contextualized, 'local' judgments,
4. gender neutrality ('modern' marriage), vs. patriarchal relations of gender inequality ('traditional' marriage), and
5. individual rights and fairness vs. responsibility/care for others.

These competing, often overlapping, discourses represent particular ideological approaches to their subjects. Like "cookie cutters" which stamp recognizable shapes in sheets of dough (Rossiter, 1988), discourses shape the way we think about those subjects. The law, its interpretation and activation reflect discourses that make available to the fathers particular ways of
thinking about family, parenting roles and their relationship to the state. Thus the liberal discourse of individualism and ‘equality’ gives shape to the model of modern marriage and the expectations of complete independence following separation, equal responsibility for supporting children, and self-sufficiency for separated wives. This accomplishes a shift from thinking about the family as being related through special ties and responsibilities (eg. father as caring, moral parent) to thinking about it within the context of civic relationships (eg. father as debtor). The discourse of the ‘debtor-creditor’ relationship organizes both the economic and the policing aspects of this relationship. Financial and contractual relationships lend themselves far more readily to regulation than do emotional and biological ones. Issues of entitlement, rights, and civil obligation are more congruent with this discourse than questions of child welfare and moral responsibility.

Defined by a discourse of traditional fathering, a *good father* pays his debts and need show little more than the interest of a ‘pal’ in his children; defined by the discourse of egalitarian parenting, he must demonstrate caring and moral responsibility by making sure the child’s material well-being is looked after and maintaining an active, nurturing relationship with the child. Within one framework he may quite reasonably protect his rights, within the other he is expected to put his child’s needs before his own. A *bad father* according to one discourse is uncaring and uninvolved, and fails to recognize or adequately consider his child’s needs; in the other he is a ‘deadbeat’. The ‘social problem’ defined by one discourse is that children’s welfare is neglected; defined by others, it is non-compliance with an order or agreement, or a struggle between the rights of opposing parents. The solution shaped by one discourse is to engage fathers’ sense of moral responsibility and caring, in another it is to enforce payment.

At a broader level, the construction of the self-sufficient family, the family as a primary economic unit, is a fundamentally patriarchal discourse. Within this discourse, society as a whole does not assume primary responsibility for the welfare of women and children. The solution of enforcing support by non-custodial fathers is essentially an expression of the patriarchal model of the family (Pulkingham, 1994, citing Eichler) insofar as it continues to hold the father responsible
for the family’s economic well-being. The aspect of this model that becomes more visible in the context of separation or divorce is that at the same time as he is held responsible for being material provider, the father’s normally marginal role in the family becomes even more marginalized, with the normal compensations, rights and/or privileges largely removed. This approach to family support is a residual one (Pulkingham, 1994), positioning the individual family and its members as having the primary responsibility for their well-being, with the state filling in as a ‘last resort’ and to a minimal standard. Within this discursive framework, women remain dependent on their former husbands in spite of the discourse of equality and independence. There is thus an underlying contradiction between the law and social and economic reality, and within the law itself, which expects women to become self-sufficient yet acknowledges that this is often not possible.

The fundamental tension between trying to engage fathers, on the one hand, in preserving some notion of the family as private and dependent on them, and on the other, of coercing and shaming them into it, shows up quite poignantly in one particularly telling detail. The series of name changes which has been imposed on the enforcement legislation and the agency which executes enforcement procedures has been as follows: Originally, there was the Office of Support and Custody Enforcement, based on the Support and Custody Enforcement Act. Then it was changed to the Family Support Plan and the Family Support Plan Act. Finally, it has been changed to the Office of Family Responsibility. While the enforcement powers have been steadily intensified, the discourse applied for the public face has tried to engage us in a construct less disquieting than policing. Who can argue with ‘family responsibility’? It is a discourse with which we are so familiar that we tend not to question what it implies about the lack of social responsibility for the family (Pulkingham, 1994). In a similar vein, the recent shift from the term Deadbeat Dad to Deadbeat Parents in the public media uses gender neutral discourse to address the issue of making fathers into bad guys and includes mothers in the moral identity of ‘bad parent’ instead of challenging the premises and purposes underlying the use of the bad guy identity. The identity of bad guy for fathers is one that has been deliberately constructed as a moral identity by
the law and social policy. It is embodied by the term ‘deadbeat dad’, implying both irresponsibility and social unacceptability. It justifies an aggressive enforcement policy and discourages empathy with the father, so as to minimize consideration of his personal needs or difficulties. This is supported by a bureaucratic discourse that precludes contextualizing individual circumstances. Most institutional informants agree that this is what enforcement policy calls for, though it is not consistently followed through by judges, as we have seen from the informants and case law. Judges, other institutional actors, and mothers are also sometimes assigned bad guy identities, by each other and by the fathers.

Family law as a field of practice is also fraught with other discursive contradictions. Family law is recognized as an area in which social and legal issues are intertwined in problematic ways. What is legally correct is often not practicable or socially sensitive. What is ‘fair’ according to a discourse of rights may not be congruent with a discourse of child welfare, and vice versa. ‘Fair’ may not take the needs of all family members into account. The solution of broad judicial discretion, which encourages individual judges to assess cases on a highly contextualized basis, is not a perfect one. We have seen that judges as individuals are also faced with choosing among opposing discourses; some approach family law through the quasi therapeutic discourse of problem resolution, while others apply a strictly legalistic framework. This is influenced not only by structural and circumstancial conditions but by the social location of the particular judge. Differences in choice of discourses also show up between mediators and enforcers, and is reflected in the solutions offered by the fathers to the inappropriateness of an adversarial system for resolution of interpersonal problems. In cases where activators of the text are not thoroughly versed in the text, it is possible that the influence of their social location and personal subjectivity may be stronger than is intended in the allowance of normal discretion. Whether the judge is envisioned as the mediator or not (or perhaps as an arbitrator), most of the fathers believe separation issues need to be handled in a way that contextualizes the family’s problems and devises a customized solution on the basis of knowing all the relevant circumstances and implications. It is
understandable, therefore, that anyone negotiating the system as part of a separation or divorce process will encounter a number of discourses, some contradictory, which will present differing constructs of reality and social identity.

The sources of fathers’ presentation of themselves as *citizens* can be found in the discursive deconstruction of the family by the law and its operationalization through the system. As the analysis of the law and the informants interviews has shown, fathers are reconstructed as *debtors*, an identity which tends to overwhelm the identity of *father*. The regulation of their relationship with former spouses with respect to money, and with their children with respect to access, makes them accountable to the state rather than to the family members. The regulation of their relationship with their employers further lifts the issue of support out of the family context.

The identity of father as *victim*, in the sense of disempowered and subject to unfairness, is one which emerges in all of the fathers’ interviews, and several of the institutional informants’ interviews. It is unambiguous in only one institutional informant’s interview (the lawyer who “champions” issues pertaining to fathers’ rights); in two other cases (the two FSP lawyers) there is no sign of fathers as victims. In the remaining instances, it contradicts other constructions of father as dangerous, irresponsible, controlling, selfish, or uncaring. Holding both views seems to make informants uncomfortable; seeing father as victim does not fit with the discourse of father as *bad guy*. Interestingly, the institutional informants rarely draw a connection between the detachment of many fathers or their ignorance of their children’s needs and the traditional model of detached fatherhood in which some aspects of family law are embedded. The dominant discourse in current family law of the model of gender equality makes it difficult to acknowledge the residual influence of traditional patriarchal constructions.

The statutes regarding custody and access do not construct fathers as victims; in fact, the gender neutral language, the *best interests* standard, and the *maximum contact* rule all contribute to an attempt to construct fathers as valued parents on an equal footing with mothers. However, the laws regarding child support and spousal support can be construed (or misconstrued) as
victimizing fathers in particular ways, and the way in which all the laws are interpreted and operationalized through the system -- and its flaws -- are indeed so construed by fathers and most institutional informants alike. The construction by all of father as ultimately responsible for the support of his children keeps the issue firmly rooted within the family unit, so that the introduction of ostensibly progressive changes not only fails to resolve the problems created by this approach, but actually produces more contradictions and ambiguity.

**How the Fathers Take Up Identity**

What I have found is that the various competing constructs and discourses are reflected in the multiple identities which emerge in the fathers' data. At times they emerge directly, as fathers take up a particular identity (eg. *debtor, provider*). At other times they emerge indirectly, as an attempt is made to *counter* a particular construct by establishing an opposing identity (eg. *good father* or *good citizen*, as opposed to *non-parent/bad father* or *deadbeat*). The fundamental pattern of the fathers' response to the identities produced through the law and its implementation is this: They do not recognize themselves in the constructs of bad father, bad citizen or criminal, and resist being characterized or engaged as such. On the other hand, they do seem to recognize themselves in the construct of disempowered male, since it tends to fit with their subjective experience in dealing with the system. The perception of disempowerment, coupled with perceptions of bias, injustice, and incompetence in the justice system leads them to identify themselves as victims.

More specifically, the fathers' presentation of themselves as *good fathers, victims, as good citizens,* and as *egalitarian husbands* mirrors the legal and systemic construction of fathers as non-parents, their loss of privilege and quasi-criminalization, and the construction -- albeit ambivalent -- of marriage as *modern.* In the fathers' interviews, I find that fathers variously take up some of these identities and resist others. They do so in a variety of ways, depending, it seems, on their respective personal histories, social locations, values and expectations. The specific nature
of their encounters with the system also influences their response. The identities produced by the law and the system which are consistently rejected are: bad father, bad citizen (or deadbeat/criminal), and provider/funder; nevertheless, the public discourses associated with good vs. bad fathering, good citizenship vs. criminality or bad guy, and debtor vs. breadwinner are very much in evidence. The identity most consistently taken up is that of de-privileged (or disempowered) male. The identity of debtor is taken up by some fathers and rejected by others.

On the whole, it appears that fathers are unable to recognize themselves in the system’s designation of them as bad fathers and irresponsible citizens, which is how the system frames non-compliance. They appear to focus on resisting the unacceptable designation, while discrepancies between their own espoused values and their actual behaviour go unexamined. Establishing themselves as good fathers and as good citizens appears to be part of the strategy of resisting the unwanted identities and of justifying non-compliant behaviour in the face of the system’s framing of it as irresponsible. Each one ultimately arrives at the identity of victimized male, among others. The sole exception to this is Michael, the one father who has custody; but his primary motivation had been precisely to avoid disempowerment.

Bad Fathers, Good Fathers

None of the fathers denies there is such a thing as a bad father; what each denies is that he belongs in that category. Each distinguishes between good fathers and bad fathers, just as the system does, and designates himself a good father, whether he fits the system’s perceived definition or not. Unanimously, they construct a bad father as one who is irresponsible and neglects his children. (Randy and Donald, however, offer an alternative construction of complete withdrawal from one’s children as a requirement for one’s own emotional survival, rather than as neglect.) Each father seems to construct the defining attributes of a good father in his own particular image, selecting from among available discourses about what makes a good father. Thus, in Donald’s case, he is a “best friend” and entertainer; in Arty’s and Randy’s case, he
provides stability; in Gary's, he broadens his children's horizons; in Keith's, he is emotionally attached to the child and gives the child's needs priorities over his own. Neil's definition of a father is a committed individual who follows through on his obligations; and Morris, whose idea of a good father is one who is "front row and centre" in the lives of his children, is the one who obtained custody of both children. Whether the personal construct has given rise to the behaviour, or vice versa, this self-identification as a good father based on legitimate discourses is one of the important ways each father justifies resisting systemic designation as a bad father. Self-identification as a good guy, in the sense of one who is responsible, who generally meets his moral and civil obligations, also emerges consistently in each of the fathers' interviews. In so doing, they draw on the discourse of a negative moral identity in the public media.

Where a father acknowledges that he is not as involved with his child as he would like to be (or had expected to be), the tendency is to hold the former wife responsible (Rick, Neil, Arty, Keith, Gary). Only Donald does not blame his wife; he blames work. Interestingly, all but two fathers account for any of their inadequacies as parents prior to separation by blaming the wife or the unhappy marriage. The exceptions are Gary, who blamed work alone for keeping him from his children during the marriage, and Keith, who has no regrets about the level of parental involvement he had while married. The blaming of work and wife draws on the traditional mode1 of mother in charge of the children, while father works to provide for the family. In every case, the wife is positioned as a significant contributor to any behaviour that could be construed as being a bad father. Thus, if a father is unable to quite exonerate himself, he at least evens the scales somewhat by implicating his wife as a bad parent. Alternatively, it is possible that identifying the other parent as the 'bad' one is part of the strategy to resist being labelled the bad parent oneself. In either case, the positioning of the wife as a bad parent indirectly supports the fathers' claims of a female-biased, unjust system.
Father as Provider

The legal construction of financial support as both individualized and depersonalized arrangement is reflected in the way the fathers present themselves as providers. While each father espouses a moral obligation as a parent to contribute to his child’s financial support, each constructs himself as a father who cares about his child and is paying as much as he can. When it is not as much as the judge ordered, the focus is shifted away from himself and onto the system. The judge is deemed unfair, biased or incompetent. The complaint that his own needs, or the needs of fathers in general, are not adequately considered by the courts is voiced by several fathers (Gary, Arty, Donald, Morris). While it is tempting to offer individual psychological explanations for such behaviour, the institutional informants’ data indicates they, too, find the system flawed by inconsistency, bias, incompetence or ignorance. They, too, tend to conclude (though mostly cautiously) that the state does give the impression of favouring the needs of women over the needs of men. And we have seen that in the body of the law, the needs of parents are indeed weighed against the needs of children, and the relative weights given may vary considerably even though the law explicitly puts the needs of the children first. It is likely then, that while each father’s own personality and circumstances determines just how he develops his particular defenses around his role as father, the discourse and practices of the separation/divorce-related institutions offer a number of powerful (and often contradictory) constructs with which to build those defenses.

Where payments are less than the amount ordered but meet or exceed the legal limit for seizure or garnishment (i.e. 50% of net wages), the fathers take up the identity of debtor (eg. Donald, Art) and justify their payment behaviour by adopting legal discourse focused on debtor obligations, rather than on their position as fathers. On the other hand, Keith identifies spending money on a child for necessities as a caretaking function, and experiences the system’s attempt to regulate a father’s spending as interference in his caretaking. In his mind, the system’s emphasis on monetary support while apparently neglecting other aspects of the father-child relationship devalues the father himself, and his role as a parent. This offers some insight into the father’s
perspective on the issue of control. Keith’s desire for control is focused neither on his ex-wife nor on the money per se; it is focused on maintaining discretion over the parental expression of nurturance. In Keith’s mind, legally regulated support deprives the father of the opportunity to experience and show himself as caring and generous, insofar as it artificially separates payment from the father’s functioning as a caretaking parent. For him, support is embedded in a discourse of relationship and nurturance, whereas the law and the system have removed it from that context.

The resentment expressed by Neil about being reduced to a “wallet,” and Gary’s struggle to “have a personality” under the given enforcement conditions suggest some of the other effects on fathers of having the support role isolated from all other aspects of parenting. Each father was surprised to find he had lost the power to make decisions or to control any aspect of his relationship with his child. It is not clear whether loss of control over money is particularly threatening to fathers (as suggested by some institutional informants), especially those who formerly functioned as heads of the household, or whether their reaction to support enforcement primarily represents resistance to perceiving that monetary provider is the only identity for which they are considered useful (as the fathers themselves suggest). Likely some combination of the two accounts for the response identified. In each case where the father depicts his marriage and family as traditional (Randy, Arty, Gary, Donald) and where he had formerly taken on the role of provider, he goes on to describe himself as a generous provider immediately following separation. Each characterizes himself as a responsible member of society. Now each perceives himself to be identified by the system as irresponsible, a deadbeat, and rejects that signification in spite of his own non-compliance with the court order. (Since Randy is still only contemplating defaulting, the issue for him, as for Neil, is the threat of such signification.) There are a number of changes in each case which could help us to understand this shift from generosity to withholding, such as the feelings of guilt that Gary talks about or the expectation each father had early on that all would go smoothly. These are psychological explanations that doubtless have some validity. At another level, however, we see fathers who were accepting of the provider or breadwinner role -- and the
traditional accompanying role of marginalized parent — in the context of patriarchal family relations. Once the privileges of the patriarchal role are removed or severely constrained, however, this willingness to act as family provider undergoes change. In sum, the breakdown of patriarch into provider without control or privilege is unacceptable. The state tries to keep the question of support confined to the family unit, using the discourse of gender equality to limit the economic demands on the separated father. The fathers, in turn, are able to draw on (and misappropriate) the discourse of gender equality in the law to justify limiting the support they will give.

Neil’s behaviour represents an important challenge to this way of conceptualizing the fathers’ behaviour. Of the group, he is the only father who has lost all contact with his children, all influence, and all apparent emotional returns of the paternal role. Yet he is the only one who has never been designated non-compliant and actively, scrupulously avoids such designation. On closer inspection, however, we note the following: Neil is the only father in the group (except for Keith, who is also currently compliant with his order) who was not ordered to pay any spousal support; he is the one who most passionately discusses his desire to be a father, and he is the only one who has virtually no other opportunity for this role except as a provider. While others in his position might well reject that as the only option for exercising fatherhood, Neil’s own stringent moral creed about individual responsibility, the legacy of his own substitute father, seems to have strongly predisposed him to adopt the responsible provider role, even in isolation, as a legitimate identity for a committed father. Neil has been able to avoid conflict with the state because his traditional view of himself as a father (and the behaviour which flows from that view) is entirely consistent with the state’s. He does not question the overriding private responsibility of a father for the welfare of his children.

In each case, what a father feels unable/unwilling to pay, he seems unable to worry about. Gary, Arty, Donald, and Randy are able to express abstract concern for their children’s material well-being, and to express the acceptance of responsibility for it, yet each avoids recognizing the discrepancy between concern and responsibility on one hand and non-compliance on the other.
Thus, non-compliance is not acknowledged as a negation of either caring or responsibility, allowing the father to maintain the identity of good father. This puzzling loss of focus on the children as fathers actively resist support of the ex-spouse seems to parallel the observation by one judge in the institutional informants' chapter that children's issues have tended to be reframed by the judiciary as women's issues. Enforcement procedures certainly reinforce this perspective. In other words, fathers are not alone in shifting their attention away from the children and onto issues of financial details, civil legalities, and the needs of women who are simultaneously constructed as dependent and self-sufficient. In the process, talk of the children appears and disappears accordingly, in all the data sources examined.

Fathering and Providing Outside of Marriage.

I have found that the fathers have a difficult time constructing a fathering role that is independent of a traditionally structured marriage and family. Individual notions of good fathering are circumscribed, of course, by individual constructions of the family, and of men's and women's roles within the family. The fathers' descriptions of their family life prior to separation, and their disappointed expectations of what post-separation life would be like, offer clues to how each constructs the family, marriage and fatherhood. However, there is clearly interplay between fathers' individual constructions and the social constructions institutionalized in the law. The case law examined and the judges in the sample collectively demonstrate confusion about what an ideal family should look like, what a real family experiences in the socioeconomic context of our society, and who is obligated to whom in what ways, that is not unlike the confusion which the fathers express.

Donald is a good example, at one end of the spectrum, of a traditional 'macho' man raised in a traditionally patriarchal family, who was socialized to expect to head his household and function as the sole provider, in exchange for sexual attention and domestic services from his wife. Being a father was apparently a secondary outcome, and emotional relationships with wife and
children were not priorities on Donald's personal agenda. When the basis of marital exchange broke down from Donald's point of view, and he contemplated leaving his wife for a new sexual partner, he expected a metamorphosis of the family into a 'modern' one, much as the Divorce Act does. His wife would now be primary caretaker of the children and work full time to share equally in the financial support of herself and them. He expected her to become self-sufficient while continuing to care for the couple's children; he would retain his marginal role in their lives. Consistent with the sociolegal construction of separate and unequal, but 'friendly' parents, he further anticipated that she would continue as an enabler and mediator between him and his children. Perhaps because he anticipated a modern separation as envisioned in the legislation, in which a newly independent wife competently goes her separate way, he did not anticipate that the disintegration of the marriage and family would cost him his own wife's good will and support, nor that she would lay continuing claim to his income and assets. Although aware of the intent of the law regarding financial independence, he seems to have been unprepared for the allowance the law still leaves, through the exercise of judicial discretion, for a "traditional" wife who is not able to become self-supporting.

Similarly, Randy, Gary and Art describe very traditional marriages, with which they were content so long as their expectations were met. Although each talks about his relationship with his child in a way that conveys genuine emotional attachment and varying degrees of awareness of the child's needs and feelings, after the separation, the wife and children are relegated to the financial discourse of claimants. Without the reciprocity of marriage or a meaningful role as parent, the identity of provider becomes less compelling. Thus, for these fathers, a good father is a provider who has a relationship with his child which may or may not be of great importance to him, but which is dependent on some sort of continuing co-operative relationship with the custodial mother. They are examples of men who want traditional marriages but modern divorces, and they are able to draw on the contradictions within the system to support this paradoxical position.

While Father as provider is transformed by the legislation and the enforcement system into
a debtor, the progressive judges and the mediators in the sample talk about trying to engage debtors as caring providers and egalitarian, involved dads. Although there is a fair amount of cynicism among the institutional informants with regard to fathers who seem to want things both ways, the system, taken as a whole, seems to do likewise. Data from the legal chapter and the Institutional chapter showed instances where the courts use a strategy similar to that reported by some of the fathers; i.e., they withhold support as way of regaining some control over an uncooperative custodial mother. The fathers in both the thesis study and the pilot study frame withholding of support as a means of self-empowerment, a way to maintain or regain control where they perceive it has been lost. Whether or not the fathers’ motivation is always as carefully deliberated or reserved for cases of genuine interference with access, the point here is that the strategy is part of legal debate and legal practice.

Father as Bad Guy/ ‘Criminal’

Discourses of morality and citizenship were found to a surprising extent in the fathers’ data. It was unclear at first why all of the fathers talked about themselves as law-abiding persons and citizens, as individuals who recognize their moral and social obligations and intend to meet them. They also talked about their rights, which was less puzzling, but the rights discourse gained significance when understood in the context of the citizen construct. The analysis of the way the system constructs support-payors reveals that these discourses are present in the law, and in the support enforcement system. They emerge as well, though not as consistently, in the institutional informants’ data. FSP personnel, predictably, talked almost exclusively in these terms about fathers obliged to pay support. Judges, lawyers and mediators used a mix of family, legal and moral discourse, as the fathers themselves did.

Having constructed all non-custodial parents under support orders as non-parents and debtors, the enforcement system which has developed during the past decade in Ontario proceeds to construct them all as potential law breakers; the monitoring procedures used to track their
behaviour categorizes them as lawbreakers for any infraction of procedure. This happens for reasons that are more bureaucratic than substantive. The system’s inability to distinguish degree or intent of non-compliance leads to a blanket labelling of all non-compliant behaviour as irresponsible and negligent; the debtor in default is not only a bad father, he is a person who does not fulfill his moral obligations as a member of society. He is a bad citizen who creates problems for society as a whole, i.e. for ‘taxpayers’.

Thus, when fathers attempt repeatedly to establish themselves as law-abiding citizens and as moral good guys, it appears to be an attempt to resist the designation of bad citizen or just plain bad guy. Randy’s personal construct of non-custodial fathers had reflected his assimilation of the popular deadbeat image, i.e. a person who not only neglects his children but is generally marginalized in society, the kind of person capable of all kinds of socially unacceptable behaviour. Gary talks about how personally affronted he feels by his perception that the system is pursuing him not only because he has been paying less than full support, but that he has been branded a “deadbeat”, a “terrible father” and a “terrible person.” Interestingly, the one father who is a support recipient and is immune from such designations, Morris declares that any parent who does not support his children is not fit to live in civilized society. All seem to be picking up on the discourse of the enforcement system and the state effort to make non-payment socially unacceptable. The fact that the “deadbeat” construct is invoked by most of the interviewees, who simultaneously believe it and deny it, reflects the degree to which the ‘deadbeat’ has become part of the common available discourse about fathers through the media.

**Fathers as Victims**

Although neither the law per se nor the enforcement system constructs fathers as victims, the construct of father as victim emerged in all the fathers’ interviews, custodial and non-custodial, paying and non-paying alike. This suggests that something must account for the perception of fathers as victims of the justice system other than the subjective experience of those
who saw themselves as persecuted. In fact, Neil’s and Randy’s references to the women’s movement suggests that at times the perception is of being victimized by a feminist-influenced society itself. Even Morris alludes to his suspicion that FSP personnel are hired by feminists, because he found them unresponsive to him as a male support recipient.

In addition to seeing ‘the system’ and ‘women’ in general as responsible for the perceived unfair treatment of fathers, every father in the sample saw his own former wife as a participant in his victimization. Whether he recited a litany of vengeful and destructive behaviour (Neil, Arty, Randy, Keith) or behaviour that could be construed as reasonably self-interested (Donald, Gary, Morris), each and every father portrayed his wife as a contributor to his sense of disempowerment and unfair treatment. What is perhaps crucial is that each also perceived that the system actively supported the wife’s interests over his. In some instances the perception is that the lawyer, the judge or FSP has actually taken on the wife’s personal anger and vindictiveness and supported her in victimizing him. Gary talks about being a “target” of FSP and being punished by a judge and opposing lawyer who have colluded in punishing him for being a selfish “homewrecker” (which is of course how his wife sees him). He, along with Donald and Arty, talk about opposing lawyers who encourage the wife to “get him” and to “get more.” This finding is consistent with finding of the pilot study of conflation of the wife and the system by fathers (Mandell, 1995).

The analysis of the case law, enforcement procedures, and the institutional informants’ data has shown that there is evidence to support the fathers’ perception of bias and inconsistency in the system. An adversarial justice system means there must be a ‘winner’ and a ‘loser’, and the overwhelming tendency of fathers to be the losers in custody assignment fuels the perception of pro-maternal bias. In conjunction with the loss of non-custodial fathers’ rights, and despite a gender-neutral approach in the legislation, judicial discourse on the needs and rights of separated women reinforces this perception. FSP practices reflect, and FSP informants express, a fairly rigid, judgemental, and undiscriminating approach to support-owing parents in pursuit of the reinforcement of support as a private responsibility. The fathers’ rights activist lawyer cites judicial
bias and lack of principle to rationalize his stance. All of the other informants acknowledge contradictions and gaps in the system that can be understood to contribute to the perception, if not the experience, of unfairness in the system. This unfairness may be based on gender, as all but one of the fathers understood it, or on class, as Keith viewed it. While he talked of 'hallway justice,' two institutional informants acknowledged the prevalence of 'market justice' or 'McDonald's justice' available to those who tend to appear before the Provincial Family Court. Perceptions of inequity in the justice system are likely amplified when issues of race and ethnicity are involved.

Discussion of Sampling

It is difficult to know whether a sample of fathers of other ethnic, racial, or class origins would have yielded a significantly different picture. In short, if my sample of white, mainly middle class men consistently present themselves and other men as victims of the system, it is reasonable to hypothesize that for working class and immigrant fathers, or those of colour, the perception might be intensified. In the pilot study for the dissertation, the five fathers interviewed were working class, non-university educated; two were immigrants, and one of the immigrants was non-'white'. The findings of that study with respect to themes of disempowerment and victimization were very clear. I had speculated at the time that this finding was related to the composition of the sample. Similar findings in the sample for the main study supports the likelihood of the disempowerment expressed being reflective of the loss of male privilege experienced in the separation and divorce process. This experience may have come as more of a shock to the educated, white, middle class group of fathers. On the other hand, this is the group considered likeliest to accept the discourse of egalitarian parenting (LaRossa, 1988; Jackson, 1991). Moreover, the identity of a marginalized person, unsupported by the institutional system, may also be more foreign to them than to those who are likely to have previously experienced systemic marginalization. This may account for the mix of discourses from which they draw, and the resulting confusion about what is acceptable to them and what is not; about what the system
should be doing, and about who they are as separated men.

The other important consideration with respect to the sample is that there are no fathers included have who never paid child support. The sole exception is Morris, who is not obliged to pay because he is a custodial parent. Chambers (1983) reported that child support research indicates that payment for a short term, with gradual tapering off, was the typical pattern for divorced fathers who had ever lived with their children (p. 287). In some ways, perhaps, it may be easier to understand -- if not to accept -- fathers who never pay, particularly if they have never lived with the child or did so for only a short time. There is less logical consistency to fathers who lived with a child and withdraw support.

Although it may be tempting to dismiss the perceptions and complaints of the fathers as mere 'sour grapes' or defensive tactics, the striking similarity between some of their observations and those of the institutional informants and the Ontario Civil Justice Review in its First Report (1995) should give pause.

Citizens are less willing today to place blind faith and trust in institutions, in professionals and in elected officials. They are more demanding of accountability, more insistent on openness...

There is criticism about a perceived callousness on the part of the courts and on the part of those who work within the system, and also a perceived insensitivity to the needs of the very public whom the courts are there to serve. Although people recognize the volume and complexity of the issues before the courts, there is a pervasive belief that the system plays havoc with people’s lives and financial resources, often putting the needs of the system and the professionals and staff within it before the needs of the public. There is an enormous sense of frustration and anger about this, and this spreading feeling of discontent was made apparent to the Review during its consultation stage... (p.105)
Summation

The central thesis is that non-payment of support by fathers is an expression of resistance to identities constructed and imposed upon them by the system, which are not perceived as being congruent with their own identities. The course of resistance focuses on non-payment and/or establishing one's identity as a *good person* instead of on a constructive response to the change in their status as parent. I have identified what the social identities are that the system constructs, how this is accomplished, and how the resistance in fathers is produced in the interface between themselves and the institutions. Intensification of these identities through the discourses identified in the dissertation is likely, in turn, to intensify resistance to them in various forms. Meanwhile, the problem of non-support goes unaddressed in a satisfactory way by fathers and state alike.

The central issues within this frame revolve primarily around issues of rights, money, power and control, gender-based parenting, and different constructions of morality, all in the context of a market-based society. The individual experiences of the fathers are viewed and interpreted against this broader social landscape. It is important to remember that fathers bring to the separation experience an identity already developed, which is then taken up by the divorce process. The system, in turn, is driven by pre-existing social constructs. In the data analysis I have attempted to sustain a focus on the multiple strands of values, attitudes, constructions, and behaviour expressed by each informant, and the tensions arising among them; I have attempted also to keep in view the counterparts of these values, constructions and attitudes in analyzing the documentary data and the institutional informants' data.

In the next section, the implications of the study findings for policy, practice and research will be discussed.

Implications

The problem of child and spousal support can be understood as an illustration of Edelman's theory of how longstanding social problems are constructed by competing discourses reflecting
competing interests and ideologies. The current dominant discourse, insofar as it is the one expressed in social policy, defines support as the private responsibility of fathers as family providers. The resulting construction of the problem, its cause, the best solution, and the appropriate ‘authorities’ are consequently framed by that discourse. The problem is constructed by a discourse of fathers as bad guys, irresponsible fathers who don’t pay unless they are forced to; the solution is to force them; the authority is the enforcement agency. Competing discourses are suppressed, the subjective positions of non-parent and deadbeat are produced for fathers to take up, and other possible solutions are ignored. Historically, constructions of fathers’ neglect have focused on individual moral or developmental failure. This was a construction based on the prevailing ideology of men as breadwinners. There have been alternative formulations of the psychological approach identifying depression as the specific psychological issue, either because of the difficulty meeting the financial demands of support (Baldwin, 1904) or because of the effects of loss of relationship with the child (Kruk, 1991, 1993). The discourse of gender neutrality applied to parenting and the best interests test are intended in part to counteract the latter phenomenon and variations of it (eg. Fox, 1986; Jacobs, 1986).

With the decline of the ideology that men are inherently destined to be breadwinners and that failure to be one was a sign of individual deficit/ moral weakness, a competing discourse focusing on structural dimensions came to the foreground. Although the problem is still seen as irresponsibility in the fathers, the solution framed by this discourse is seen to lie in the societal management of irresponsibility. In turn, the decision to treat the support relationship according to the rules that govern the debtor-creditor relationship put the solution in terms of business and civil transaction, rather than morality or psychology. Meanwhile, the state has maintained its interest in keeping responsibility for children squarely within the private domain of the family, creating the appearance of sharing in that responsibility by enforcing private support. The failure of this construction of the problem and its solution to bring about the well-being of children and their custodial mothers is clear from the statistics on support payment and the poverty of mother-led
single families. This study points to one important reason for this failure: Fathers resist identification of themselves as the *bad guys* and the source of the problem. Rather than shaming or intimidating them into responsible behaviour, we seem to have created a situation in which primarily salaried employees can be pursued while all others can evade the system, which they continue to do in significant numbers.

The puzzling question raised in the first chapter is relevant here: Why should it surprise us that many fathers are unable to recognize and/or remain focused on their children’s needs once they do not live with them? Why are we perplexed by fathers who remarry and take on or start second families while they distance themselves from the first? The phenomenon is entirely congruent with the discourse of patriarchal relations. So long as women are socialized to be primary caretakers and are economically disadvantaged by it, it is predictable that men will regard their parenting role as secondary in their own lives and in the lives of their children. Although this traditional model has been historically modified somewhat in Western culture, the conditions which perpetuate and result from it continue. It strikes me as unreasonable to expect that separation or divorce will correct the power imbalances -- economic and interpersonal -- that are present in marriage.

Several insights emerge from the foregoing analysis into the ways that divorce draws attention to and amplifies the ambiguities and contradictions inherent in the ways we think about the ‘intact’ family and its relationship to the state. When the private decision to end a marriage is institutionally processed as a public re-ordering of the family, the many conflicting ways in which we think about social relations of gender, marriage, parents and children, individual and social responsibility, personal rights, equality, and human welfare become ‘live’ because they require renegotiation in light of state scrutiny. The options for renegotiation are much broader at this point in time than they have historically been. The social changes that open up a multitude of possibilities where once there was fairly rigid determinism also open up the potential for uncertainty and conflict. In the face of this, there seems to be a tendency to retreat to positions that offer some certainty and predictability. The existence of a variety of such positions, however, means that
there are competing interests and discourses which, in the course of debate, have -- not surprisingly -- become polarized. These positions are found in the literature on divorce and in particular on child support, and in the various critiques of family law, as well as in the popular media. The two polar positions are those of feminists, both liberal and radical, and proponents of 'fathers’ rights' or 'men’s rights'. The current approach taken in the law tries to combine elements from both in ways that are often incongruous or actually contradictory.

Feminist scholars and activists have taken positions that seek to protect the rights of women, while men’s rights activists have urged the protection of fathers’ rights (or men’s privilege, depending on one’s viewpoint.) In this struggle, the discourse of rights on both sides displaces the discourse of child welfare. There are certain ironies in the way that this polarization of the debate has evolved. Some feminists now argue against the authority of ‘experts’ such as social workers and mental health professionals, largely because the current trend in research concerning the welfare of children of divorce emphasizes the value of continuing access to both parents and a cooperative relationship between the adults. As Smart points out, “Policies affecting children do not occur outside gender politics” (1989, xvi).

The rush to meet the perceived ‘needs’ of children and to ‘rectify’ what has become identified as mother preference in custody cases may result in trampling the needs of those people who still carry the overwhelming responsibility for child care, namely mothers (Smart, 1989, xvi).

The result is that we now find feminist scholars and activists arguing against the best interests standard, an arguably paradoxical place for mothers to be. Smart argues for the deconstruction of "notions like the ‘best interests or children’ or the ideology of the new fatherhood” to prevent legal and social policy from relegating child care and nurturing by women “to the lowest priority whilst redefining women’s objections as individual pathologies or selfish vested interest” (Smart: 1989: 25-26). In addition, “the application of formal equality to the ‘private’ sphere, such as family law, may be more troublesome than its application to some areas of the public sphere” (Smart, 1986,
The emphasis on increasing fathers' access and control through formal equality threatens to undermine the power of custodial mothers. Holtrust (1989) writes of the feminist reaction in the Netherlands to legislation introduced in 1978-79 on post-divorce access:

In short, feminists maintained that the right to access was more a confirmation of patriarchal conceptions -- in which fatherhood means surveillance, relationships are legally enforceable, and a world without fathers is unthinkable -- than the voluntary continuation of the ties between father and child after divorce. (p. 54)

While there can be no doubt that many fathers construe access this way, the alternative of enshrining patriarchal relations in formal post-separation arrangements does not address the underlying problems with respect to inequality. Categorizing fathers, as a group, as irrelevant to their children’s emotional or psychological well-being seems a poor alternative to categorizing them as indispensable.

Pulkingham (1994) identifies the primary caretaker standard as a ‘radical’ feminist position, in contrast to the ‘liberal’ feminist position advocating degendering of the structure of parenthood. She argues that the position feminist scholars have taken in favour of a primary caretaker standard seeks to acknowledge and protect the value of the work women do as caretakers, but threatens to trap them, even outside of marriage, in the traditional role of dependence upon a male breadwinner (Pulkingham, 1994). The liberal position became suspect, perhaps, when men’s rights groups took up the call for shared parenting after separation, assuming the best interests test would protect their involvement with their children. The discourse of equality, when appropriated as a men’s rights issue, appears to have put many feminists in the position of taking up the discourse of rights to protect themselves from the perceived threat of increased control (and restoration of patriarchal privilege) to fathers. This has had consequences which Pulkingham (1994) summarizes as follows:

In focusing on rights for women as the goal, whether they be equality rights through gender neutral legislation (1970s style) or gender specific rights based on
women's actual and/or "special" role as nurturers (1980s-1990s style), the implications of the interaction of feminist demands and state action in structuring women's subordination have been overlooked. Failure to carefully document and assess "solutions" such as the primary caregiver presumption may unwittingly reinforce both the privatization of social reproduction and paternal control over children. (p.96)

She goes on to summarize the research in the United States demonstrating the link between support and access and concludes:

...[T]he research clearly demonstrates that the amount of support paid changes when the frequency of contact changes, and provides support for the concern that the amount of visitation (or "access") may be used to influence the amount of support paid.

This *quid pro quo* approach reflects the prevalence of the male breadwinner family wage model; moreover, it flourishes in an environment primarily focused on strengthening individual rights. Consequently, as long as it is individual women's (maternal) rights that remain the object of attention for reform, rather than societal responsibility and paternal obligations and responsibilities *within* and beyond marriage, paternal rights will be fortified. This situation will do nothing to shift the burden of obligation and responsibility for day-to-day caring and the long-term costs from individual carers, primarily mothers, to fathers and society at large.

(1994, p.96-97)

The *primary caretaker* principle appears to paint women into the very corner women have been trying to get out of. If recognition of women's caregiving and dedication to parenthood is the goal, it is not clear why state responsibility for the welfare of mother-led families is considered unacceptable. The more relevant issues are what the "decent minimum standard of subsistence" should be, where to take the funds from, and how to have both children and state benefit from supplementary expenditures by fathers.
A similar irony applies to the issue of mediation. Initially hailed as a way to keep women out of an expensive and often nasty adversarial environment, it quickly became identified as a process which threatens women’s rights as well as their safety and negotiating power. Here, too, the fact that men’s rights groups began to advocate mediation made feminists wary. It was viewed as a way to dominate women without accountability to the law. The potential benefits of a flexible, resolution-oriented process for many (though certainly not all) families seem to have been outweighed by the concern for women’s ability to get a fair deal. The argument that a woman is safer in the hands of adversarial lawyers than a mediator is ultimately about the protection of rights. Mediation is part of a trend towards resolution-oriented approaches, both inside and outside the courts. It reflects the recognition of the problems arising out of the attempts to regulate unique and complex interpersonal relationships through abstract legal rules and procedures. Olsen (1993) argues against this process of “deformalization” in family law; i.e. the case-by-case approach of family courts. She objects to the principle of creating resolutions carefully tailored to the particular family... The point is not to protect the individual rights of each spouse against infringement by the other but to use the state apparatus to promote family solidarity.” (p.73)

The danger of deformalization, according to Olsen, is that

[it] violates the rule of law and may result in ad hoc readjustments that are themselves oppressive. The welfare of family members may come to depend upon the uncontrolled discretion of state agencies, with the result that the state may directly dominate family life. (1993, p.73)

While the fathers in the study argue that the legal system is inconsistent, unfair, biased, and offers too much protection for women, this kind of argument against mediation and deformalization of the courts is made as if the formal legal system operated objectively, consistently, fairly, and offered adequate protection for women. In any case, with respect to the question of rights, radical feminists and fathers’ activists share the perspective that protecting one’s
parental rights should not signify selfishness or a bad parent. (The difference is that feminists do not agree that the rights of fathers are threatened, only their patriarchal privilege.)

Glendon’s argument about the problems associated with deformalization, however, is consistent with the findings of this research. Based on her study of family law in five Western countries, she concludes:

The ideal of individualized justice (which is the main justification for a system of broad discretion) seems impossible to achieve, while the degree of uncertainty the system entails seems unnecessarily high.” (1989, p.201)

Addressing the important question of why family law reform strategies have had “ambiguous and even contradictory effects,” Olsen (1993, p.65) develops a complex analysis of how historic attempts at reform in law and family relations have been constrained by the liberal dichotomous ideology within which they operate. Her comments on reforms relating to child support are helpful:

Reforms aimed at ensuring support of the family by the husband either criminalized nonsupport or provided a procedure by which the wife could enforce the husband’s support obligations. Some alimony and child support provisions similarly required men to be financially responsible for their families. Statutes were enacted that allowed a widow to take a ‘forced share’ of her deceased husband’s estate and thus circumscribed a husband’s ability to disinherit his wife. These reforms were successful insofar as they limited the husband’s power to abuse the control he exercised, but they were unsatisfactory insofar as they left the husband in control....

Recent reforms of this type tend to impose mutual obligations of support upon both spouses and to prevent either spouse from disinheriting the other. Such a cosmetic change, however, fails to eliminate the ideology of sexual inequality, because merely formal gender neutrality does not address actual conditions of economic
dependency." (p.72-73)

Another issue is whether it is reasonable to expect that there actually is enough money to go 'round in most cases, when one household splits into two. Glendon (1989) has argued that for the majority of families in the countries she studied, it is not. While research does not support the belief that all non-payment is due to inability to pay (University of Alberta Institute of Law, 1981; Wachtel & Burtch, 1981; Weitzman, 1985, 1988), there is certainly abundant evidence that a large proportion of separated families had relatively little income prior to separation, and cannot manage two households on an income that was inadequate for one (Pulkingham, 1995). Pulkingham adds the view that post-separation/divorce poverty per se is not the problem; rather, she argues, it makes more visible the problem of women's inequality in general under patriarchal relations of economic distribution (1994, 1995).

Some of the fathers express a willingness to financially support their children, even their wives, but this willingness is diminished as discretionary control over the money is lost. The tendency among the institutional informants is to label this as evidence of fathers' "control thing" and thereby dismiss it. The relationship between generosity and control has an important place in the discourse of charity. The tradition of social welfare that we know as 'philanthropic' or 'charitable' was indeed based on the maintenance of control by those who gave money over who received the money and how it should be spent. The tradition of the laws of charity for the poor according to the ancient Jewish scholar, Moses ben Maimon (c. 1175), anticipates this tendency in those who hold the purse strings by specifying that the highest form of charity is when the donor and the recipient both remain anonymous. While this approach to social welfare may be admirable and progressive at the macro level, its applicability to the intimate relationships between parents and children and the emotionally 'loaded' relationships between ex-spouses is questionable.

If we adhere to a discourse of fathers as bad guys, as irresponsible parents who must be forced to take responsibility, we are not necessarily going to solve the underlying problem of inadequately supported mother-led families. On the other hand, state resources are also limited,
and it is arguable whether families can or should be supported at a higher standard without the contribution of parents. Glendon questions whether any "entirely satisfactory solution" can be developed in countries where most families have modest means, there is a high rate of marital breakdown, new families are formed or begun, and welfare states have limited resources.

But some countries do more than others to ensure a decent minimum subsistence to families that are raising children... (1989, p. 237)

Her criticism falls most heavily on the model of the United States, which has "embraced free terminability of marriage and spousal self-sufficiency after divorce, while failing to assure either public or private responsibility for the casualties" (1989, p. 237). Although Canada has made considerable efforts to assure private responsibility, these have been demonstrated to have limited effectiveness and are likely to be less so as funding is cut back. Moreover, we need to consider the possibility that this policy, applied in the larger context examined by this research, may be perpetuating the problem rather than ameliorating it.

The findings of this study suggest that policy makers, bureaucrats, judges, and related professionals all contribute to the perpetuation of the problem of non-support by making fathers into 'bad guys' while society as a whole is absolved of responsibility for the final outcome of economic inequality. Even though the law is steeped in the language of children's interests, the findings are that women and children are, quite literally, dropped from the debate because they are not truly an essential part of it. The debate is in actuality between fathers and the state, about where responsibility should rest for the welfare of children and mothers.

* * *

It is difficult to explain the striking contrast between the reality of impoverishment of women and children after separation or divorce and the notion of the legal system being pro-women. It strongly suggests that somewhere in the complex web of policy, law, and procedure, there is a profound disjuncture which gives rise to the co-existence of such contradictory
experiences of bias and victimization. Is there a difference between the courts’ stance toward initial awards of support and their approach to conflicts over non-payment? Is the impoverishment of women and children primarily the result of a lack of adequate resources, or is it in significant part due to the courts’ apparent reluctance to award appropriate levels of support? It is beyond the scope of this thesis to attempt an analysis of the gap between the perceptions of fathers, the perceptions of mothers, and of the feminist community generally. This gap is, however, problematic both for policy and for individual counseling and requires more attention.

**Alternatives**

What are the alternatives? I begin with the assumption that “support and property-division law exists in a complex relationship with that country’s social-assistance law” (Glendon, 1989, p. 198). This means that changes to the child support system must include considerations of social assistance as a whole. The conclusion I am led to is that it is necessary to step outside of the patriarchal framework that points to preserving the family as a self-sufficient economic unit after separation, dependent on a father for its sustenance, particularly if he is a disaffected parent. We need to assume social responsibility for the fallout of terminated marriages as a primary solution, not as a last resort. The welfare of children needs to be conceptualized as a social responsibility, with private responsibility relied on to recoup as much of the expenditure as possible without vilification and coercion as the strategy of choice. I must admit that when I first encountered this proposal in the literature, it struck me as retrograde. It seemed unthinkable that fathers should be ‘let off the hook’ in this way, and women and children made dependent on the state. Such a reaction, however, is grounded in the same discourse as the problem itself; i.e., within the framework of the ‘private’ family and personal responsibility, a fundamentally patriarchal, individualistic perspective. The sense that a workable solution is unacceptable because it lets fathers off too easily belongs to the same view that situates the problem in individual fathers who are not fulfilling their moral obligations. The goal of ensuring that children and mothers are taken
care of gets quietly shunted to the side as the focus settles on how we can assume social responsibility for ensuring that fathers do their duty. This approach, however, is retrograde in its own way, as the following excerpt from a 1904 study by the Associated Charity Organizations (U.S.) of various state support laws suggests:

It is clear... that the cause is not, as might be supposed, discouragement over inability to fulfill a husband’s part in caring for the family, but the lack of determination to do so; that the trouble is not physical but moral weakness.

(Baldwin, 1972, p.9)

In order to generate solutions that actually address the problem of poverty, we have to step outside the framework of liberalism, moral rectitude and the current relationship between the private family and the state. Enforcement policy has in an important sense represented a step forward, as it puts the problem of non-support in the foreground; on the other hand, it has reinforced reliance on fathers who historically and cross-culturally are notorious for not being reliable in this context. I am persuaded by Pulkingham’s argument (1994, 1995) that the real problem is not post-separation poverty per se but the economic inequality of women as a whole, which separation renders more visible. Enforcement policy, even if it worked, could not rectify this. As Sampson wrote in the early days of American enforcement policy reformulation:

Perhaps demanding individual responsibility from parents will lead ultimately to an acceptance of societal responsibility for the well-being of our children in a natural progression. This latter will require a thoroughgoing revision of the parens patriae doctrine. To date the state has merely claimed the right to intervene in the family unit when necessary to protect children from harm. Future generations may rightly view this narrow commitment as barbaric. (1983, p.72)

Ironically, at the time Sampson wrote this, a great deal of research and writing was going on throughout the Western World about the problem of child poverty due to lack of support. But the call for “public responsibility” and “family policy” did not necessarily refer to the shouldering
of full and ungrudging responsibility for the welfare of children and unmarried mothers. On the contrary, most authors tended to remain fixed in a residual framework where social responsibility meant “social assistance” in the sense of minimal, inconsistent, and stigmatizing help (Kamerman & Kahn, 1983). Outrage over the historical failure of the state to intervene in families for the benefit of women and children was directed towards the state’s failure to ensure that the private system worked (Cassettty, 1983; Weitzman, 1985). There was research implying structural inequality in the system of private support (Sorenson & MacDonald, 1983) and evidence that, in countries where state support is given relatively more generously whether or not the former husband pays, families fare better (especially if mother is not penalized for working) (Kamerman & Kahn, 1983). Nevertheless, the overwhelming emphasis in the child-support literature of the time was on reinforcing the family’s dependence on the father.

**Implications for Practice.**

In the meantime, we need to consider changes in practice by all those who work with separating and divorcing families. Empirically, we know that enforcement of child support has universally been problematic (Glendon, 1989; Hahlo, 1983). If we adhere to the view of fathers who don’t pay all or part of their support payments as bad guys, there is little reason to expect we will not continue to encounter resistance and denial (Foote, 1986). On the basis of the evidence, it is realistic to assume that some fathers will never demonstrate responsibility for the welfare of their children. The collective experience of the institutional informants as reported in this study, however, is that when fathers are engaged as caring, valued parents, very few fail to respond positively. Supported by other findings, this suggests that integrating fathers’ identity as provider with the identity of caring parent is more likely to be successful than keeping them artificially separate. This is not to suggest that a quid pro quo approach towards access and support should be used; rather, I am suggesting that fathers’ identity as parents not be isolated from their identity as breadwinners.
In addition, the fragmentation of the process into one court for property, another for support enforcement, etc. is more than just confusing and expensive; it does not fit with people’s lived experience and forces a dis-integration of parental identities. As Glendon (1989) states:

Although lawyers habitually distinguish for analytical purposes among divorce as such, spousal support, custody, child support, and property division, issues in these areas are inseparable from each other in real lawsuits. (p. 197)

This may be particularly relevant for people whose cultural identification is still strongly patriarchal.

To bring about integration of paternal identities, a forum is needed where all the issues can be discussed and considered holistically, and where the parties do not surrender all sense of control over the process. This likely is best accomplished by a mediative approach or, in cases where mediation is contraindicated, perhaps an alternative such as formal arbitration. The suggestion of tribunals has been made by two of the fathers interviewed as well as by the eminent Judge Norris Weisman (R.F.L. 36, 3d. ed.) although each has a different idea of who would comprise the panel and how it would be used. For example, one suggestion is that it would be composed of appropriate community people chosen with the family’s input. The tribunal’s decisions might be interim solutions or long-term.) A series of recommendations made by the Ontario Civil Justice Review (1995) includes expansion of the Unified Family Court system, a case management system, encouragement of alternative dispute resolution, and other ways of speeding up court-related processes, cutting down costs to individuals, and promoting resolution rather than litigation. It also calls for increased participation of the public in the justice system.

Educational programs for parents have been found to be helpful (Garon et al., 1994) in supporting fathers to remain involved constructively with their children. Helping them to relate directly to their children and to understand their developmental needs and behaviour can offset the fear of losing one’s relationship with the children and of being dependent on an uncooperative ex-spouse. Support is needed for mothers in dealing comfortably with former spouses, eg.
establishing necessary limits, and in identifying situations where the fathers' involvement is genuinely problematic for the children or threatening to themselves. The availability of supervision for visits in questionable situations would help to avoid the difficult choice between potentially unsafe or damaging visits and no visits at all. Fathers may need educating about child development, realistic budgetting for children, etc. Parents could benefit from ideas on how to negotiate holiday visits or changes from the normal routine; how to work out the minutiae of dual-household logistics that predictably contribute to tension and mistrust.

At the level of individual, family counselling and group services, it is important for professionals to feel permission to 'join' with fathers in the same way that is known to be successful -- in fact, essential to the helping process -- with all other clients. By this is meant the ability to empathize with the client and to demonstrate empathy in order to establish a basis for trust and openness. Put differently, it is the basis for working together on developing shared meanings in a context where the purpose is precisely to help fathers develop constructive meanings with respect to fathering. Our goal should be to help shift the perspective of a father who is stuck in a discourse of rights and power, fighting an identity of bad guy or non-parent. To accomplish this, we need to begin by empathizing with --not necessarily accepting -- the father's 'lived experience'. Another important perspective shift is implied in Ahrons & Miller's recommendation that all members of the family be included in intervention strategies because of gender differences in parents' perceptions of how involved the father actually is with his children (1993). The victim stance of fathers does not sit well with most of the institutional informants interviewed, even those who acknowledge that in some respects it's true. It also understandably enfuriates feminism and many non-feminists alike. Women in general scoff at the construction of men as 'losers' and women as 'winners' in the context of separation. The reality is that, in most cases, mothers and children clearly suffer financially as well as emotionally and socially. The way the problem is constructed, it's clearly the father's fault; therefore, to empathize with fathers is to risk feeling like/being perceived as an enabler for the bad guy. Reinforcing the bad guy identity is not constructive.
At the level of individual family relationships, including financial support and paternal involvement, it is clear that fathers need to find ways to empower themselves that will also benefit their children but that are not at the expense of the mother. We have to help fathers move from a discourse of rights to one of responsibility and caring. To focus on this as the ultimate solution to economic well-being for mothers and children, however, is to perpetuate the problem of keeping the responsibility within the family. So long as energy is focused on how to get fathers to take responsibility, society as a whole can continue to see child and spousal support as private problems rather than social problems for which the state must assume responsibility.

It may be possible to generate innovative alternatives so long as we are willing to think in terms of both policy and practice, and challenge the limitations imposed on us by particular ideological positions. We must consider, too, the complexities of applying policies and practices framed within the dominant culture to the many different cultural groups who are served by the system in Canada. The more flexible the approach, the likelier it should be to construct solutions that people can respect and live with.

**Implications for Research**

The findings of this research are based on analysis of a non-representative sample, in keeping with the goals of the study and qualitative methodology. It may be helpful to test the generalizability of these findings, as well as their transferability to particular ethnic, socioeconomic, or racial sub-populations. The multicultural composition of Canadian society, and Ontario in particular, requires particular sensitivity to the differences in the ways that fathering, family, and relationships between family and state are constructed.

There may be much we can learn from fathers who do pay support, and studying them may tell us more at this point than further study of non-paying fathers. Discovering how paying fathers represent their identities and how they construct economic support may help us gain insight into how fathers can be positively engaged in meaningful parenting roles which benefit all family
members. Careful evaluation of innovations in policy or practice need to be conducted so that we can stop doing what doesn’t work and direct energy and funds into productive endeavours. Programs whose main focus is to minimize conflict between parents for the sake of the children should be evaluated for their impact on financial support as well. Whether or not there is state support for all children and mothers, the greater the financial contribution that can be induced from income-earning parents, the better for everyone.

**Relevance to Social Work**

What has all this to do with the profession of social work? Social workers deal on a daily basis with the fallout of social problems at the individual level. As a profession, we have always struggled with the question of whether to work at ameliorating individual suffering or to direct ourselves to social change. As a profession, we appear to have accepted the construction of support as an individual, private issue and have directed our frustration and anger at fathers who are constructed as the villains in this scenario. In so doing, we reinforce the construction of responsibility for children as a private parenting matter.

The emerging literature on social work and postmodernism/poststructuralism suggests that, as a profession and as a field of inquiry, social work is well suited to address problems that arise out of the interrelationship between micro and macro, the state and the family. According to Parton (1994, p.94), modern social work emerged in association with the changes beginning in the mid 19th century “around a grid of increasing and inter-related anxieties about the family and the community more generally.” Social workers became the “primary technologists” of the so-called “hybrid space” which Donzelot has termed ‘the social’ (1994, p.94). “Social work is sited at the intersection between various institutions, the community and private families,” rendering it an “essentially ambiguous activity” which mediates among “diverse overlapping discourses” (Parton, 1994, p. 95). These ambiguities at the heart of social work, along with the emergence of the profession itself, “were inter-related with and dependent upon the development of new forms of
social regulation associated with the increased sophistication and establishment of modern society" (1994, p.96). Parton outlines the phenomenon of post-modernity and its operant principle of deconstruction "whereby phenomena are continually interrogated, evaluated, overturned and disrupted" (Parton, 1994, p.104). A postmodern critique presents considerable challenges to the field of social work -- along with most other disciplines -- insofar as it "advocates pluralism in morals, politics and epistemology" (1994, p. 104). Social work practitioners and scholars who are influenced by postmodernity may find themselves caught between the "potentially liberating" effects of postmodernism and the inherent threat of "potentially disabling and nihilistic" uncertainty (p.104). Deconstruction of hitherto taken-for-granted systems of thought and social regulation can create an uncomfortable zone for those who rely on neat models, but it can also theoretically 'open up possibilities' for change that may have previously been invisible. Parton concludes that the goal of social theory and of social work in the context of postmodernity is "to try and enhance intelligibility between different cultures" (1994, p.105). This necessitates the willingness to tolerate contingency and uncertainty, and to seek "the constitution of conditions in which it becomes possible for people to exercise self-determination in the face of contingency" (1994, p.105).

The guiding philosophy behind this dissertation is that if what we are doing to bring about social change is not working, then to continue doing more of the same makes little sense. Many of us cheered when governments created policy which actually holds separated fathers accountable for support of their children and former wives. In so doing, we failed to recognize that the state was continuing to keep itself 'off the hook'. As long as the solution to support is sought within the private domain, strategies that initially appear progressive and show promise must inevitably fail or create other problems. If we are to consider radical change, however, we need to unpack the current structures and look at all the pieces before we move forward in a new direction. If some of the elements are kept off-limits because they do not fit ideologically with a favoured discourse, or do not meet the interests of a particular group, then we will be hampered in the effort to create meaningful change. If we think of the discourses of rights, fairness, individualism, child welfare,
private/public, and fathers’ rights as “different cultures”, then we are faced with the task of “enhancing intelligibility” among those cultures. Similarly, the polarization of micro and macro, of the individual and the social need to be broken down in order to generate new options for change. As Chambon (1994) writes, “[T]hese divisions [dichotomies such as the clinical/ policy arenas] no longer seem as relevant when we examine the personal/institutional meanings and practices and the internalization of discourses” (p.72).

The social work goal of change in the direction of social justice is also well served by the orientation of feminist research towards social praxis. It is hoped that the findings of this study will be helpful to practitioners in the field of separation and divorce, be they social workers, mediators, assessors, lawyers, or judges. Insight into the multiple perspectives and identity positions emergent from fathers’ lived experience should offer an effective guide for establishing empathy and relationship in working with separated fathers. At the same time, an understanding of the discursive context in which those perspectives and identities take shape can offer guidance for deconstruction and joint reconstruction of new ones. In keeping with my original objective of bridging practice and policy, it is also hoped that the dissertation can contribute to opening up the debate about issues of support and access, to broadening the context within which they are considered and addressed.

NOTES


2. On the subject of social work as the application of technology, see also Pitsula (1979).
REFERENCES


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Amsterdam/Philadelphia: John Benjamins.


APPENDIX A

A.1. Sample request for Referral Source Participation

Date

[Name], Executive Director,
[Family Service Agency]

Dear

I have spoken with [Agency's Clinical Director] requesting your agency’s assistance in recruiting a small (up to 5) number of participants for my doctoral dissertation on divorced fathers who do not pay child support. [Clinical Director] has expressed her willingness to support this endeavour, and has requested that I contact you formally about it. I have also discussed this with [Agency’s Research Director] whose response was favourable.

The research is being conducted through the Faculty of Social Work at University of Toronto. A protocol for approaching fathers has been developed for this study and approved by the Faculty’s Ethics Review Committee. The protocol is designed to protect the privacy and confidentiality of fathers, to keep the role of the referring worker simple, and to prevent the client-worker relationship from being compromised in any way.

I am aware that any request, no matter how small, for agency assistance in outside research is an imposition. Clients’ time is also valuable. In recognition of that, I would like to offer some of my time at the study’s conclusion for whatever follow-up the agency would deem useful. I would be glad to present the research results to staff and/or clients, or to do a related staff training session, lead a client seminar, etc.
I am attaching the following materials for you, and will be glad to add any further information or address any concerns you might have:

1. Summary of the protocol prepared for the Ethics Review Committee at the Faculty of Social Work.
2. A sample of the letter of introduction to be distributed to the fathers initially, and of the follow-up letter to be distributed several weeks later. The letters would be tailored to the setting and worker.
3. A sample of the fathers’ consent form.
4. An administrative consent form.
4. A confidential copy of the draft interview schedule for fathers. (This questionnaire should not be shared with workers or clients at this stage.) Please bear in mind that this schedule outlines the areas of information to be explored and is meant as a guideline and accountability tool. The interview will not be conducted in this rigid question-and-answer format.

I hope that you will consider this request favourably and allow me to proceed, with your support, in attempting to recruit participants for this research.

Sincerely,

Deena Mandell, MSW, CCSW, PhD. Cand.
A. 2. Institutional Referral Source Consent

To the Principal Investigator:

I acknowledge that the procedures for the research study "Divorced Fathers and Child Support: The Problem in Social Context" have been described to me. The potential risk has been explained to me and any questions or concerns I have raised have been answered to my satisfaction. I have been assured that the confidentiality and personal identity of the individuals who agree to participate in this study will be protected.

____ I have requested and received a copy of the Ethics Protocol prepared for the University of Toronto's Human Subjects Review.

____ I have not requested any documentation related to this study.

____ I have requested and received the following materials:

________________________________________________________________________

________________________________________________________________________

I hereby consent to the conduct of research at ________________________________

________________________________________________________________________ by the principal investigator, as described.

________________________________________________________________________

Name (Please print) __________________________ Title/Position __________________________

Date __________________________ Signature __________________________

Please save a copy for your records
A. 3. Letter of Introduction to Fathers

Date
Dear

I, Deena Mandell, am a social worker who has worked as a family counsellor and mediator for twenty years. [Name of referral source] has given you this letter because I have asked for [his/ her] help in contacting divorced (or divorcing) fathers who might be able to help me with the research I am working on for my PhD at the University of Toronto Faculty of Social Work. I am hoping that you will consider participating in this research.

For my PhD thesis I am planning to do a study of fathers who are obliged to pay child support, along with a study of the legal, clinical and administrative system that governs divorce in Ontario. I am particularly interested in the experiences of fathers without custody who have experienced difficulty related to support. It is my hope that this study will contribute to a better understanding of divorced fathers and the way the divorce system affects them. This research should help those who work in the field of divorce and who develop family policy to help families in the most constructive possible way. In order to achieve this goal, it is important for me to talk with fathers in your situation and to learn about your experience directly from you, in your own words.

If you consent to participate in the research, the following expectations would apply:

I am requesting one face-to-face interview of about two to two-and-one-half hours' length, to be arranged at a time convenient for you. The interview may take place at one of several locations to be mutually negotiated, i.e. your place of employment, my office in North Toronto, or the University of Toronto (downtown). The interview will be tape recorded, and sections of it will be transcribed. No tests will be administered. There will be a core set of questions, and
additional questions may be asked to clarify what you have to say. You may choose to not answer any question, and you will be free to withdraw from the study at any time if you so choose, in which case the information gathered from you will be destroyed if you wish.

Confidentiality will be assured by deleting your name and all identifying details will be altered. No-one involved in your personal situation and no professionals, officials, or institutions will be given any information whatsoever about your decision to participate or not, nor about what you say in the interview. After reviewing this letter with you, [referral source] will not discuss this research with you again and will receive no information from me as to whether or not you have participated. Your decision will have nothing to do with your contact with [referral source] or the [service offered by referral source].

All information gathered from you (tapes, transcribed records, etc.) will be kept in a secure location and will be available only to myself and to my doctoral supervisor unless subpoenaed, which is extremely unlikely. In any case, no identifying details will appear in these records. Within one year of the acceptance of the dissertation, all records will be destroyed.

In the course of completing the research analysis and report, it may be important to contact you in order to discuss a particular question or issue. This may be done on the telephone.

Once the dissertation is complete, a summary of the research will be sent to you if you wish.

If you are willing to assist in this research, or if you have any questions you would like to discuss before deciding, do not hesitate to contact me at (416) xxx-xxxx. If you leave a message, please let me know when is the best time to return your call. If you decide to participate, you will be asked to sign the attached consent form. The signed copy is to be given to me and the other is for your own records.

I will look forward to hearing from you, by mid-April or as close to then as possible.

Yours truly,
A. 4. Fathers’ Consent to Contact

**Divorced Fathers and Child Support: The Problem in Social Context**

Consent to contact

The principal investigator (Deena Mandell) has my permission to contact me at a telephone number which I have provided. Yes [ ] No [ ]

__________________________  ____________________________
Name (Please print)  Date

__________________________  ____________________________
Signature  Phone (Day)

__________________________  ____________________________
Phone (Evg.)

*Please retain one copy for your records*
A.5. Fathers’ Consent to Participate


Consent to participate

To the Principal Investigator:

I acknowledge that the research procedures described in the attached letter, of which I have a copy, have been explained to me. Any questions or concerns I have raised have been answered to my satisfaction. The potential risk has been explained to me. I have been assured that my decision to participate in this study will be kept confidential and no information will be released or printed without my permission that would reveal the personal identity of me or anyone in my family, or anyone involved in my case.

I understand that my participation in this study is completely voluntary and that my decision to participate or not will not influence any services that I may seek or receive. I also understand that I am free to withdraw my participation from the study at any time and that this would not be made known to anyone other than the principal investigator.

I hereby consent to participate in the study.

__________________________________________  ____________________________
Name (Please print)  Date

__________________________________________
Signature

Please retain one copy for your records
A.6. Introduction to Referral Source “Package”

Date

Dear

I am most appreciative of your willingness to assist me in my doctoral research on fathers without custody who are not paying child support. The proposal has now been passed by the Ethics Review Committee at the Faculty of Social Work, University of Toronto.

I have enclosed the following material, as we recently discussed by telephone:

1. An overview of the research as prepared for the Faculty’s Ethics Review Committee for your information.
2. A draft version of the questions which will guide the interview with fathers, including the introductory statements which will be given to them orally. Although these questions may be helpful to you in clarifying any general questions a prospective subject may have, I would ask that you not share specific questions with anyone. If you have any suggestions or comments that might help me make the interview more appealing to your clients, I would welcome them.
3. Several letters of introduction to the fathers, explaining briefly who I am, the nature of the research, what is being asked of them and what protections will be assured for their confidentiality. It would be very helpful if you would let each client know that I am a legitimate researcher known to you/your colleague, that I am genuinely interested in hearing whatever experiences they have had with the divorce system, including complaints, problems, and criticisms. You may feel free to explain anything in the letter which might be unclear, and answer any questions about the text itself. Any encouragement you can give to contact me would be valuable, but I in no way would
want you to compromise your client’s trust in the separateness of this research from his involvement with you.

4. Several consent forms for the fathers. The duplicate copy is for each father’s personal records.

Please consider the following criteria when considering your clients for inclusion in the study. In each case:

a) Father divorced, (or separated for at least six months), without custody, and with an agreement or court order specifying child support obligations;

b) Child support payments in arrears (either unpaid, partially paid, or irregularly paid) for two months or longer).

c) Father not involved with any “fathers’ rights” or similar group.

If you have any questions or comments, please call me at (416) xxx-xxxx or fax me at (416) xxx-xxxx. Once again, my sincere thanks for your co-operation and assistance.

Sincerely,
**APPENDIX B**

**Fathers’ Interview Guide**

**Introductory Statement**

I am very grateful that you are willing to talk to me about your experiences with the divorce system in Ontario. I know from my previous research with divorced fathers that there are some important problems with the way fathers are treated in the system. It makes them angry and it sometimes gets in the way of their relationship with their children. I’m studying this problem because I feel it’s important to understand what’s going on for fathers in order to make the system better.

The interview is in two parts. The first part is a series of straightforward questions which help me get some basic information about you and your family. That will help me to have an idea of your life circumstances and to be able to describe them to others when I write my report.

The second part of the interview is designed to help you tell the whole story about your divorce experience in detail, and your thoughts and feelings about it, in your own words.

I. **Demographic & descriptive**

1. Age
2. Place of birth.
3. Length of time in Canada
4. Education level completed (in Canada? Elsewhere?)
5. Occupation.

6. Employment status (salaried, commissioned, full-time, part-time, seasonal, contract, self-employed, unemployed, receiving UIC, Welfare or other benefits)
   a) Current
   b) During past 12 months
   c) At time of separation
   d) At time of support order/agreement.
8. Income in the past 12 months (salary, commission, profits).
9. No. of children from terminated marriage.
10. Age(s) and gender(s) of children from terminated marriage.
12. Length of time since separation was first agreed/decided upon.
13. Length of time since first actual physical separation.
14. Have there been any attempts at reconciliation?
15. Status of custody and access. (agreed access, actual visiting pattern during past 6/12 months).
17. Former wife’s marital/relationship status.
18. Status of support payments (arrears, regular payments, full payments).
19. Status of support obligations. (order vs. agreement, amount)

Thank you. That ends the first part of the interview. Now I’d like to begin the second part of our interview. I have a list of things I want to be sure to hear about, so I will ask questions from time to time, but not in any particular order.

II. Experience of Separation Process
I’d like you to walk me through the steps you had to go through in moving from a couple and family living together to separating and reorganizing your lives. I want to hear it in your own words so that I can understand what it’s been like for you. I’m interested in the people and institutions you had to deal with, the procedures you had to go through, the way you were treated, what you thought about it and how you felt about it. I’m also interested in what your current situation is like for you and how you deal with it.
[The questions below serve as a guideline for the interviewer, to follow up on information given spontaneously and to ensure the inclusion of all areas of interest to the researcher. It would most likely not be necessary for them all to be explicitly asked, nor would they be asked in this order.]

1. Tell me about your contact with your children. (Length of contacts, scheduling, nature of time spent together, location, quality of interaction.)

2. How did the current arrangements described in #1 come into being?

3. Please describe for me your involvement in the day-to-day life of your child such as school, health, friends, discipline, leisure and child care?
   eg. To what extent would you say you
   - hear about/help with homework, tests, projects; talk to teacher
   - arrange or attend doctor’s and dentist’s appointments
   - know names of/see your child’s friends
   - set limits and issue/enforce consequences
   - participate in decisions about after-school activities & passtimes ....(cont’d)
   - spend leisure time
   - make meals, buy clothes, put to bed, bathe, read stories.

4. What do you think is going on with fathers who have stopped having contact with their children?

5. What are your thoughts about child support?

6. What do you think is going on with fathers who pay/don’t pay child support if they’ve been ordered to or have agreed to pay?

7. a) What is the current status of your child support payments?
   (paid up to date and in full, in arrears -- partial or fully, paid up to date but not in full)
   b) How long has this been the case?

8. Describe all the steps you went through in separating from/divorcing your wife and making all the arrangements that had to be made for living apart.
9. a) Can you remember all the agencies, professionals etc. with whom you had contact in the course of separating and reorganizing your lives? (lawyers, social workers, mediators, judges, Masters, Official Guardian’s officers, police, court workers, receptionists/secretaries, information officers, etc.)

b) What was the nature of that contact and by whom was contact initiated? Telephone; Mail (form letter or individualized response?); personal encounter (interview by appointment? other?); literature sent to you

c) With whom in each organization did you have contact? (role, not the actual individual)

d) What kinds of information were sought from you? What was done with that information and how was it treated?

e) What comes to mind about time in this process? (i.e. being kept waiting for people of for information, for things to happen, etc.)

10. How would you characterize each step in the process in terms of the following?

   a) general quality of the help
   b) treatment of you personally

11. If you had to do it again, what would you do differently?

   What would you want others (i.e. the institutional, agency reps. professionals, etc.) to do differently?

12. Do you think of yourself differently in any way after going through the process of separation and divorce? If so, how do you deal with that?

13. Do you think anyone else thinks of you differently? If so, how do you deal with that?

14. Have you changed in any other ways?

15. If you were offering advice to a newly separated father, what advice would you give him?
APPENDIX C

C. 1 Introduction to Institutional Participants

Date

Dear

I am a professional social worker currently undertaking the dissertation for my doctoral degree at University of Toronto Faculty of Social Work. My PhD supervisor is Dr. Adrienne Chambon.

I am hoping that you will consent to participate in a study designed to develop a multi-faceted understanding of fathers who do not pay child support within the context of the legal, administrative and clinical dimensions of the divorce system in Ontario. The study will be conducted in two phases. In the first phase of the study, the focus will be on the subjective experiences of non-support paying divorced fathers with the various aspects of the divorce system. The second phase will focus on the functions, views, and decision-making processes of judicial personnel, institutional officials, social workers, lawyers and mediators in the field of divorce. Relevant legislation, texts, policy documents and practice manuals will be examined to provide the substantial background for these interviews.

By participating, you would be providing me with your unique perspective on the role you and your colleagues play in the divorce system, the functions attached to that role, the data and procedures that govern your practice, your attitudes and perceptions regarding custody and access processes, and your experiences with divorced fathers who are obliged to pay child support. My goal in executing this research is to contribute to building links between individual/psychological ("micro") levels of analysis and social/institutional ("macro") levels.

If you agree to participate, I will be asking for the following:

A face to face interview will be scheduled at a time and location convenient to you. The semi-structured interview, which will last approximately one to one-and-a-half hours, will be conducted by the principal investigator (myself). The interview will be tape-recorded and
subsequently transcribed. Confidentiality will be protected in a number of standard ways, eg. Names will be replaced by numerical codes in transcriptions and personal identifying information will be disguised. Given the purpose of “mapping” the divorce systems and the key functions of personnel within that system, one limitation to disguising identity may be the need to retain identification of particular types of public agencies/institutions and positions/roles within them. Within these parameters, every effort will be made to disguise personal identities. You will be asked to assist in deciding how this may best be achieved in your own case.

In accordance with qualitative or interpretive methodology, it is sometimes desirable to pursue certain questions or issues which arise out of the data analysis with the participants who have been previously interviewed. You might, therefore, be asked at a later date to discuss a limited number of specific points requiring further input from you.

You may choose to not answer any given question, and you may choose to withdraw your participation in this study at any time. All research information will be stored in a secure location. The transcriptions, with identifying information deleted, will be available only to me as principal investigator and to my thesis supervisor. Within one year of the acceptance of the dissertation, all records will be destroyed.

I hope you will choose to participate in the study, as the results should provide information useful for both practice and policy related to divorce. As a participant, you will be consulted prior to completion of the written report and provided with a written summary of the final research results if you wish. If you are willing to assist with this research or if you have any questions or concerns before deciding, please do not hesitate to contact me at (416) xxx-xxxx.

If you agree to participate, please sign the attached consent forms. One copy is for me and the other is for your own records.

*PLEASE NOTE: Administrative consent for participation in this research has been obtained from your agency/organization/professional firm. A copy of that consent will be provided for your records.*
C.2. Request for Institutional Permission to Interview

Date

Dear Mr. [FSP Regional Manager]

I am a professional social worker currently undertaking the dissertation for my doctoral degree at University of Toronto Faculty of Social Work. My PhD. Supervisor is Dr. Adrienne Chambon.

I am hoping that you will consent to the participation of [Lawyer’s name], Legal Services, [Regional Office Name] of the Family Support Plan of Ontario, in a study designed to develop a multi-faceted understanding of fathers who do not pay child support within the context of the legal, administrative and clinical dimensions of the divorce system in Ontario. A summary of the proposed research is contained in the attached Ethics Protocol prepared for and accepted by the University of Toronto’s Human Subjects Review Committee.

By participating in the research, [Lawyer’s name] would be providing me with her unique perspective on the role she and her colleagues play in the divorce system, the functions attached to that role, the data and procedures that govern her practice, her attitudes and perceptions regarding custody and access processes, and her experiences with divorced fathers who are obliged to pay child support. My goal in executing this research is to contribute to building links between individual/psychological (“micro”) levels of analysis and social/institutional (“macro”) levels.

Interview procedures are outlined in the attached materials. I will be pleased to answer any
additional questions you may have or to provide any additional material you may wish to examine.

I hope you will consent to the conduct of this research within your organization, as the results should provide information useful for both practice and policy related to divorce. As participants, all personnel will be consulted prior to completion of the written report and provided with a written summary of the final research results if they (or you) wish.

If you agree to participate, please sign the attached consent form. A copy is provided for your records.

Thank you for considering this request. I look forward to speaking with you about it. Please contact me at your earliest convenience at [researcher's telephone number].

Yours truly,

Deena Mandell  MSW, CCSW
C. 3 Institutional Informants’ Consent

**Divorced Fathers and Child Support: The Problem in Social Context**

**Consent to participate**

To the Principal Investigator:

I acknowledge that the research procedures described in the attached information, of which I have a copy, have been explained to me. Any questions or concerns I have raised have been answered to my satisfaction. I have been assured that no information will be released or printed without my permission that would reveal my personal identity or the identity of any of my clients. Where applicable: I understand that administrative consent for my participation in this study has been given by my employer and I have a copy of that consent form.

My participation in this study is completely voluntary. I understand that I am free to withdraw my participation from the study at any time.

I hereby consent to participate in the study.

_____________________________  ________________________________
Name (Please print)            Title/Position

_____________________________  ________________________________
Signature                      Date

*Please retain a copy for your records*
C. 4. Administrative Consent

To the Principal Investigator:

I acknowledge that the procedures for the research study “Divorced Fathers and Child Support: The Problem in Social Context” have been described to me. I have been provided with a copy of the Ethics Protocol prepared for and accepted by the University of Toronto’s Human Subjects Review Committee. I am satisfied that the confidentiality of the subject(s) interviewed will be protected and the integrity of ___________________________ will be respected in any reports or publications pertaining to this research.

I hereby consent to the conduct of research at ___________________________,
by the principal investigator, as described.

_________________________________________  ___________________________
Name (Please print)                                Title/Position
_________________________________________________________________
Signature                                           Date

Please keep one copy for your records
APPENDIX D

Interview Guide for Institutional Informants

*Define "Divorce system" for informant before beginning questions.*

*Locating the informant in the system*

1. Describe your role in the divorce system (include title and any agency or institutional function involved).

*Locating the client*

2. Under what circumstances or conditions would a divorcing/divorced father deal with you?
3. a) What route(s) is a father likely to have gone through prior to reaching you?
   b) What route(s) is a father likely to take after contact with you?
4. What are the variations you encounter among divorced/divorcing fathers in your role, with regard to their custody status, access patterns, their obligations to pay child support and their payment patterns?

*Looking for Individual/subjective judgement, co-ordination, etc. vs “documentary processes”*

5. Based on your practice experience, do you have an impression of any patterns related to divorced fathers with regard to payment of child support?
6. To your knowledge, are there any data which confirm OR contradict your impression(s)?
7. What kinds of decisions affecting fathers are you required/mandated to make in your role?
8. From what sources do you seek or receive information in the work you do with fathers?
9. a) On which of the following do you rely to make your decisions:
   - specific legislation;
   - specific policy documents;
   - agency or institutional guidelines/manuals;
   - professional code of ethics;
knowledge based on related research or professional literature;
knowledge based on professional experience;
personal value system;
personal experience? (Elaborate).

b)i. Are there areas of action or decision-making which you normally must address that are not covered by any of these?

ii. If so, what governs your decision or actions in these instances?

10. What kind of discretion is available to you in making these decisions?

11. What kinds of decisions do you find most difficult to make and why?

12. What are the factors that you typically take into account in making your decisions?

13. a)i. Are there any documents, certificates or statements that you or your father clients are required to produce?

ii. What are they, what is their purpose, and what is done with them?

b) Are any of your decisions conveyed in non-documentary form?

c) Are there any decisions which are not conveyed explicitly to the parent(s) in any form?

14. What kinds of actions are you mandated/required to take which would affect fathers?

15. How would you characterize the direction of the laws and policies related to custody, access and child support in the past couple of decades?

16. If you had the power to bring about change(s) in the divorce system, are there any you would make? Why?

OR: What are your views on the strengths and weaknesses of the divorce system in Ontario?
APPENDIX E

Ethics Protocol Review

Proposed Dissertation

Deena Mandell, PhD Candidate,
Faculty of Social Work, University of Toronto

Summary of Proposed Research

The purpose of the dissertation is to study the relationship between the legal and administrative context of divorce and the non-payment of child support by fathers without custody.

The study will be qualitative, employing methodology based in the tradition of critical social research. The research will be conducted in two general phases:

In the first phase, a small purposive sample of fathers (approximately 8-10 subjects) who do not pay child support will be interviewed. They will be asked to describe the divorce process including legal, administrative, financial and personal aspects in detail. Of particular interest will be the nature of encounters with judicial and administrative personnel, social workers, etc. particular interest. Fathers will also be asked to discuss their relationship with their children, views on child support legislation and policy and personal history of child support. It may prove important to interview a few supporting fathers as well, using the same interview schedule as the non-supporting fathers.

The second phase will involve examining the operation of the divorce system itself, analyzing relevant texts (e.g. pertinent legislation and policy documents, professional practice manuals/guidelines) and interviews with a purposive sample of key institutional/organizational informants. Key informants will include judges, lawyers, mediators, personnel from the Office of the Official Guardian of Ontario, etc. Each will be asked about her/his mandate under the system, actual function within the system, interpretations of the relevant legislation and policies, and how decisions re: application of these are made.
Nature of involvement of Human Subjects

The research will involve personal interviews with two sets of subjects, in the first and second phase of the study, respectively. The first set of subjects will be approximately 10 divorced fathers who do not pay child support and 2 or 3 fathers who do pay. The second set will be practitioners in the field of divorce-related law, social work, and mediation. Interviews in both phases will be conducted on a face-to-face basis by the principal investigator. If requested by a particular father subject for reasons of convenience or anonymity, the interview may be conducted by telephone. All interviews will be semi-structured; i.e., there will be a core set of open-ended questions put to each individual, and further questions added on an ad hoc basis in each case in order to pursue relevant material introduced during the course of the interview.

Location of key informant interviews will be negotiated at the subject’s convenience, most likely at her/his place of employment. Location of father interviews will be also be negotiated, and will be conducted either at the subject’s place of employment or at the investigator’s office. Time allowance will be one to two hours for key informants and three hours for fathers. Subjects will be informed in advance that additional follow-up contact may be requested in order to pursue issues which emerge from the data analysis.

Approach to Subjects

Initial approach to father subjects will, in cases of referral (i.e., by mediator, lawyer, counsellor, etc.), be done through the referral source, with a prepared letter from the investigator. Follow-up telephone contact by the investigator will proceed only if the subject contacts the investigator.

Approach to key informants will be made directly by the principal investigator by letter and by telephone. Wherever an approach is being considered to a key informant employed by an agency, institution or professional firm, administrative consent will be sought by the principal investigator verbally and in writing from the appropriate individual within the organization.
Administrative consent will also be sought when father subjects are to be recruited through a professional referral source who represents an agency, institution or professional firm.

Should it become necessary to recruit father subjects through other means (e.g. the media) in order to complete the desired sample, the investigator will use the appropriate print media to provide information about the study and will request that volunteers initiate contact.

**Risks:**

**Informing Subjects**

A letter of introduction will be given to each subject prior to obtaining written consent to participate. The letter will explain in general the nature of the study and the purpose of the interview. Details about how the interview will be arranged, the subject’s rights, plans to protect confidentiality, etc. will be explained in writing as well.

All standard precautions for disguising identity will be employed, and described to the subjects prior to obtaining consent. In addition, guarantees of confidentiality are likely to be very important to non-paying fathers, since some of the information they may disclose might be potentially self-incriminating if revealed to legal authorities or former spouse. The only other foreseeable risk is that of uncovering painful feelings or memories in the course of the interview.

It will be made especially clear to the father subjects that no information they give, nor even their decision to participate, will be conveyed to anyone, including the professional who has provided the letter of introduction.

Key informants will be advised that there may, in certain instances, be some difficulty in disguising the institution, agency, etc. and/or the individual’s position/role in the organization. Where appropriate, informants will be advised that administrative consent to their involvement has been obtained.

In seeking administrative consent, all materials prepared for the Ethics Review will be offered by the principal investigator to the appropriate individual(s) within the organization.
Minimizing Risks to Subjects

All interviews will be tape-recorded and selected segments will subsequently be transcribed, with identifying personal information deleted, by either the principal investigator or a trained research assistant. Tape recordings and transcriptions will be treated as confidential material and will be seen only by the investigator’s thesis supervisor, upon request.

The actual risks to father subjects of being identifiable is negligible, given the above measures for maintaining confidentiality and disguising or deleting all identifying information. In consideration of potential emotional effects of the interview, although research ethics preclude clinical intervention by the investigator, information/suggestions would be offered by the investigator, with the subject’s permission, regarding follow-up or appropriate resources.

Although every attempt will be made to include only identifying information which is required in order to maintain the integrity of the study, the potential risk to professional key informants will be explained and discussed with them before formal consent to participate is obtained. Each professional informant will be asked to assist in determining how best to disguise her/his identity without distorting the nature of her/his professional function and position.

The potential benefit to key informants is an opportunity to review professional functioning, conceptualize practice issues and reflect upon personal/professional/agency perspectives and attitudes.

Benefits

Prior experience with the type of interview described for father subjects, both in my own research and in the literature, suggests that even individuals who find the interview emotionally painful perceive a benefit to themselves in the opportunity to tell their story in their own words, in a non-judgmental context.

The potential benefit to the institutional/professional informants will be the opportunity to reflect upon professional knowledge and practice and to examine and articulate practice-related
decision-making processes.

The benefit of this study to the field will be a fuller understanding of how divorced fathers' attitudes and behaviour relating to child support are related to their encounters with the legal system during the process of establishment and/or enforcement of custody, access and support. There is considerable division in the literature between research focusing on psychological (so-called "micro") issues and those focused on economic or legal ("Macro") issues. From a different perspective, there is a split between those who regard non-payment as evidence of "bad" or immoral behaviour on the part of fathers, versus those who see it as the inevitable result of inequities in the system. The former precludes an understanding of all the factors which may require our attention as a society, whereas the latter precludes issues of parental accountability. This study will attempt to bridge these gaps.
APPENDIX F

Fathers’ Case Profiles

Donald

Donald is a thirty-seven year old self-employed entrepreneur. He is Canadian born with a university degree in business. He was married for nearly thirteen years and has been separated one and a half years. There are three children from the marriage, all males, ages nine, four and seven.

Donald says it was his decision to leave the marriage. He indirectly describes himself as having grown disillusioned with the marriage and with his wife when family life altered the focus of their relationship. He had been having an affair with a younger woman, with whom he began to live when he left his wife and children. Quite recently, that relationship ended and he is living on his own in the home they had shared. He is currently planning to get a housemate to share costs with him. Donald says mediation was not used because the spouses couldn’t talk to each other and because his wife had engaged a lawyer. Donald hired a lawyer and at one point consulted with an accountant as well. He and his wife have very recently resumed speaking and have raised the possibility of attempting reconciliation.

An interim court order has been in place for over one year, giving custody of the children to Donald’s wife. Meanwhile, a “court battle” involving both the Provincial and General Division Courts is in progress: a case conference has taken place and Donald is awaiting another pre-trial addressing the interim motion. At some point during the separation, Donald’s wife charged him with making death threats but the case was “thrown out” of court. She also charged him with assault, and a trial related to that charge is pending in criminal court.

The specifics of the interim order regarding access have never been followed; Donald’s wife has never interfered with access and has been flexible about it. With regard to financial support, the interim order obligated Donald to pay child support plus household bills, the car, nursery school, etc. He claims he was earning $3500 a month and the order amounted to nearly
$5000 a month. His wife had claimed he was earning much more and accused him of hiding large amounts of cash. His lawyer discouraged him from seeking a variation of the order and recommended he direct his legal fees towards a divorce trial in General Division Court instead.

A gap occurred between the time the order was made and the lawyers filed it with FSP, and another between the filing and the processing, so that payments were being made before FSP had completed the processing of the case. Thus initially, Donald’s wife was not forwarded any money by FSP even though he was paying some support.

Donald claims his business had collapsed prior to the separation, he had declared bankruptcy and couldn’t afford to pay the amount ordered. He therefore did not pay the household bills, and instead paid an amount of child support equivalent to the maximum that FSP could garnish under the law (i.e. 50% of his declared gross). His mother took on the payment of the bills. At the show-cause hearing, the judge insisted he had to pay the full amount that had been ordered, even if it meant borrowing the money or seeking his parents’ help.

Donald’s lawyer’s advice was to get a pre-trial conference under the case management system. Two case conferences have been held thus far "with no result" i.e. without the parties coming to an agreement or the judge agreeing to a change in the order or arrears. Donald’s lawyer went back to court on the interim order claiming a change in circumstances (i.e. a request for a variation of the order) but the judge ruled there had been no change warranting the court’s recognition through a variation of the order. To date, four judges have been involved in the case, all of them female. Donald sought the help of an accountant in preparing a proposal for personal bankruptcy, but the support order would have survived personal bankruptcy, so he decided not to proceed. His lawyer is now suggesting mediation. His wife, on the other hand, ran out of money and her lawyer was demanding to be paid, so she (the wife) asked Donald (using his mother as mediator) if they might now negotiate directly.

Art
Art is a forty-four year old man with two years of university education. He has been self-employed in property services for the past five years. After eighteen years of marriage, he separated from his wife "physically" eighteen months ago, "officially" twelve months ago. He describes the marriage as unhappy almost from the start. He stayed on ten years after discovering she had had an affair, for the sake of the children, but finally decided to leave. The two children of the marriage, girls age eleven and fifteen, live with their mother in an apartment since the marital home has been sold. Art lived for some months in his married sister's home, then moved into an apartment. The girls have dinner with him mid-week every week, and spend alternate weekends with him. Neither Art nor his wife has a new partner. During the marriage, the couple consulted a series of seven counsellors and therapists. Since separating, Art has continued in therapy. He has also consulted two psychiatrists about his daughters' adjustment and the family participated in a local agency's family separation group program.

The original plan was to mediate an agreement without lawyers, but after Art moved out, his wife hired a female lawyer who was a family friend. Art hired a lawyer as well and has subsequently sought consultation with several others. The couple "wound up" in court a few weeks later, with the wife seeking a support order. The result was an unexpected interim order for joint custody, which Art had requested, although his wife had requested sole custody. An interim order for $1000 child support and $1300 spousal support monthly was considered by Art to be higher than he could afford.

An appeal of the support order seemed futile, so he requested mediation, offering $1500 total support monthly. Because his wife was unhappy with the joint custody order and still had assets and liabilities to divide, she agreed. Since she was funded by Legal Aid, they had to wait about three months for mediation. His own lawyer walked out of the mediation process, because the wife's lawyer was insisting on including a new, higher support order in the settlement. Later, the wife denied having instructed her lawyer to take this stance. She then initiated direct negotiations with Art. She presented him with a negotiable proposal but rejected his counter-
proposal because her lawyer told her she could get more. Next, her lawyer postponed the court date another month. This time the judge stayed collection and enforcement proceedings and said the support would be paid from Art’s half of the proceeds of the sale of the house. Shortly before they were due back in court 6 months later, Art was advised by a number of people he consulted informally (in addition to his lawyer) to declare bankruptcy because the "best case scenario" in a trial would in any case have been bankruptcy, with huge legal bills in addition. His wife had no money to pay her half of the marital debts, even if the judge had ordered her to do so. Bankruptcy entailed freezing the account out of which support had been ordered collected, so further collection was blocked. At this point Art was compelled to fire his lawyer, and then his wife did likewise. The next court date led to further postponement when it was discovered the file had been sent to another district.

Currently, the couple find themselves in a situation which Art describes as a “legal black hole”. A trial was scheduled but was then cancelled by the judge, without notification, after a call from his wife’s second lawyer claiming that matters had been settled. Without a trial, a long-term settlement is not possible. Art recently applied for and was granted Legal Aid funding, but his lawyer would not accept legal aid work because of the additional documentation entailed. He has agreed instead to work pro bono to get Art out of the “black hole”. Art’s wife also hired a new lawyer. Her Legal Aid coverage is gone. The current status of the case is that Art’s lawyer has sent a proposal, to which her lawyer has responded with queries.

**Neil**

Neil is a forty-seven year old Canadian. He is a self-employed health professional, university educated, and an amateur photographer. He and his wife were married eight years. Nine years ago, his wife initiated a separation. Neil had been unhappy for years but had stayed in the marriage on account of the children, two girls now aged eleven and fourteen. His lawyer discouraged him from the outset from seeking joint custody, so sole custody was assigned to his
wife. His former wife moved to northern Ontario after about one year of separation and after another two years, to B.C. Both children have been with her since the time of separation. Neil has had no contact with them for approximately six years. Neither spouse has remarried, although Neil has had a non-cohabitational relationship with a woman for several years. His former spouse had a new partner shortly after the separation, but was abused by him and the relationship ended. Neil has hired and fired two lawyers “for incompetence”; one who had originally advised him regarding custody and one who continued to work on the case past the point which Neil had said he would pay for charged him for the unauthorized services. The Office of the Official Guardian (O.G.), the police, a social worker, and FSP have all been involved in this case. The O.G.’s office did an assessment at the time Neil was objecting to having his wife remove his children from the area. Their finding was that their relationship with their father was not such that their moving away could be considered against their best interests. The social worker was a counsellor in private practice whom Neil’s wife had contacted after the separation and who reached out to invite Neil to attend a joint session, which he did. FSP sent Neil a warning letter when the first several cheques he had submitted were lost and therefore never processed. He was able to produce records of the payments in question. The police got involved in an incident where Neil picked one daughter up from school without her mother’s knowledge, intending to drive her home to her mother’s. When the child did not arrive with the school bus, the mother called the police and accused Neil of kidnapping. By the time the police arrived, so had Neil and the little girl.

The initial agreement was negotiated by lawyers. It gave sole custody to the mother and reasonable access to Neil. The order for child support amounted to 60% of Neil’s net income (“take-home” pay). Because he is self-employed and therefore cannot be subject to wage garnishment, he pays directly to FSP. He pays the full amount on a regular basis and has never missed a payment. Spousal support was neither sought nor ordered. There was some conflict over possession of Neil’s camera; otherwise, most of the home furnishings, including his grandparents’ antique bedroom suite, remained with his wife. For three years, he lived in his parents’ basement
before establishing a separate residence.

Neil’s lawyer had discouraged him from seeking sole custody. The access agreed to was every weekend, but Neil says his wife often made it hard for him to see the children. His older daughter grew “estranged” and stopped wanting to see him. When his former wife wanted to move far from the city in order to attend a particular post-secondary program, he objected, but she was allowed by the court to go following the O.G.’s assessment. Neil planned to pursue his objection, but the judge had indicated to his lawyer that the cause was hopeless. Once the children moved away, Neil did not see them often. Their new home was more than a full day’s drive away and plane fare was “expensive”. Now visits took place only on school breaks and holidays, when the girls would fly down to visit with Neil. One of the children became angry with Neil after overhearing an argument on the telephone and she stopped wanting to see him or speak to him. He made regular Sunday night phone calls, for which their mother often said they were unavailable, e.g. in the bathtub. He sent birthday and Christmas gifts which were not acknowledged. Eventually, he wrote to the children saying he would leave it up to them to initiate contact when they were ready. They didn’t respond and he gave up trying to stay in touch with them. Ultimately, he received a letter from his wife from B.C. saying she had moved there with the girls. She gave no address. Neil has not attempted to locate the children or to re-establish contact with them.

Neil’s intention is to continue supporting the girls until they are 18, after which he will continue paying if they are still attending school. He has established a trust fund for them.

**Randy**

Randy is a self-employed health professional in a small city in Southern Ontario. He has an eight year old daughter by a woman, W., with whom he lived common-law for approximately eight years. They separated less than a year ago. They have a voluntary separation agreement for spousal and child support negotiated with the aid of a paralegal/mediator and ratified by their
respective lawyers. The child lives with her mother, who has custody, in a home purchased by Randy in a nearby suburb in order that the child could remain in her school district, close to him and to extended family. The house is registered in W.'s name. Since the agreement was not filed with the court nor registered with FSP, support is paid directly to W. According to Randy, he pays "early, every time".

Randy says he had been planning to end the relationship with his former partner long ago, when she informed him that she was pregnant. He decided to remain with her and the child but was unhappy, and finally ended the relationship. He has paid the mortgage and full spousal and child support on a regular basis, and sees his daughter when W. permits. Recently, W. announced that she was moving to a city nearly two hours away with their daughter and a man she met on vacation about six weeks previously. In response to this information, Randy has sought advice about how to keep W. from taking the child with her. He has consulted with the original mediator, has sought two additional legal opinions and is contemplating a third. He has also met with an educational psychologist, and attended one meeting of a single fathers' group. He agreed to participate in the research in order to seek my opinion as a divorce counsellor.

The three lawyers with whom Randy has discussed the case have offered three different opinions. The original lawyer says he has no choices now; he will not be able to stop W. from taking the child, and he will not be able to stop paying support. The second, a female, encouraged him to fight for custody and told him he can win. The psychologist, whom he consulted about how best to conduct himself in the current situation, advised him to back off from the child in order to remove W.'s leverage. In the event that he cannot gain custody and cannot keep the child in the jurisdiction, Randy is considering cessation of support.

Morris

Morris is Canadian born, forty-seven years old. Formerly a teacher, he has worked during the past several years been in the field of real estate services with an international firm. The couple
separated six years ago, after fourteen years of marriage, and were divorced four years ago. There are two children of the marriage: a boy, age fourteen and a girl, age nine. Both spouses have remarried, first the wife, then Morris, three years ago. Morris’s second wife has a young daughter from a previous relationship.

The separation agreement was negotiated with the aid of a mediator/lawyer and ratified by the court as an order giving sole custody of both children to their father without opposition from the mother. At this time, the mother was paying an amount of child support equivalent to the monthly Family Allowance rate. The couple’s assets were divided up as part of the agreement. When the son chose to live with his mother at the age of twelve, she requested joint custody of him, to which Morris responded with the proposal that custody of both children be made joint, and she agreed. Two years later, the boy came back to live with his father, sister, stepmother and stepsister. Morris has sought the advice of a family counsellor at various times throughout the years since the separation.

After his former wife and her new partner bought a larger home and went on vacation, Morris hired a lawyer in an effort to get more child support from her and won a second agreement with "substantially more" support. The new agreement was registered with FSP. At first, FSP did not take action to enforce payment when Morris complained of non-compliance, until Morris’s second wife intervened. He found he had to call each time payment was late or reduced in order to get a response from FSP. During the time that there was one child living with each parent and the switch had been made to joint custody, "the support obligation was eliminated". When his son moved back with him, Morris reapplied for child support. Neither Morris nor his former wife has sought to change the joint custody status even though both children are now living with Morris.

At the time the boy declared his wish to return to his father, the mother reacted with verbal and physical abuse. After consulting with a counsellor, Morris decided that both children’s visits with their mother would be suspended until she either underwent a psychiatric assessment or agreed to supervised visitation. The mother’s lawyer responded that the children were old enough
to take control of visits themselves and could arrange them with her directly. Morris's answer, through his lawyer, was to declare that he insisted on remaining involved in visiting arrangements, or there would be none.

**Keith**

Keith is forty-four years old, Canadian-born. He is currently a full time undergraduate student, but previously worked as a musician and as a service technician. He was separated from his first wife twelve years ago, and has been divorced for nine years. There is one male fifteen year old child of the marriage, but two older girls, daughters of the wife from a previous relationship, lived with the couple during the marriage. Keith subsequently remarried (to the woman for whom he left his wife) and redivorced, and is currently living with a new partner. His first wife has been living with a new partner since shortly after the separation and recently married him. Several years ago they moved with the son to a town two hours north of the city where Keith still lives.

Keith left the marriage when his wife confronted him about suspicions of an affair. He admitted he was seeing someone, and his wife demanded that he leave, hand over his keys and never return. This he did, unaware of the legal ramifications his leaving could have on custody and access. Soon after, he consulted with more than one lawyer.

Initially, Keith's wife severely restricted his access to the boy and he wanted to change the custody arrangement to joint or sole paternal custody. The lawyer discouraged him from seeking custody, saying the court would likely assign custody to the mother in view of Keith's having left the family. He warned Keith that fighting for custody would be very expensive. Keith abandoned thoughts of going for custody but went to court, represented by the original lawyer, to establish a firm visiting schedule because an informal one was not working. Frequently, his wife had not allowed him to see the child. The court responded by ordering a regular pattern of visiting on alternate weekends. Keith feels strongly that the custody decision ultimately hurt his son because it left him with the parent who was less capable of meeting his needs and kept the more able parent at
a distance, where he felt unable to give his son the help he needed.

At first Keith was granted two-hour visits with his son on weekends, provided his girlfriend wasn't present; then after four years, overnights were permitted, but this was not formalized in a change to the order and depended on the mother's good will. When the boy's mother planned to move out of town, Keith consulted a lawyer who told him that if he tried to restrict her, she'd likely revert to the strict letter of the order, so he should leave well enough alone. Keith objected that the mother was suspected of dope dealing and was not a fit parent, but the lawyer said "Prove it". For the past several years, Keith has driven four hours round trip at the start and finish of each alternate weekend in order to pick his son up, bring him back for the weekend, and then deliver him home. He requires a car for this purpose. An attempt to have his son come by bus did not work out. Extended visits also take place on school holidays and summer vacations, and Keith has invited the boy to live with him if he comes to the city to attend university.

Keith has applied and been turned down for Legal Aid (at the "very beginning") and appealed it, but lost again. He believes that a person's class determines his/her treatment under the law, insofar as it limits access to resources in a judicial system that is very expensive to use.

Keith's support order is for $100 monthly, paid to Family Benefits as the Assignee, since his wife is on government assistance. In principle, the $100 applied to the wife's two daughters, since Keith had acted as substitute parent for them during the marriage and was now considered under the new legislation to be responsible for their support. Support payments were made to FSP, which forwarded them to the Ministry of Community and Social Services as the assignee. In 1991, FSP took Keith to court for arrears after he reduced payments because the girls had left their mother's home. When he explained the reason for the reduction, FSP determined that in that case they owed HIM, instructed him to suspend payments until further notice, and never advised him to start up again. FSP has now caught up with him for arrears again and is taking him to court. Since he is a full-time university student on government loans, Keith doubt that the court and FSP will
decide to vigorously pursue him for arrears.

Keith is satisfied with the low order for support because it is within his means and allows him to spend money on his son informally as needed, e.g. to buy new clothes, school books, or pay for dental bills. He believes that if additional support were paid either to FSP or to his wife, it would not end up being spent on the boy, whereas this way he knows that it is being used directly for the child’s benefit.

Keith feels the system is too “legalistic” and makes assumptions that fathers don’t care about their children and so cannot be relied upon to support them. The courts assume that mothers are the better parents and treat fathers as if all they’re good for is money. He believes the court does not pay attention to individual families’ circumstances in order to make the best decision for the child, and decisions are made “in the hallway” instead of through full and open discussion among the judge and the family members.

Gary

Gary is a forty-seven year old lawyer, Canadian born. For the past eighteen months he has been a partner in a law firm which he joined after leaving his previous firm. He was married for twenty years and has been separated for two, but is not yet divorced. There are two children from the marriage, a nineteen year old boy and a seventeen year old daughter, who chose to stay on in the marital home with their mother. He left after years of mutual marital unhappiness, but when he finally made the decision to end the marriage, his wife was opposed and very angry.

Initially, Gary lived in a downtown apartment and his children visited him on an irregular basis. He now lives with a woman who was a former girlfriend from his bachelor days. He admits that she left her husband for him, but denies that they were involved at the time he left his wife. His current partner’s two children live with them in a home owned by the woman; Gary pays her the equivalent of rent. He seldom sees his children now, since they are “uncomfortable” coming to his home, and they contact him infrequently. Gary has undergone psychotherapy himself (since long before the separation) and counselling together with one of the children. He occasionally
attends group programs for separated and remarried adults. Gary encouraged his children to go for counselling, either with him or alone, but so far they have declined.

Husband and wife were represented by two well-known family law lawyers. There is an interim order for spousal and child support of $9,000/month, but he has been paying only $5,000 a month since the order was made. This figure is based on the couple’s original agreement, arrived at through opposing lawyers, which established the support level at 50% of his gross income, about $5,000. Gary did try to get a settlement as part of the divorce proceedings, but his wife resisted lowered support payments. A high profile senior judge heard the case in General Division Court and ordered even higher payments, plus court costs to Gary. His wife agreed to establish a business and become self-supporting, but this never materialized. Gary requested a case conference but was denied because his wife would not consent to it. He then sought to return to court for a formal hearing. After the case conference was denied, Gary sought a second legal opinion. He also consulted a leading insolvency lawyer about the course of bankruptcy and had numerous informal consultations with friends and colleagues who practise family law. An adjournment was agreed to, but Gary felt he could not pay the amount ordered and instead paid what he felt he could. When the hearing eventually took place, the judge refused to hear the evidence Gary’s lawyer tried to present. Gary then chose to adhere to the 50% of gross principle from the original agreement, thus falling into arrears. He is now scheduled for a ‘show-cause’ (default) hearing; he must satisfy the judge that he is truly unable to pay his arrears, or he risks being sent to jail.

During the months before the order was filed with FSP, Gary made payments directly to his wife; they were not credited by FSP and he is therefore considered in arrears for the amount that was paid to her, not just for the 50% he failed to remit. Gary presented an affidavit to the court expressing his concern that if FSP were to notify the bank to seize his account, his loans would be called and he would be forced to sell the matrimonial home. FSP nevertheless proceeded to take action and tried, inappropriately, to garnish his wages first at source, then through the bank, which
froze his accounts. No enforcement hearing had taken place to this point. Gary suspects that his wife's lawyer used personal connections with senior FSP personnel to have him pursued aggressively.

Gary's lawyer and other family law experts have advised him not to try negotiating directly with FSP, in order to avoid drawing further attention to himself. A return to the original judge on the basis that his order had been left open for review, was treated by the judge as a request for variation, on which grounds he summarily dismissed the request, and upheld the original order. He "ignored" all evidence about Gary's debts and income. Several lawyers advised Gary not to "waste" his time appealing because no judge would tamper with this senior judge's decisions, or even give him leave to bring an appeal in the first place. At this point, opposing council has moved to strike pleadings, which would mean that a trial is out of the question and final judgement would take place without trial. The judge has not yet ruled on this motion.
OBLIGATION OF SPOUSES FOR SUPPORT.

30. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

30§1 Spouse — See s. 1 and s. 29. A "spouse" is a party to a relationship created by (i) a valid marriage; (ii) a voidable marriage contracted in good faith; (iii) a void marriage contracted in good faith: s. 1; (iv) continuous cohabitation of three years; (v) cohabitation of some permanence where a child is born of the relationship or adopted by the parties: s. 29.


Where a petitioner wife applied, inter alia, for support, it was held that under ss. 29 and 30 of the Family Law Act, the husband had an obligation to support the co-respondent as a spouse, as well as the wife, and that this obligation had to be taken into consideration in deciding on a figure for support payments: Bell v. Bell. Ont. H.C., Doc. No. D116738, Potts J., May 9, 1986.
Divorce Act

R.S.C. 1985 (2nd Supp.), c. 3

An Act Respecting Divorce and Corollary Relief
Am. R.S.C. 1985 (2nd Supp.), c. 27, s. 10

SHORT TITLE

1. This Act may be cited as the Divorce Act.

INTERPRETATION

DEFINITIONS — "appellate court" — "child of the marriage" — "corollary relief proceeding" — "court" — "custody" — "custody order" — "divorce proceeding" — "spouse" — "support order" — "variation order" — "variation proceeding" — Child of the marriage — Term not restrictive.

2. (1) In this Act,
"appellant court", in respect of an appeal from a court, means the court exercising appellate jurisdiction with respect to that appeal;
"child of the marriage" means a child of two spouses or former spouses who, at the material time,
(a) is under the age of sixteen years, or
(b) is sixteen years or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;
"corollary relief proceeding" means a proceeding in a court in which either or both former spouses seek a support order or a custody order or both such orders;
"court", in respect of a province, means
(a) for the Province of Ontario, Nova Scotia, Prince Edward Island or Newfoundland, the trial division or branch of the Supreme Court of the Province,
(b) for the Province of Quebec, the Superior Court,
(c) for the Province of British Columbia, the Supreme Court of the Province,
(d) for the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Queen's Bench for the Province, and
(e) for the Yukon Territory or the Northwest Territories, the Supreme Court thereof.
and includes such other court in the province the judges of which are appointed by the Governor General as is designated by the Lieutenant Governor in Council of province as a court for the purposes of this Act;

“custody” includes care, upbringing and any other incident of custody;

“custody order” means an order made under subsection 16(1);

“divorce proceeding” means a proceeding in a court in which either or both spouses seek a divorce alone or together with a support order or a custody order or both such orders;

“spouse” means either of a man or woman who are married to each other;

“support order” means an order made under subsection 15(2);

“variation order” means an order made under subsection 17(1);

“variation proceeding” means a proceeding in a court in which either or both former spouses seek a variation order.

(2) For the purposes of the definition “child of the marriage” in subsection 101

(a) any child for whom they both stand in the place of parents; and

(b) any child of whom one is the parent and for whom the other stands in the place of a parent.

(3) The use of the term “application” to describe a proceeding under this Act in a court shall not be construed as limiting the name under which and the form and manner in which that proceeding may be taken in that court, and the name, manner and form of the proceeding in that court shall be such as is provided for by the rules regulating the practice and procedure in that court. [am. R.S.C. 1985, c. 27 (2nd Supp) s. 10]
DUTY OF COURT — Bars — Revival — Condonation — Definition of “collusion”.

11. (1) In a divorce proceeding, it is the duty of the court,

(a) to satisfy itself that there has been no collusion in relation to the application for a divorce and to dismiss the application if it finds that there was collusion in presenting it;

(b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made; and

(c) where a divorce is sought in circumstances described in paragraph 8(2)(b), to satisfy itself that there has been no condonation or connivance on the part of the spouse bringing the proceeding, and to dismiss the application for a divorce if that spouse has condoned or connived at the act or conduct complained of unless, in the opinion of the court, the public interest would be better served by the divorce.

(2) Any act or conduct that has been condoned is not capable of being revived so as to constitute a circumstance described in paragraph 8(2)(b).

(3) For the purposes of this section, a continuation or resumption of cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose shall not be considered to constitute condonation.
G. 2. Divorce Act, s. 15

DEFINITION OF "SPOUSE" — Order for support — Interim order for support — Terms and conditions — Factors — Spousal misconduct — Objectives of order for support of spouse — Assignment of order.

15. (1) In this section and section 16, "spouse" has the meaning assigned by subsection 2(1) and includes a former spouse.

(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and period sums, as the court thinks reasonable for the support of

(a) the other spouse;

(b) any or all children of the marriage; or

(c) the other spouse and any or all children of the marriage,

(3) Where an application is made under subsection (2), the court may, on application by either or both spouses, make an interim order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of

(a) the other spouse,

(b) any or all children of the marriage; or

(c) the other spouse and any or all children of the marriage,

pending determination of the application under subsection (2).

(4) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including

(a) the length of time the spouses cohabitated;

(b) the functions performed by the spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of the spouse or child.

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(7) An order made under this section that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable amount of time.

(8) An order made under this section that provides for the support of a child of the marriage should

(a) recognize that the spouses have a joint financial obligation to maintain the child; and

(b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

(9) An order made under this section may be assigned to

(a) any minister of the Crown for Canada designated by the Governor in Council;

(b) any minister of the Crown for a province designated by the Lieutenant Governor in Council of the province;

(c) any member of the Council of the Yukon Territory designated by the Commissioner of the Yukon Territory; or

(d) any member of the Council of the Northwest Territories designated by the Commissioner of the Northwest Territories.
COROLLARY RELIEF

ORDER FOR CUSTODY — Interim order for custody — Application by other person — Joint custody or access — Access — Terms and conditions — Order respecting change of residence — Factors — Past conduct — Maximum contact.

16. (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).

(3) A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.

(4) The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.

(5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

(6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

(7) Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody of a child of the marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child.

(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

(9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

(10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.
ORDER FOR VARIATION, RESCISSION OR SUSPENSION — Application by other person — Terms and conditions — Factors for support order — Factors for custody order — Conduct — Objectives of variation order varying order for support of former spouse — Objectives of variation order varying order for support of child — Maximum contact — Limitation — Copy of order.

17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

(a) a support order or any provision thereof on application by either or both former spouses; or

(b) a custody order or any provision thereof on application by either or both former spouses or by any other person.

(2) A person, other than a former spouse, may not make an application under paragraph (1)(b) without leave of the court.

(3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

(4) Before the court makes a variation order in respect of a support order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either former spouse or of any child of the marriage for whom support is or was sought occurring since the making of the support order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration that change.

(5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

(6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

(7) A variation order varying a support order that provides for the support of a former spouse should

(a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;

(b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the former spouses pursuant to subsection (8);

(c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.
(8) A variation order varying a support order that provides for the support of a child of the marriage should

(a) recognize that the former spouses have a joint financial obligation to maintain the child; and
(b) apportion that obligation between the former spouses according to their relative abilities to contribute to the performance of the obligation.

(9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.

(10) Notwithstanding subsection (1), where a support order provides for support for a definite period or until the happening of a specified event, a court may not, on an application instituted after the expiration of that period or the happening of that event, make a variation order for the purpose of resuming that support unless the court is satisfied that

(a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (4) that is related to the marriage; and
(b) the changed circumstances, had they existed at the time of the making of the support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

(11) Where a court makes a variation order in respect of a support order or a custody order made by another court, it shall send a copy of the variation order, certified by a judge or officer of the court, to that other court.

EXPLANATORY NOTES

Section 6 of the Bill adds section 35a to the Act, creating what is intended to be a speedy remedy for access difficulties.

If an existing court order provides for access to a child at specific times or on specific days (or if a separation agreement containing specific access provisions has been filed with the Provincial Court (Family Division) or the Unified Family Court), a person who claims that he or she was wrongfully denied access to the child may make a motion to the court.

The motion will be heard within ten days of being served. It can only be made within thirty days after the alleged denial of access. Normally the hearing will deal only with oral evidence relating directly to the alleged denial of access and the reasons for it. This is intended to ensure expeditious hearings.

If the court is satisfied that a wrongful denial of access took place, it may make a variety of orders, including an order for compensatory access, supervision or (if the parties agree) mediation. It is also possible for the court to order that the moving party be reimbursed for reasonable expenses actually incurred as a result of the denial of access.

Similar remedies are available for a person with custody who claims that a person with a right of access failed, without reasonable notice and excuse, to exercise the right of access or to return the child as the order requires.

Denial of access is wrongful unless it is justified by a legitimate reason. Criteria are provided to assist the court in determining whether a reason is legitimate.

The new remedy created in section 35a of the Act is not available if the access order or separation agreement fails to specify times or days when access is to be exercised. Section 3 of the Bill adds section 28a to the Act, to provide a mechanism for varying those orders and agreements by specifying times or days. Access provisions that have been varied in this way can then be enforced under new section 35a.

Section 4 of the Bill makes a related amendment to section 29 of the Act (which provides that custody and access orders may not be varied unless there has been a material change in circumstances). The amendment clarifies that this restriction does not apply to orders made under section 28a or 35a.

Section 1 of the Bill amends section 20 of the Act by adding a new subsection. Proposed subsection 20 (4a) provides that when parents have separated and one has custody and the other is entitled to access under the terms of a separation agreement or order, it is the duty of each to encourage and support the child’s continuing parent-child relationship with the other.

Section 2 of the Bill amends section 24 of the Act to make it clear that the overriding principle of the best interests of the child, which governs applications under Part III of the Act (Custody, Access and Guardianship), also governs enforcement motions under proposed section 35a.

Subsection 24 (2) of the Act is re-enacted with minor wording changes and the addition of a new clause (4), stating that a person’s ability to act as a parent is to be taken into account in custody and access proceedings. Subsection 24 (3) (past conduct) is replaced by new subsections (3) and (4). New subsection (3) specifically provides that the fact that a person has committed acts of domestic violence shall be considered in assessing his or her ability to act as a parent. New subsection (4) (based on existing subsection (3)) provides that other kinds of past conduct may be considered only if the court is satisfied that they are relevant to the person’s ability to act as a parent.

Section 5 of the Bill rewords subsection 31 (10) of the Act (which deals with payment of mediators’ fees) to match more closely the wording of subsection 3 (8) of the Family Law Act, 1986. Section 5 of the Bill rewords subsection 35 (1) of the Act (which deals with restraining orders) to match more closely the wording of subsection 46 (1) of the 1986 Act.
CUSTODY AND ACCESS

20.—(1) Except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child.

(2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child and must exercise those rights and responsibilities in the best interests of the child.

(3) Where more than one person is entitled to custody of a child, any one of them may exercise the rights and accept the responsibilities of a parent on behalf of them in respect of the child.

(4) Where the parents of a child live separate and apart and the child lives with one of them with the consent, implied consent or acquiescence of the other of them, the right of the other to exercise the entitlement of custody and the incidents of custody, but not the entitlement to access, is suspended until a separation agreement or order otherwise provides.

(5) The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.

(6) The entitlement to custody of or access to a child terminates on the marriage of the child.

(7) Any entitlement to custody or access or incidents of custody under this section is subject to alteration by an order of the court or by separation agreement. 1982, c. 20, s. 1, part.

21. A parent of a child or any other person may apply to a court for an order respecting custody of or access to the child or

GARDE ET DROIT DE VISITE

20 (1) Sauf dispositions contraires de la présente partie, le père et la mère ont, à l’égard de leur enfant, un droit de garde égal.

(2) Quiconque a, à l’égard d’un enfant, un droit de garde possède les droits et les responsabilités d’un père ou d’une mère relativement à la personne de l’enfant et doit exercer ces droits et assumer ces responsabilités dans l’intérêt véritable de l’enfant.

(3) Si plusieurs personnes ont, à l’égard d’un enfant, un droit de garde, chacune d’elles peut exercer les droits et accepter les responsabilités d’un père ou d’une mère en ce qui concerne l’enfant pour le compte des autres.

(4) Si les parents d’un enfant sont séparés et que l’enfant vit avec son père ou sa mère avec le consentement, même tacite, ou l’acquiescement de l’autre, le droit que l’autre personne a de faire valoir son droit de garde et ses droits accessoires, mais non son droit de visite, sont suspendus jusqu’à ce qu’un accord de séparation ou une ordonnance prévoie le contraire.

(5) Le droit de visite comprend le droit de rendre visite à l’enfant et de recevoir sa visite ainsi que le droit, en qualité de père ou de mère, de demander et d’obtenir des renseignements sur la santé, l’éducation et le bien-être de l’enfant.

(6) Le droit de garde ou de visite prend fin au mariage de l’enfant.

(7) Le droit de garde, ou les droits accessoires, et le droit de visite établis en vertu du présent article sont susceptibles d’être modifiés par une ordonnance du tribunal ou un accord de séparation. 1982, chap. 20, art. 1, en partie.

21. Le père ou la mère d’un enfant ou une autre personne peut demander au tribunal, par voie de requête, de rendre une ordon-
24.—(1) The merits of an application under this Part in respect of custody of or access to a child shall be determined on the basis of the best interests of the child.

(2) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, a court shall consider all the needs and circumstances of the child including,

(a) the love, affection and emotional ties between the child and,

(i) each person entitled to or claiming custody of or access to the child,

(ii) other members of the child’s family who reside with the child, and

(iii) persons involved in the care and upbringing of the child;

(b) the views and preferences of the child, where such views and preferences can reasonably be ascertained;

(c) the length of time the child has lived in a stable home environment;

(d) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessaries of life and any special needs of the child;
APPENDIX H

Profiles of Institutional Informants

Family Support Plan of Ontario (FSP)

Mr. P.A. (Family Support Plan Administrator)

Mr. P.A. is the Manager of one of eight Regional Offices of the Family Support Plan (FSP) in Ontario. As of July, 1995, these eight offices had a combined caseload of over 109,000, distributed rather unevenly across the regions. Each office employs enforcement officers, legal counsel, and support staff. There is also one full-time worker whose job it is to investigate and process overpayment claims and issue refunds.

Mr. P.A. is a meticulous man. Throughout the three hour interview he follows a prepared presentation format designed for Public Relations purposes and pointedly returns to this after any questioning which I introduce. He is very careful to avoid offering personal opinions, and to be sure that I understand he can represent only his own region, not the Plan as a whole. “I don’t want to get my hand slapped”, he says at the outset. This concern is likely in response to strict oversight of staff at FSP by the Head Office, which became clear when Mr. P.A.’s request for permission to have me formally interview one of his staff lawyers was declined. The Director’s explanatory comment was that “Staff have no personal opinions about the work of FSP.” On the one occasion when Mr. P.A. actually does offer a personal opinion, he is careful to distinguish it as such.

Ms. P.L. (Family Support Plan Lawyer, Female)

Ms. P.L. is one of several lawyers employed full-time by her Regional FSP Office. The number of court appearances involving FSP is very high (up to 300,000 in a single month) and so lawyers in each regional office work with large caseloads and at a fast pace. On the particular
summer day during which I was an observer, there were over 80 cases on the court docket, the majority involving Ms. P.L. as FSP representative. She was highly task-focused and had little time for discussion on the day I “shadowed” her at the courthouse. Since a formal follow up interview was declined by the Director of FSP, findings for Ms. P.L. are confined to observations of her work and incidental comments and explanations offered by her during the course of the day at the courthouse.

Mr. P.L. (Family Support Plan Lawyer, male)

Mr. P.L. is a senior lawyer who has been with FSP since its origins as SCOE in the late 1980s. He happened to be available in the office after I interviewed Mr. P.A., who suggested I might like to speak with him and introduced me. Given only a brief time with which to speak to him, I decided to focus on trying to get from Mr. P.L. what I had not yet been able to get much of from Mr. P.A. or Ms. P.L. directly, i.e. their attitudes towards fathers in default. Mr. P.L. is outspoken and, although clearly identified very strongly with FSP’s mandate, has strong personal feelings about his work which he expressed rather eloquently. These will become clear in the data analysis.

Judges

Judge T. (Judge in a large town)

Judge T. is a judge of the Ontario Court (Provincial Division). He is one of only two family court judges in his jurisdiction, which includes urban, semi-urban and rural communities. He is a very focused and thorough man who had prepared for our interview by asking in advance for questions and taking time to think about them. It was Judge T.’s courtroom in which I sat as an observer, and so was able to witness the manner in which he dealt with the cases and the people before him. Judge T. identifies himself as a “problem solver”, and emphasizes his use of unorthodox methods in order to solve a problem in a way that minimizes hardship and delay for the
parties. He is able to operate in this way, he says, because his position in this particular jurisdiction allows him to "run my own show". On the day I observed him in court, he claims to have been in a more formal mode than normal because of the heavy schedule.

Prior to and during his law career, Judge T. had extensive work experience in the field of child welfare. He admits that his background is likely a contributor to his approach to sitting on the Bench. Often, his response to fathers (as reported by him and as observed by me in court) is clearly influenced by his own values as a parent.3

At the conclusion of the interview, Judge T. commented that Judges are "lonely people", in the sense that their work is done in isolation, without much opportunity for discussion with others.

**Judge C. (Judge in a large city)**

Judge C. is a relatively recent appointee to the Ontario Court (Provincial Division). His courtroom is located in a large city in southern Ontario with a diverse ethnic population, many of whom are recent immigrants. He is cognisant of the complexities of applying family law to cultures whose constructions of the family are radically different from those in Canadian law. Previously he had been Director of the Family Support Plan of Ontario. I had, in fact, spoken with him about my research plans during his tenure in that position, on which occasion he had said "I don't care why they don't pay. I just want to know how to make them pay." Judge C. is a candid and articulate person. He has strong opinions about the subjects covered in the interview, as will be evident in the data analysis, and he expressed his appreciation of an opportunity to talk conceptually about this area of his work. He emphasized that judges have little opportunity to receive critical feedback on their work or to think critically about it themselves. His unique perspective as someone who has been on two sides of the child support issue makes him a particularly helpful participant in the research. Asked whether he has changed his attitude towards understanding fathers in default, Judge C. acknowledges that he has.
The Community Lawyers

Mr. C.L. (Community Lawyer, Male)

Mr. C.L. has a private family law practice in a major urban centre. Although he has a reputation among practitioners in the field of divorce as an activist on behalf of fathers' rights, he denies that this is a fair representation of him. He identifies himself as “someone who takes on difficult cases in family law”, a “champion of difficult issues in the law”, the majority of which he says “happen to have been related to fathers’ rights”. An articulate man with a highly professional, rather formal manner, Mr. C. expresses strong opinions about various areas of the law and the judiciary, as the data analysis will show. He expressed scathing criticism of the research consent form when asked to sign it, pointing out its deficiencies as a legal document.

Mr. C.L. describes his own practice of law as being bias-free. He points out that his practice includes a proportional number of female clients, and the advice he gives to fathers is unbiased by his own experience or views. In keeping with this belief about the separateness of personal and professional positions, when asked whether any personal experiences or situations have influenced his views, his response is “Absolutely not.” He bases his advice solely on “experience” and his ability to predict outcomes.

Ms. C.L. (Community Lawyer, Female)

Ms. C.L. is a feminist lawyer with a private practice in family law in the same urban centre as Mr. C.L. She also teaches part-time at a law school. She immigrated to Canada from the West Indies, where she had done research on issues of child support. Her articling work at the Office of Ontario’s Official Guardian exposed her to the lives of families where divorce causes intense and persistent, often unmanageable, conflict. She considers herself a feminist but is careful to define the feminism to which she declares allegiance as “one that includes all women. Ms. C.L.’s practice consists of both non-custodial fathers and custodial mothers, many of them from the West Indian community. Given her strong identification with the women’s and children’s issues involved, legal
representation of fathers who are in default of child support payments is a moral issue. Nevertheless, she struggles towards an understanding of fathers’ point of view.

Ms. C.L.’s analysis of the judicial system is based more on issues of race and class than on issues of gender. I had originally contacted Ms. C.L. as a referral source for father participants because I wished to learn about the experience of fathers in a different racial/ethnic group. Despite her efforts, none of her client agreed to be contacted by me. She is candid about the limitations inherent in the position of a middle class white female academic researcher trying to gain the trust of black male clients who already mistrust “the system” with which I am identified. She then consented to participate in the study herself, as an “institutional informant” with an important perspective to contribute regarding race and class. Ms. C.L. politely admitted at one point in the interview her unwillingness to discuss “projected stereotypes of black men as husbands and fathers with a white woman.”

The Mediators

Ms. F.M. (Female Mediator)

MS. F.M. is coordinator of mediation services attached to the Provincial Court in a large urban jurisdiction where the population is of mixed ethnic background, and generally relatively low socioeconomic status. Referrals to this service come from the court or lawyers, usually if the parties are unable to afford private mediation. Some clients are “off the street” or have been through General Division court and want to “do the whole thing on their own”.

MS. F.M. has formal training in social work as well as years of experience as a court clerk. She speaks about her clients with candor and acceptance. Her ultimate concern is about the children and their needs and all issues are framed in terms of them. She keeps this focus unwaveringly in the foreground, and aims to have her clients do the same. Her language is consistently the language of relationships and human experience, rather than law or protocol. Nevertheless, she is well versed in the relevant areas of law and procedure insofar as she must
keep herself and her clients within these parameters.

**Mr. M.M. (Male Mediator)**

Mr. M.M. is a paralegal/mediator in private practice in a small city in southern Ontario. Having accompanied him to the courthouse to file some documents, I learned that he has a close and comfortable working relationship with staff there. He is highly knowledgeable about legal matters of all sorts and talks about them with ease. Prior to working in this field, MR. M.M. was a police officer in two different forces. Like many former police, he has applied his familiarity with the law and the rules of the court to a related second career. Despite brief formal training in mediation, MR. M.M. describes much of his work as being “by the seat of the pants” -- a candid way of saying “experience and intuition”. Most other informants admitted only to the “experience” part.

Mr. M.M. expresses great respect for the fundamental “checks and balances” of the legal system and believes that in this sense people are well served by it. He offered personal views on the motivations of men and women alike as they struggle through separation, divorce and related issues. While reasonable and insightful, his theories are clearly influenced by his personal values about men, women, and parenting; he acknowledges that these, in turn, have been shaped by his experiences as a law officer, husband, and father.

**NOTES**

1. Each institutional informant was consulted about the degree to which personal identifiability is acceptable in the report. Any identifying details which are included have been permitted by the individuals in question.

2. The closure of these offices was announced by Ontario’s Attorney General, Charles Harnick, in August 1996. The structure of the FSP has been redesigned, with funds being directed to an improved telephone system that will handle client calls, mainly recipients. Enforcement personnel will be cut in half.
3. On the day of our meeting, Judge T. politely but firmly moved our interview to the local church basement where we talked before, during and following his daughter’s appearance in a children’s amateur theatrical production. He was plainly committed both to doing the interview (for which he had thoughtfully prepared) and to being present for his daughter’s play.