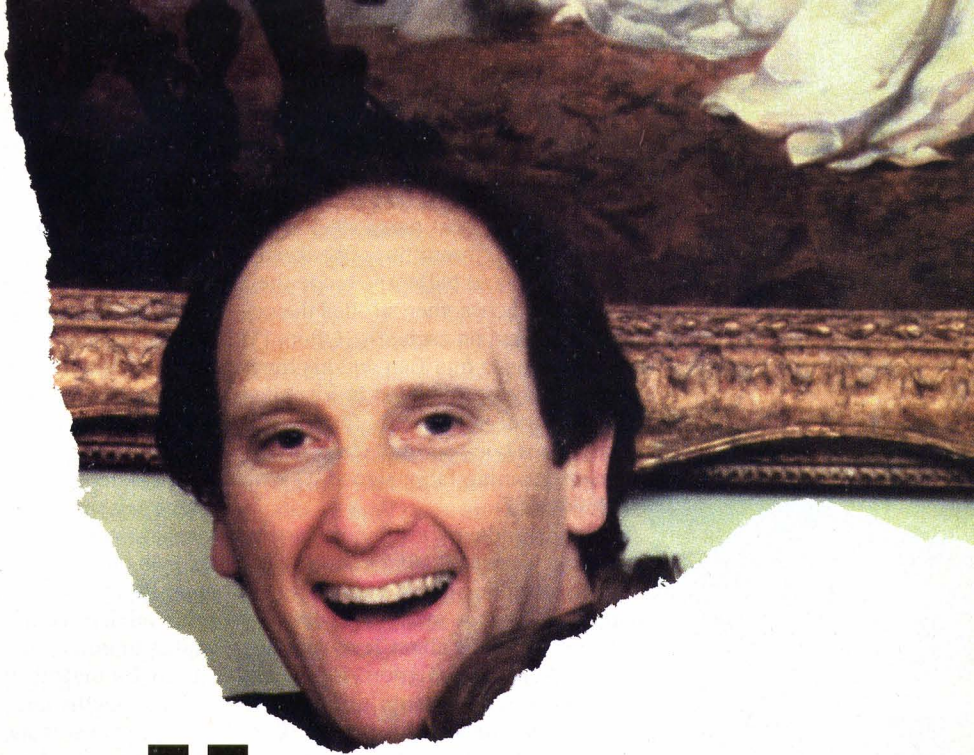


It should have been routine. What Ben Gordon wanted was to stay a parent to his two young daughters and half the family assets. What he got was a painful seven-year legal battle that cost \$293,000, left him limping with debt and estranged from his children. Is this justice?

By Wendy Dennis



TORONTO
LIFE

The divorce from hell

Terry Nusyna called Ben Gordon for the first time in the spring of 1980, looking for her old friend Danny Mann. Mann was staying with Gordon while he was visiting from Los Angeles. The night before, Mann had taken Nusyna to a party. She'd met a good-looking guy there and was calling to ask Mann if he'd set her up. When Gordon learned what Nusyna wanted, he began kibitzing with her. Like Nusyna, he was divorced and available. "Yes, I know the guy.... Great guy.... Very good-looking. And charming? Absolutely. Let's see...did I say dull? Me, on the other hand? Not good-looking, not much hair. But fascinating."

On their first date they went out for Chinese food and to the show at Second City. Just before the curtain Gordon excused himself to go to the washroom. When the show began, Nusyna discovered that her date was part of the cast, performing sketch comedy while the audience choked with laughter.

She moved in with him a few months later. Then came the house in Forest Hill and marriage; next, the renovations. Their first child, Deja Victoria, was born on May 4, 1983. Two years later, Zoe Nicole came along and the picture was complete. They were a family. Between auditions, Ben spent

much of Deja's first year at home with Terry, who'd quit her freelance production assistant's job in the advertising business after moving in with Ben, worked intermittently until Deja's birth, then became a stay-at-home mom.

Soon Ben was making good money acting in movies and commercials and producing television. Despite his success, after Zoe was born, all he really wanted was more time with his kids. He began working with his dad, a sales rep in the shoe business. Though he continued to get roles where he was called upon to be funny, by 1987, his marriage was a battleground, and it was harder and harder to play the clown.

By the time I met Ben Gordon, around Christmas in 1990, his marriage was over. Though Terry and he had agreed to split in March of 1989, he had just moved into a fourplex on Relmar Road, around the corner from Forest Hill Village. For nineteen months the hostility at home had been lethal, but his lawyer had advised him that it would be unwise to move out until he and Terry agreed on custody and selling the home.

I met Ben's girls for the first time at his apartment. Then seven and five, they were bright, gregarious children, both tall, slender and lovely. Deja was the athlete, Zoe the

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actress. They'd crawl into his bed to cuddle early in the morning and late at night. He'd go on their field trips, take them to appointments; host noisy sleep-overs on his living-room floor. Weekends, after piano and ballet, he made their favourite lunches, then strolled the village with a kid on each arm. Often, I'd open his door to find Ben and his long-limbed little girls sprawled in a tangled heap on the ratty old couch. Or, I'd find their drawings lying around: childish renditions of grinning faces signed, "I love you Daddy-O."

When friends offered comforting words about his matrimonial troubles, Ben was given to making black jokes about the situation. The jokes made me uneasy. I didn't know anything about Terry Nusyna, or much about Ben Gordon. But I was divorced, too, and I didn't appreciate snide ex-wife cracks. When I met Ben, my daughter Sara was ten years old, and I'd already spent six years trying to make joint custody work with an ex-husband whose version of events clashed wildly with my own. I knew that the truth at the centre of any divorce was not always as simple as it appeared to the wounded parties. Still, I liked this man who seemed to worship his kids and want little more than to carry on being a good dad. And I was seriously considering loving him. So I decided to keep my eyes open and draw my own conclusions about what was preventing him from realizing that simple ambition.

When he'd moved out of his home that fall, Ben had taken only a few things, so his apartment was furnished in a donated odds-and-ends style I've come to think of as Early Ex-Husband. He consoled himself with the knowledge that the house would soon go on the market. Once it had sold, he and Terry could each find more suitable accommodations, the kids could finally have some stability and they could all get on with their lives.

The story did not end that way. Over the next few years, I came to learn a great deal about the way in which our family courts work, and much of what I saw turned my stomach. I saw lawyers play the game of law and get richer. I saw judges with too many cases and too little wisdom. I saw "experts" wield astonishing power with devastating consequences. I saw endless court hours wasted, with little resolved. I saw a father, who simply wished to parent his children, dragged through a system where the cards were stacked against him from the start.

Finally, I saw an arbitrary system without accountability or closure, which sanctimoniously professed to act in the best interests of the children but which failed scandalously to do so.

From the moment his marriage expired, Ben's mission had been to keep lawyers from picking over the carcass. As Ben saw it, disentangling their lives didn't have to be complicated. They agreed to continue co-parenting, and their home was worth over a million dollars. All they had to do was sell the house, split the proceeds, divvy up their stuff and figure out a parenting schedule.

Throughout the spring and early summer of 1989, still living under the same roof, they attended eight separation-mediation sessions with marital and family consultant Mario Bartoletti. His reports reveal two people hopelessly divided, their marriage reduced to petty accusations and curdling contempt. Still, on one crucial matter they seemed to agree. *Session summary*, May 9: "Underlying these exchanges between them is some anxiety about custody, which is clarified, i.e., neither wishes to initiate legal action to wrest custody of and responsibility for the kids from the other."

Two months later, Bartoletti's reports reveal that, though their priorities were still identical, they remained at an impasse. By then, the recession had sliced Ben's income. Without Terry working, or the house sold, they were hemorrhaging debt. In July, after discovering a bank book among the bills on the kitchen desk, Ben learned that Terry had about \$3,000 cash in a personal account. He asked her to cover her own expenses. When she wouldn't, he stopped paying for her personal items.

Around mid-July, Ben received a letter from Carl Orbach, a lawyer representing his wife. The letter said Terry was in "dire financial circumstances," and threatened to take Ben to court if he didn't pay her "\$350 a week for food and other necessities." Ben wondered what the hell was going on. Lawyers were just supposed to review their agreement. Why was he paying Bartoletti to help them settle if Terry had a lawyer?

At the next session Ben showed Orbach's letter to Bartoletti. As Ben recalls, Bartoletti implored Terry to reconsider, telling her that not many women who came into his office walked away from a marriage with close to half-a-million dollars. When lawyers got through, there'd be nothing left.

Session summary, July 19: "The letter makes no mention of mediation. Obviously Terry feels: (1) her back is against the wall, and (2) Ben is not negotiating in good faith. Terry acknowledges that she has given to her lawyer the last money in her account (c. \$3,000), being saved in case of an emergency...." The lawyer's letter ended mediation.

Now Terry had a lawyer, so Ben had to hire one, too. He chose Ken Cole, whom he'd heard was a smart negotiator with a professional style and a reputation for settling. In the six months it took to arrange a meeting between both lawyers and their clients, Terry had found a job with a small advertising firm and hired a new lawyer, Ronald Zaldin.

The four met on January 31, 1990, in Cole's office. The purpose of the meeting, or so Ben and Cole believed, was to negotiate a separation agreement. For the first hour and a half, Zaldin grilled Ben about his finances. In exasperation, Cole finally demanded that Zaldin state terms. Terry, Zaldin said, wanted \$2,000 a month in child support, possession of the home for five years and sole custody of Deja and Zoe.

Ben's stomach turned over. Throughout the sessions with Bartoletti, Terry had never mentioned wanting sole custody; money had been what she'd talked about. And, to Ben's

From the moment his marriage expired, Ben's mission had

July 16/91

knowledge, Zaldin had never raised the issue with Cole. "Are you telling me we have a custody fight on our hands?" Cole asked him sharply. Zaldin nodded. Ben was in shock.

Inevitably, the lawyers said, they'd need an assessment. In custody proceedings, the court often orders an assessment of the family by a psychiatrist, psychologist or social worker, who then makes recommendations. The process typically lasts several months, involves psychological testing, observation, twenty or so interviews with the parents, kids and significant others, and costs anywhere from \$3,500 to \$8,000. In 1990, assessors wielded tremendous power in family court, since the court tended to accept their word. (Judges today are more inclined to view the assessment as just one important piece of all the evidence, though a respected assessor's recommendations still carry considerable clout.) I've heard seasoned lawyers handicapping assessors and trading scuttlebutt about their biases and bunglings; selecting the person most likely to deliver a "good" assessment (meaning favourable to their client) is a key strategic move in a custody battle.

Cole suggested the couple hire a professional to come up with a plan before the court ordered them to. They'd shortcut the process, maybe even settle. Both lawyers recommended psychologist Irwin Butkowsky, and Ben and Terry agreed.

After the four-way meeting, Ben parted amicably with Cole. Now in a crapshoot to remain more than a weekend dad in a system with lousy odds for men with such aspirations, he needed some hand-holding. He hired Judith Beaman, who belonged to an all-female firm with a reputation for championing women's issues. Ben also hoped she'd be less intimidating for Terry, maybe have some luck getting her to settle.

After Ben described to Beaman his role in the kids' daily life, she was encouraging about his chances for joint custody. But she couldn't assuage Ben's most pressing worry, which was that the kids would suffer as long as he and Terry were forced to live under one roof. After a heated argument in December, Terry had called the police claiming assault. (She says they were discussing getting a divorce when Ben became enraged, overturned a coffee table and aimed it in her direction. Ben says he overturned the table and stormed out of their den after she refused to divulge her new lawyer's name.) The investigating officers declined to lay charges, but Zaldin advised Terry she could press charges through a justice of the peace. Four days later, she did. Ben then had to hire a criminal lawyer, too.

Ben knew that ending the daily conflict was what Deja and Zoe needed most. But Beaman advised that if one spouse left the home without an agreement in place, it was easier for the other to claim exclusive possession and block its sale. Also, the spouse who stayed could argue that the other parent no longer had daily contact with the kids, which would damage that person's chances in a custody dispute. ("If custody's at issue," one family lawyer told me, "both parties should stay in the home unless they're going at each other with knives.") That was when Ben learned his first lesson on how the family court looked out for the "best interests of the children." The moral course of action was legal suicide.

In July, another blazing fight erupted. Again Terry called the police; Ben called a friend to get the kids out of the house before the cops showed up. Terry says Ben assaulted her. Ben says he stomped on her toe (to stop her from berating him in front of the kids and from blocking his way to the front door.) Again Terry went to a justice of the peace.

By this point, Ben was almost \$50,000 in debt. On a \$60,000 income, he was also carrying almost all the household and

kids' expenses. Meanwhile, Terry, who'd been working for a year at the ad agency, was banking, or keeping for her own use, almost all of her \$27,000 salary. She wouldn't agree to sell their home. Nor was she interested in Ben's suggestion that they alternate in the house (letting the kids stay put) until they'd worked things out. Terry wanted Ben out of the house, and to know how much child support she'd get. She insisted Ben had destroyed his acting career and depleted his income in order to deny her child support. Ben resented Terry's assumption that the man should be the one to move out, and wanted her assurance on custody and selling the home. They had to settle that, he said, before they could crunch numbers to figure out the money she'd need for the kids.

And then there was Irwin Butkowsky. Ben was growing extremely uneasy about how the psychologist seemed to view Ben's fathering role: "I said to him one day, 'I'm making the kids' lunches, taking them to the dentist, going on their school trips. I'm getting them ready for the school bus.' Then he made a remark that made me feel that I just wasn't getting through to him, something to the effect that, 'Well, you should do that. I waited for the camp bus and that's one of the most important things a father can do for his kids.'

"That's when I knew I was in trouble. He'd told me that he had a traditional marriage, that his wife stayed home. I was afraid that he saw a father who did less than he did as not good enough, and a father who did more as threatening."

In August 1990, Butkowsky released his recommendations, and they confirmed Ben's worst fears. The psychologist suggested that the kids go to Ben's one night a week, on alternate weekends and for some time at holidays. Terry's place would be the kids' primary residence; Ben's, their secondary one. Ben was deeply offended by those terms. He'd hoped for alternating weeks, and worried he'd now be Uncle Dad.

But his gravest reservations lay in what Butkowsky had failed to recommend. The report stated that all major decisions affecting the kids' lives were to be made by both parents, with conflicts monitored by a mediator/arbitrator. That recommendation certainly suggested a form of joint custody—but nowhere did Butkowsky actually use the term.

As Ben recalls, Butkowsky told him he believed joint custody was in the children's best interests, but

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deliberately refrained from classifying it as such because he did not want to convey to Terry the idea that she'd "lost" on that issue. Ben warned the psychologist that his report just paved the way for more conflict; this must be the first time in history, he said, that a father couldn't get equal time with his kids because their mother might be "socially embarrassed" or "psychologically upset" by the fact that their father was just as capable and important a parent. Butkowsky told him it wasn't unusual to make decisions on that basis and asked Ben to trust him and try the plan for a year. Ben had no doubts that a custody fight would be bad for his kids. If he and Terry supported the plan, they'd avert a full-scale custody battle. So he consented—if Butkowsky would mediate (and, if necessary, arbitrate) disputes at monthly meetings. The psychologist agreed.

On September 27, 1990, Zaldin wrote to Beaman: "I have just spoken with Terry Gordon and she has requested me to advise you that she accepts the recommendations of Dr. Butkowsky concerning the children provided that Mr. Gordon leave the home promptly, i.e. within 5 days."

In early October, believing that custody was settled and that Zaldin's correspondence indicated that Terry had agreed to sell their home, Ben finally felt secure enough to move into the apartment on Relmar Road. A few days later, he and Terry had another skirmish when he returned to the house to pick up the kids and pack a suitcase with a few more of his and the girls' belongings. After he was gone, Terry changed the locks, and again went to a justice of the peace. (Ben later testified he yanked the suitcase from Terry's grasp and left, wanting to "escape" her "screaming insults...in front of the children." Terry testified—though couldn't substantiate—that she was covered in bruises from Ben "repeatedly slugging" her in a backwards motion with suitcases.)

As Christmas approached, Ben sat in his car in the driveway of the home he'd recently vacated waiting to pick up the kids.

Deja and Zoe came bounding down the front steps chattering and trailing their paraphernalia. "There's something for you from Mommy in my knapsack," announced Zoe. Ben glanced toward the house. Terry was standing on the porch, her arms folded. The kids grew silent. "Consider yourself served," Terry shouted.

An excerpt from the December 18, 1990, notice of application filed in the court by Terry Nusyna: "The Applicant makes application for:

(a) Interim and permanent custody of the two children of the marriage...;

(b) Child support and interim child support...in the sum of \$1,000 per month per child...;

(c) Exclusive possession of the matrimonial home for five (5) years in the best interest of the children."

Although the assault charges have yet to come to court, the document (which contains twenty claims) says Terry is seeking "an Order for interim exclusive possession of the matrimonial home and contents (to prevent a further assault by the husband of the wife, three so far...)."

Zaldin had advised Beaman that Terry supported Butkowsky's recommendations. But as soon as Ben moved out, his client sued for custody. Since Butkowsky had left the custody issue ambiguous, Terry could now claim that she interpreted his recommendations to mean she already had custody—and Ben had only access rights. And that's exactly what she did: in her affidavit Terry said she accepted the psychologist's recommendations "in principle," and was "therefore requesting interim custody of the children, subject to the access as set out by Dr. Butkowsky." Later, she said she believed she had custody due to an "understanding" with Butkowsky. When asked if she'd ever queried the psychologist directly on whether her assumption was right, Terry replied, "It never seemed like a necessary question." Finally, although Zaldin's correspondence to Judith Beaman had proposed the real-estate agents Terry preferred for listing their home, after Ben was out of the house, Zaldin vehemently disputed that Terry had ever agreed to sell it.

Ben believed he'd made every effort to settle. But he discovered that if someone decides to litigate, or thinks they have no choice but to litigate—one's only option is to capitulate or fight back. Terry's view was that after she and Ben had lawyers, Ben decided to "fight me for custody of our two little girls," and during Butkowsky's investigations "waged a campaign of terror to undermine my will to fight him for custody...and...force me to sell the house..."

Ben thought Terry saw him as the villain and herself as the mother bear fiercely guarding her cubs. He says she often accused him of making her waste money on lawyers when he ought just to go away, leave her and the kids in the house, hand over custody and send a cheque each month. That's what divorced fathers were supposed to do. If he'd only behave like a gentleman, she'd let the kids visit him now and then. But Ben feared that if Terry had custody, he'd have to beg or borrow time with his own children. He strongly believed his daughters needed both their parents in day-to-day ways,

and he wasn't about to walk away. But even if he could prove he'd been an exemplary parent who defied conventional notions of fatherhood, he was facing an uphill struggle to remain more than a visitor in his kids' lives. The court doesn't like to order joint custody when parents battle about their kids. "All things being equal," one lawyer told me,

If custody's at stake, a lawyer said, "both parties should stay in the home unless they're going at each other with knives"



“mom is going to get custody.”

Had Ben been seeking sole custody, he'd have had almost no chance, given the court's reluctance to take custody away from a mother and many assessors' reluctance to risk an unconventional recommendation. His best bet was to try to get the court to endorse Butkowsky's parenting plan. The irony of this predicament was not lost on Ben. He would now have to beg the court to let him keep a parenting arrangement that he'd always considered to be wrong for his children.

Throughout the winter and spring of 1991, with Butkowsky's schedule in place, Ben tried to adjust to the role of Uncle Dad. Terry had the kids, with full-time help, in a four-bedroom house with all the amenities; Ben and his daughters were on top of each other in his two-bedroom place with the galley kitchen and tiny bathroom. Ben spent what little time he had with Deja and Zoe just trying to settle them down. Parenting was almost impossible.

By the spring, Terry also had someone in her life. Ben had seen her new boyfriend, Randolph Steepe, standing in a bathrobe at the front door of the house when he'd arrived to collect the kids. And Terry had shown up with Steepe at the birthday party that Ben threw for Zoe at the Bathurst Bowlerama. Curious about the man who was spending time with his daughters, Ben asked around. The word on Steepe gave rise to a few questions.

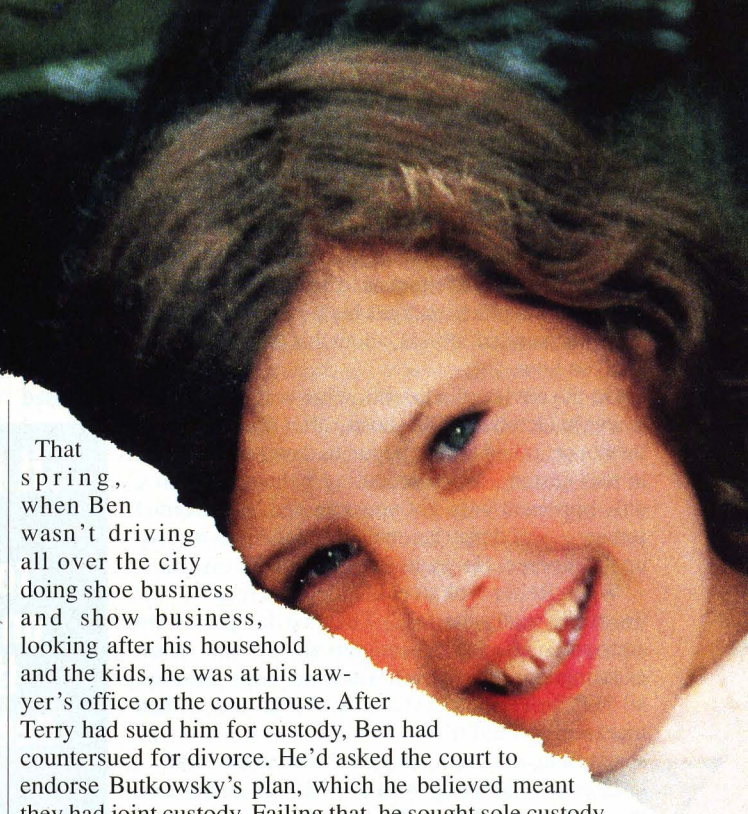
Ben was also falling deeper into debt. He'd stopped carrying the house expenses once he'd moved out, but he had his expenses, the kids' (when they lived with him), and was

paying for orthodontics, religious school, lessons, camp and the like. And then there were his mounting legal bills. But Terry didn't believe Ben had money problems. In her affidavit of December 2, 1990, she'd written that she didn't know why Ben would unilaterally “cut off

Hardly anyone stopped to ask how endlessly prolonging a toxic battle could be in the “best interests of the children”

all mortgage and utility bills and other assistance to me and the children,” other than her “suspicion” that he wanted to drive “the children and me out of the home by forcing its sale due to an economic crisis,” which he was attempting to create. Ben had cancelled cheques to prove he was still paying for the kids' expenses, but she further accused him of “unilateral termination of any contribution towards the financial cost of the children....”

By February, Terry was unwilling to contribute to the ongoing mediation costs. She'd begun a new job with a company that did credit reporting, and her income had jumped to about \$40,000 a year. She said she couldn't afford the expense. “If you were paying me a proper amount of child support, I would reconsider contributing,” she wrote Ben. Terrified that the fledgling co-parenting arrangement would collapse, Ben agreed to pay for it all. To Ben, money was just money. When his life settled down, he could always find a way to earn more. But how could he ever get back his kids?



That spring, when Ben wasn't driving all over the city doing shoe business and show business, looking after his household and the kids, he was at his lawyer's office or the courthouse. After Terry had sued him for custody, Ben had countersued for divorce. He'd asked the court to endorse Butkowsky's plan, which he believed meant they had joint custody. Failing that, he sought sole custody. He'd also asked the court to force the sale of the home. Things had begun to heat up on the legal front. And then Ben had to go to criminal court.

On March 20, 1991, the first assault charge is stayed due to the Askov ruling by which judges may throw out cases not heard within a prescribed time. At the criminal trial on April 16, Judge Marshall admits that although she's got a “pretty nasty” reputation for being tough on domestic assault, in this case she has a “problem” with “beyond reasonable doubt.” The second charge is withdrawn and the third dismissed on the condition that both parties sign a bond promising to keep the peace. To keep the two apart and prevent disputes, the bond also prohibits Ben from re-entering the matrimonial home without a court order or written agreement. Judge Marshall warns Ben and Terry that the kids “should be free to have a relationship with both of you,” and that Deja and Zoe will wind up “a couple of basket cases” if they don't stop fighting.

Butkowsky's mediation sessions were volatile. Having stepped around declaring his intent on custody in his report, he wasn't willing to clarify the issue, nor did he want to hear about court matters. He only attempted to mediate the couple's day-to-day disagreements. “We'd be in his office and I'd be screaming that Terry has served me with an affidavit saying she thinks your report means she already has custody, that I was hearing all kinds of terrible stuff from the kids, that Zoe had said to me, ‘Mommy says you're a jerk and you're making us move and trying to take our home away from us.’ But he just censured me for being so worked up. At one point I asked him to tell me what Terry wanted. He said that Terry had told him I was an actor merely putting on an act to get custody, and the only reason was so that I wouldn't have to pay her child support. And I said to him, ‘You mean she's worried about how much money she's going to get?’ And he told me, Yes. So I said to him, ‘Fine. Then ask her how much money I have to pay to buy my kids.’”

Moishe Reiter is a man impressed with himself. Napoleonic in height, built like a pit bull, he struts about the courtroom brandishing words like spurs, delighting in showdowns with worthy opponents, fancying himself in dazzling command of the language and the law. Outside the courtroom, he corrects those who fail to introduce him with the letters QC after his name. Charmed by his own voice, he likes to light his pipe with elaborate ritual and tell long-winded stories about his boyhood. Reiter charged \$350 an hour.

On the advice of a litigation lawyer he knew, Ben had hired Reiter in October 1990, shortly after moving out of the house. It had finally begun to dawn on him that, in this system, accommodating behaviour with a wily opponent only got you screwed. Ben needed someone who'd play hardball in negotiations to wrap up his divorce. He wanted to get on with his life.

When Reiter took over his file, Ben recalls, "the fireworks really started." The two lawyers were constantly at each others' throats. At the cross-examinations before trial, where no judge presides, all hell broke loose. At Ben's, Reiter speechified incessantly, Zaldin told him to "put a lid on it" seven times and both lawyers threatened to walk.

In court, Zaldin sat with one buttock splayed on the edge of counsel's table and addressed the court in an injured voice, whining of the injustices inflicted on him or his client until he got his way. He was like the kid who always had an excuse for not doing his homework, who'd fink on others but run to the teacher if someone played a trick on him. Reiter deemed Zaldin beneath him. But as the case wore on and Zaldin kept gaining the advantage, Reiter became obsessed with finishing off his opponent. Winning that fight, and not Ben's case, became his *raison d'être*. Ben just had to pay.

At the criminal trial, Judge Marshall had advised Ben and Terry that the best lawyers told their clients, "Folks, the money should be in your pocket, not mine." They should "consider the motivation" of any who didn't, because "the way the lawyers really clean up on these things is to go to court on the motions, and the appeals and the fight."

Zaldin and Reiter filed two dozen motions and appeals, which cost tens of thousands of dollars, swallowed endless hours of court time and resulted in not a single issue being finally resolved by the court. For instance, with Terry refusing to sell their home, Ben's only recourse was to get a court order. When, on April 10, 1991, Justice Walsh ruled that the home be sold "forthwith," Ben was relieved to have finally made some headway. On May 7, Zaldin appealed. According to *Rules of Civil Procedure*, found on the bookshelf of any first-year law student, Zaldin had only thirty days after filing notice of an appeal to "perfect" it (meaning submit to the court the materials on which his arguments would be based). But Reiter let five months go by before he acted either to quash or to expedite the appeal. Zaldin parried by perfecting it.

In October, the weighty judicial matter of whether Ben's and Terry's home should be sold went before Chief Justice Dubin and a panel of two other judges of the Ontario Court of Appeal. The waiting list at the Court of Appeal is more than two years long. The judges agreed to expedite the appeal, setting a hearing date in November. Then, on the first day of trial in late October, Zaldin announced that Terry was abandoning her appeal

on the sale of the home. For almost a year, with Zaldin's help, the court's procedures and rules rewarded Terry through delay—permitting her to stay in the home, potentially strengthening her case on exclusive possession and custody. Meanwhile, the house plummeted in value as the Toronto real-estate market spiralled downward. And Ben was sent the message, Sorry pal, be patient while we dally with your only significant asset.

Resolving child support was the same story. Judges and masters (who deal with certain interim matters) determine child support by assessing the children's costs and the parents' ability to pay them. In February 1991, Master McBride awarded

Terry \$958 a month in short-term support. Ben was livid. Terry's largest child-care expense was her nanny/housekeeper's salary—an outlay Ben considered ludicrous since the kids were in school, Terry worked flexible hours and he was limping with debt. She had also claimed more than six thousand dollars of expenses for which Ben had the receipts. He wanted to appeal, but, for closure, paid up.

Terry appealed. Believing (wrongly) that he wasn't obliged to pay Terry until the matter had been resolved, Ben stopped sending her cheques. Justice Weiler, who heard the appeal, backdated the award by two months. When Terry was cross-examined in June, not only did she lack proof for many of the expenses she'd claimed, it turned out she'd understated her income by reporting net figures instead of gross. (Zaldin called the discrepancy "a mistake.") The issue returned to Master McBride. He reserved on his decision for three months. Then, because Terry's cross-examination was incomplete and the trial now pending, he declined to rule.

Even the simplest matters, such as arranging a date for Terry's cross-examination, became a schoolyard scrap.

In April 1991, Justice Walsh orders Terry's cross-examination to be completed by May 9. Zaldin agrees to May 6, but that day says Terry is "too weak" to

attend due to the flu. When Ben calls the kids that evening, Terry's housekeeper informs him that everybody's out. The kids tell Ben their mother had taken them that night to a children's play featuring the music of her uncle, composer Louis Applebaum.

The May 9 deadline passes. On June 10, Justice Walsh orders that Terry's examination take place on June 13. On June 13, Zaldin tries to derail the proceedings because Ben's behind on his child-support payments. But Ben pays up. Justice Walsh stays all motions and orders Zaldin to present Terry for cross-examination at two that afternoon.

Terry arrives at the examiner's office, which is near the courts. Ben, the lawyers and a court reporter are present. Terry claims she fears for her safety with Ben there and refuses to be cross-examined if he doesn't leave. Ben points out they're attending mediation sessions and transferring the kids without incident. Terry still refuses.

The official examiner is called in and confirms Ben's legal right to stay. Zaldin threatens to leave unless Ben does, so the

It finally began to dawn on Ben that he needed a lawyer to play hardball in negotiations. Making nice in this system often got you screwed

lawyers head for the courthouse to see if they can get in to see Justice Walsh. The judge orders the cross-examination to proceed with Ben present, and advises that a police officer be hired to calm Terry's concerns. Reiter arranges for the officer; a dispute then arises over who will pay him. To get things under way, Ben says he'll pay. Zaldin then says he has an appointment with another client and, due to the hour, can't wait for the officer. Zaldin and Terry leave.

Terry's cross-examination begins on June 19, with an officer present on Ben's tab. She produces little documentation to support her financial testimony, and Zaldin refuses to get more unless Ben pays the financial institutions' search fees.

Lawyers argued arcane issues. Judges and masters granted adjournments. More months went by while they reserved or declined to judge. When someone finally rendered a decision—as occasionally happened—there was always another angle a lawyer could take. The question hardly anybody seemed to be asking was how endlessly protracting a toxic battle could possibly be “in the best interests of the children.” Through various legal manoeuvres—all perfectly allowable within the system—a searing conflict was prolonged, and two little girls continued to live in a state of siege.

By the time trial approached in the fall of 1991, Ben and I had given up hope of a normal life. Reiter's conduct embarrassed Ben, and his lawyering was scattershot and reactive. He interrupted meetings to take phone calls from clients. He never sent Ben a standard reporting letter. When Ben complained that his problems only seemed to be worsening, Reiter's advice was usually to keep fighting: everything would come together at trial.

Ben wanted to fire Reiter, but a lawyer friend said it was unlikely another lawyer could prepare the case on short notice, and getting another trial date soon wouldn't be easy. Ben couldn't stomach another delay, and he still believed the trial would bring closure. Unhappy as he was with Reiter, Ben decided to stay with him until after trial.

We also struggled to cope with problems that were cropping up with the kids. Often they accused Ben of trying to oust “Mommy and us from our house.” If denied a childish want, Zoe would retaliate angrily: “Mommy's right. You are stupid.” Deja was more low key. “Men are so pathetic,” she'd say. At such times, Ben scorched the kids with angry words about their mother, then, afterwards—ashamed—crawled into a gloomy cave of depression.

One night, I listened outside their bedroom door as he put the kids to bed. Gingerly, he broached the subject of why he thought they needed to be cared for by a mom and a dad who loved them. Zoe interrupted him: “Mommy says it's not so bad if we only see you sometimes, Daddy, because some kids never get to see their daddies, but Mommy thinks we should see you, so she's letting us.”

I could feel Ben struggling to contain anger, searching for words to answer Zoe. But before he was ready, she lashed out: “Why are you taking our money, Daddy? Mommy told us you stole it all from us and gave it to the lawyers.”

Outside in the hall, it was now my turn to stop from screaming incoherently at a six-year-old child whom I knew, in some distant recess of my rational mind, was only the messenger.

The trial begins on October 29, 1991, Justice Potts presiding. Zaldin announces Terry is abandoning her appeal on the sale of the home; his client “sees no reason why the house should not be sold,” as the children are “doing much better now.”

Ben testifies first, and Zaldin cross-examines him. The lawyers spend hours in argument and Justice Potts shoos them away to settle; after three days of negotiating, Ben and Terry agree on equalization payments (reflecting their shared increase in net worth while married), and procedures for selling the home and dividing their possessions. Reiter and Zaldin then fight over Butkowsky. Reiter argues that his recommendations are outdated. Zaldin fights to keep Butkowsky.

Justice Potts refuses to rule on custody recommendations that are over a year old and orders a new assessment by child psychiatrist Dr. Sol Goldstein. The judge reduces Terry's interim child support (ordering Ben to pay her \$750 a month) and requires Ben to shoulder some additional expenses. After promising to review (at a later date) whether the burden of expenses has been equitably allocated, Justice Potts grants a divorce judgment and, November 13, adjourns the eight-day trial to await the new assessment. Terry has not yet testified.

It had now been almost three years since Ben and Terry decided to end their marriage. Their home had yet to go on the market, their possessions had yet to be divided, and the issue of custody was back to square one.

As soon as the trial was adjourned, another dispute erupted. In the settlement, Ben agreed to let Terry select the real-estate agents for the first listing period. On November 20, 1991, their house—worth over a million dollars when they'd decided to split—finally went on the market for \$665,000. Two weeks later, the agents Terry had chosen recommended lowering the price. Their research showed that, in a rapidly declining market, only a significant reduction would fetch an offer. Terry refused. Between December 1991 and August 1992, Ben had to go to court five times to reduce the asking price of his home to \$569,000. By then the house had been listed for nine months and not a single offer had come in.

At trial, Justice Potts had given Ben—who now had about \$160,000 in debts and no further borrowing power—some time to meet the latest financial burdens placed upon him by the court; he'd been ordered to pay Terry back child support (as well as the ongoing monthly cheques) and to foot the bill for the new assessment. (Terry's reported debt was \$37,500.)

To meet his obligations, Ben applied for a line of credit using a second mortgage on his share of the home as collateral. But without Terry's co-operation, Ben couldn't get the second mortgage, and without that, he couldn't pay the \$6,000 retainer for the new assessment to proceed. Ben had to bring two motions—one to allow the mortgage and a second to implement it. In the interim, Zaldin tried to have Ben's case thrown out because he was behind on child support.

In January, we met with Dr. Goldstein, a balding, bespectacled man with the worn Wallabee look of the rumped professor. In that meeting, Ben explained that he wanted Deja and Zoe to have two involved parents, but he now believed the only way to ensure this was to give him custody. Dr. Goldstein looked at him quizzically.

Ben made his pitch: if he had custody, he'd continue to respect Terry's mothering role. He knew the kids were attached to Terry. But they were also attached to him, and, if Terry got custody, he didn't believe she'd do likewise—there was certainly no incentive in the court system for her to do so. All a woman had to do was undermine joint custody, and then her lawyer could claim that giving her custody was in the children's “best interests” since the parents simply couldn't get along. Ben recalled that Zaldin had argued at trial that you can't have joint custody when parents fight. Terry, Ben told the

psychiatrist, had been undermining his fathering role by ostracizing him at the kids' religious-school consecration, and by calling Deja, who was feverish with flu, to say the cats missed her and she really should be home with Mommy. Ben believed that this was a more damaging campaign than the one Terry was waging in the courtroom. If Ben had sole custody, he argued, Terry would have to co-operate.

Dr. Goldstein listened intently, took notes, asked a few questions. As part of the assessment, he said, he wanted to meet at McDonald's with each parent and the kids—to observe the family interaction. And so, one day, around four in the afternoon, we found ourselves under the golden arches, wolfing down Chicken McNuggets and fries, while a psychiatrist, whose view of us would determine the most critical aspect of our future, sat beside us, silently staring.

In January, Ben asks Dr. Goldstein to interview Terry's boyfriend, Randolph Steepe. The psychiatrist consults with Terry, who says that she and Steepe are no longer involved. Dr. Goldstein declines to pursue the matter. Then, in February, Jacqueline Izzard, who says she's Steepe's business associate, calls Moishe Reiter to say that she has some information about Terry. Izzard says that Steepe and Terry broke up after trial, and that Terry then went to a justice of the peace and charged Steepe with threatening. Izzard also tells Reiter that Terry is suing Steepe for breach of contract for employment.

Reiter retrieves Terry's signed statement supporting her criminal charges against Steepe. In it, Terry claims that threats from Steepe made her "increasingly fearful for my safety and that of my children." In an affidavit Terry filed in the breach-of-contract action, she alleges Steepe promised to pay her \$96,000 to work for his company, and at least another \$120,000 in commission.

But Terry has not reported this anticipated income to the family court. There, she reports she's working for a new company from which she expects to earn \$48,000.

Terry further reports that a woman named Yvette Cutrara is suing Steepe for child support. (Terry has known Cutrara for many years.) Terry alleges she agreed to let Steepe partially pay her through an outside company so he could claim he had no assets and avoid an order to pay Cutrara child support. Steepe eventually signs a statement containing some damaging allegations about Terry and Zaldin. At Ben's and Reiter's urging, Dr. Goldstein agrees to interview Steepe.

In March, Dr. Goldstein released his assessment. He saw both Ben and Terry as manipulative and self-interested, and recommended therapy for each. Ben "presented as an intelligent...charismatic...man" who was good at portraying himself as a "sincere" person, being "victimized by a system which lacks understanding and empathy." Terry "presented as a pleasant, intelligent lady who...seems to have very little insight into her contribution to the struggle which rages...."

The lawyers, he worried, were taking positions "more adversarial than

necessary" and "escalating the conflict"—perhaps by having too much empathy for their "theatrical" clients. About Randolph Steepe, who was "apparently very much involved with these children," he had "grave concerns." He advised the lawyers to deal with Steepe's "serious allegations." If they were true, Dr. Goldstein wrote, then the kids had to be protected. If they weren't true, then Terry's judgment about the people she let associate with her daughters should be called into question.

Although possessed of a rather "jaundiced" view of how people treated each other, the kids, he wrote, were nevertheless doing extremely well. He found them bright, alert, attached to both of their parents and all of their grandparents. He thought each was likely to do well individually, but worried about their long-term ability to sustain a healthy relationship. He reported that my daughter and I seemed to supply the girls with a great deal of "friendship, understanding and empathy." He characterized me as "an island of sanity" in their "tumultuous" existence, which prompted Ben to remark that now he was worried I'd get custody.

"What would best serve these children," Dr. Goldstein wrote, "would be a cessation of hostilities and manipulations between these two people." He despaired of that ever happening. Nevertheless, he recommended joint custody. Unwilling to entrust either Ben or Terry with official power over the other, he proposed that the kids alternate weekly between their parents. Conflicts arising from their co-parenting were to be overseen by an "astute and strong" mediator/arbitrator.

The trial resumes on June 23, 1992. Zaldin had told the court often of Terry's dire financial straits. But just as he had abandoned Terry's claim to the house, now he announces that Terry is dropping her claim for child support from Ben. Custody is next. If either Ben or Terry refuses to accept the Goldstein recommendations, Justice Potts must hear further evidence: Terry will then have to testify and be cross-examined. Terry had fought relentlessly for custody. Now Zaldin tells the court that Terry is willing to accept the Goldstein plan. By abandoning these claims, Zaldin virtually guarantees that Terry will not be called to testify, thereby ensuring that Terry's financial evidence and conduct in the disclosure

process will never be put before the court, and Justice Potts will never learn anything about her tangled dealings with Randolph Steepe.

Reiter is salivating over the Steepe evidence, which speaks to Terry's judgment as a mother. Ben knows he can force Terry to be cross-examined if he refuses to accept the Goldstein plan. But Ben just wants joint custody and for this nightmare to be over. He accepts the Goldstein plan provided that the court clarify the issue, since Terry agreed to Butkowsky's report, then litigated over its interpretation. The lawyers haggle over Dr. Goldstein's intent, the psychiatrist elaborates on it for the court and custody is finally resolved according to his plan.

Master Linton will deal

The letters (below and opposite), returning their Christmas gifts, were the last Ben's mother received from her granddaughters

30/12/93
Baba Zell,
Thanks but no thanks.
Where were you when I needed
you. Why did you give me a
Christmas present? I am Jewish.
"Thanks but no thanks"
Why did you not help us when
we wanted to be with our mother
most of the time and not
half + half.
You never cared to hear how we
felt, but you did what my dad
told you to do.
Deja
1/1/94

with the house sale and property division. Justice Potts only has to decide who will be the "astute and strong" professional to watch over the parenting of Deja and Zoe. Zaldin objects to it being Dr. Goldstein. Justice Potts says he's "not going to force Dr. Goldstein on Mrs. Gordon" and adjourns for lunch, instructing the lawyers to return with some names. Ben and Terry have two hours to find the person who will make all the decisions they can't reach jointly about their children's lives. Reiter suggests a social worker named Helen Goudge. I call a friend for whom Goudge did marriage counselling, and my friend speaks highly of her. Zaldin consults Butkowsky, who approves of Goudge, and Justice Potts appoints her. On June 30, the trial concludes. It has lasted thirteen days.

Helen Goudge is a cheerfully scattered woman with a singsongy voice and the ingratiatingly empathic manner of the social worker. After the first half-hour meeting with the kids at Ben's apartment in the fall, Goudge announced that she was considering altering Dr. Goldstein's parenting schedule; Zoe was expressing some "attachment issues" to Terry, and would need more time with her mom. Ben and I were appalled. It had taken two-and-a-half years in court and two child-care professionals to achieve a stable parenting plan. After a half-hour interview with a seven-year-old child, Goudge was now considering changing it. Ben told Goudge that we wouldn't support a decision to tamper with Dr. Goldstein's schedule. Her mandate, as Ben understood it, was to implement the recommendations, not reinvent them. Our concerns fell on deaf ears.

Within a couple of months Goudge was also talking about Deja's "attachment issues." When we told Goudge she was upsetting joint custody, she told us that *she* had custody of Deja and Zoe.

Ben and I knew only too well how the game worked by now. We had to make nice with Helen Goudge. Most troubling was the fact that she was our last hope. If Goudge couldn't keep the lid on joint custody, our only option was to go back to court. But, after years spent with only a bigger mess to show for it, going back to court was out of the question.

Then there was Reiter. Since trial, there'd been little progress on the file. Reiter's wife, Carol, who handled the firm's finances, had been calling Ben frantically at eleven o'clock at night to say they couldn't make the rent on their Scotia Plaza office and pleading to come over and pick up a cheque. Ben had already paid Reiter \$80,750 and he'd been billed for another \$94,635, but had nothing more to give him.

4001
Dec 30/93
Dear Zella,
Thanks but no Thanks.
Why did you give me a Christmas present when we are Jewish?
Are these the kinds of things you think I really need? "How many days this week did you go to church?"
Why weren't you here when I needed you? Why didn't you listen to me when I wanted to go to my mommys house? Like the time that I had to go to your house for New years and I wanted to go to my mommys house for New years.

On October 9, 1992, Ben finally fired Reiter.

On May 25, 1993, Reiter is declared personally bankrupt. Court documents reveal he owes more than three quarters of a million dollars—including \$400,000 to Revenue Canada. Upon his discharge, almost all of his forty-one creditors get nothing.

Ben's new lawyer was Julie Hannaford, a partner at Borden & Elliot. Ben told her he wanted closure. Hannaford said that whatever financial losses he may have suffered, he could forget about getting money back: the court wasn't big on retroactivity. Then she asked about the possessions.

At trial, in the fall of 1991, Terry and Ben agreed to keep the stuff they'd each brought into the marriage or had received as gifts during that time; the other possessions were to be split equally. In January, they had gone through the house, with witnesses, to catalogue their belongings, and had signed a list identifying personal, jointly owned or disputed items. But by August, still unable to retrieve any property, Ben went to court. Terry filed an affidavit, now claiming as gifts the bedroom and dining-room suites Ben had brought into the marriage, and a piano he'd purchased for Deja's lessons.

The court ordered Terry to release the undisputed possessions, and, in September, she'd returned some of Ben's belongings, such as an antique globe, some posters and a reel-to-reel tape recorder. Ben had the items from that delivery, and what he'd taken around the time he'd moved. That was it.

Hannaford asked whether there were any valuable antiques or works of art at stake. Ben said no. She advised him to forget about the belongings, too: it would cost him more to pay her to fight for them than they were worth. Finally, she delivered the only good advice a lawyer could have given Ben at that point: "I advise you to capitulate," she said. "In this legal system, a spouse who feels wronged can carry on a court battle indefinitely—as long as there's enough anger and money to fuel it—and so far Terry has demonstrated no shortage of either." Hannaford told Ben it would cost about \$30,000 to wrap things up.

Late that November, Ben abandoned all his outstanding financial claims against Terry and they signed minutes of settlement. They'd have full joint custody. Neither would pay child support to the other. Goudge would resolve their disputes. Master Linton would oversee the disposal of home and possessions. For a moment, it looked as if the war might actually be drawing to a close. Then, after a year, the first two offers

There are no King Solomons in family court, only beleaguered judges running a clearing-house for divorce and high-priced lawyers living off the avails of human misery

Even if he could prove he'd been an exemplary father, he was

came in on the house, now listed at \$549,000. The agent, Paul Slavens, recommended accepting an offer for \$470,000 (increased to \$490,000). By the time Ben got to court, the purchaser had withdrawn it. In December 1992, another offer came in from a competing real-estate agency for \$450,000. This time Slavens recommended against accepting. He said he could do better; Master Linton gave him sixty days to try. On January 19, an agent in Slavens's office brought in an offer (\$455,000 increased to \$470,000). It was the higher offer that Slavens had pledged to present; Master Linton would almost certainly order it be accepted. Then, another bomb exploded.

At around four p.m. on January 21, 1993, the fax machine began rumbling in Julie Hannaford's office. Zaldin was serving her, on short notice, with what he called an "emergency motion" on the sale of the home for the following morning. (The court had ordered that any offers be irrevocable for three days, so there'd be time to bring them to Master Linton.) Among the documents was a competing offer, which would expire at 11:59 a.m. the next day. It was signed by Terry Nusyna.

Terry said that, two days earlier, she'd found a new job and immediate financing to buy the house. On the strength of this new job, with a Chicago-based printing company that would pay "about \$50,000 (U.S.) per year against commission," Terry told the court she was now in the position to purchase and maintain a \$470,000 home.

Ben gets no opportunity to respond to Terry's affidavit. Hannaford has said Ben's only chance of averting Terry's purchase of the home was to make a competing offer, in the hope that Master Linton would reason a curse on both their houses and take the third-party offer. But Master Linton is unavailable that morning. Justice Eberle, who has had no prior involvement in the case, hears the matter in chambers with only the lawyers present, as motions are often heard in family court. While the lawyers are argu-

ing, Ben and I deliver the competing offer to the judge's chambers. Justice Eberle reviews it. He rules that Ben is obstructing the sale of the home and orders that Terry can purchase it for \$475,000—without Ben's consent. In February, Justice Southey of the Ontario Court of Justice denies Ben leave to appeal.

Ben had always believed that, in their particular case, selling the house was a pivotal factor if joint custody was to work. Only then could Deja and Zoe come to see their parents as having equal parenting status. Justice Eberle's decision dealt him a devastating blow. Terry now had the court's blessing to tell the kids what she'd been telling them all along—that she was their parent, that her house was their home. Ben's greatest ambition in life was to be a dad, and, on paper, he finally had the words joint custody. But the court had just ensured that his fathering days were numbered.

To secure his fees, shortly before the house deal closes in May 1993, Reiter gets an order requiring that Ben's house proceeds be held by the court. On June 2, \$98,553.63 (of Ben's approximately \$109,000 net proceeds) is paid into court, pending a hearing in which Ben will contest Reiter's fees.

At around three o'clock on January 7, 1993, Goudge phoned me, looking for Ben. She opened with, "I understand your last week with the kids was a disaster." I hadn't a clue what she meant. "Wendy, did you know Ben hit Zoe?" she asked. Then it began to dawn.

Goudge said Terry was bringing the kids in shortly to tell her the story. She was calling, a half-hour before that meeting, to hear Ben's account. Ben wasn't around, so I told Goudge what Ben had told me. Nine days earlier, he'd gone to pick up the kids at the Jewish Community Centre on Bloor Street. He was parked in a no-parking zone, horns were honking and Zoe got mouthy, threw a fit. She wouldn't buckle her seatbelt. Ben lost it and gave her a cuff on the back of the head. Remorseful, that night he told Zoe he was wrong to have hit her, and apologized. They talked it out. Zoe agreed her behaviour was out of line, too. Ben said she couldn't see *Aladdin* that week. By the next day, Zoe was cuddling in Ben's lap. The last fact I could attest to myself.

Goudge asked me whether Ben would get therapy to deal with his anger and pledge not to hit the kids again. I told Goudge that taking into account Zoe's behaviour and Ben's stress level I thought his action was understandable, though not excusable. Under the circumstances, any parent might have done the same.

The next morning, Goudge called Ben and me to report on her meeting. She said that Zoe was very big on telling her how wrong Ben was to have hit her and to have made her miss *Aladdin*. Deja had confirmed that Zoe had behaved (as Goudge put it) like a "maniac" and "deserved to be clobbered," but was fine the next day. Still, Goudge warned Ben she'd have to "do something about it" if there was a next time.

After that call I knew Ben was doomed. Goudge was a great one for getting the kids to talk about their feelings, letting them vent. But she didn't seem to realize that there might be another reason why the children were saying what they were saying. She turned two scared, confused kids into the centre of power in a bitterly charged struggle, and everyone suffered the consequences.

The situation deteriorated rapidly. On January 26, 1993, Goudge told us she believed she had the authority to alter Dr. Goldstein's parenting plan, but, because "it would appear that



now facing an uphill struggle to be more than Uncle Dad

there's a good chance [Ben was] right," she was going to consult with Dr. Goldstein and get independent legal advice. If she thought there should be a change, the matter would go back to the lawyers for clarification. And if there was a dispute about her power, all Ben would have to do was subpoena Dr. Goldstein. She made this last suggestion offhandedly, as if re-entering the court system was like visiting the chiropractor.

We begged Dr. Goldstein to intercede. We could no longer bear to watch the kids torn apart. Nor could we bear to ricochet from crisis to crisis, our lives constantly on Red Alert. Ben told Dr. Goldstein that unless he could help, he saw only one way to end the conflict: to let the kids live with Terry. The psychiatrist emitted an alarmed "No!" But he was out of the loop now. He told us Goudge had an excellent reputation and suggested we have her call him. Beyond that, there was nothing he could do.

On March 1, 1993, Goudge released her parenting plan arbitration. Among other things, she ruled that both kids were to get a midweek overnight with the other parent, private phones in their bedrooms and a sojourn at summer camp. Ben and Terry would split the cost.

Deja had asked Goudge to settle the camp issue so she wouldn't lose her spot. Goudge ruled that Deja would go to sleep-over camp for two months, while Zoe would go to day camp. Though Ben objected to most of Goudge's rulings, he was relieved that Deja, at least, would go away to camp.

Goudge's rulings came out during a week when the kids were at Terry's. When Deja and Zoe arrived at his apartment that Friday night, Ben greeted them enthusiastically. "Deja," he said, "isn't it great that Helen has decided that you'll go to camp for two months?" But Deja fell silent, looked away. "Well," she said, "I'm not sure if I want to go to camp."

"What are you talking about?" Ben asked. "You've been dying to go to camp."

"Well, who's going to pay for camp?" Deja fired back. "I think you should pay for camp. Mommy pays for a lot of things, you know, and the house is more important than camp, and anyway camp's not that good because you have to do stuff you really don't want to do, and if you stay home you can do just what you want to do, like go to Ontario Place. Anyway, I think you just want me to go to camp to get rid of me. Well, I'm going to stay home to see if that's true."

Ben called Goudge on Monday morning to tell her about Deja's sudden about-face. He asked sarcastically if she was getting the picture yet. Goudge told him not to worry. The matter was decided, finished, done: Deja was going to camp. If she didn't go, well, then, Goudge would have to resign.

By early April, with Deja's summer plans still uncertain, and many of Goudge's other rulings causing conflict and confusion, Ben and I wrote her an urgent letter warning that she was going to be the catalyst for a tragic ending to this story. Ten days passed with no response. On April 12, we wrote her again. That day she wrote the lawyers asking them to clarify her jurisdiction on money matters and to Ben and Terry, requesting information on camps.

On April 21, a Wednesday, Goudge called to say Deja had phoned her to ask if she could visit Terry that evening. Goudge had ruled that the kids' visits with the noncustodial parent were to be on Tuesday nights. But Ben had a hockey game on Tuesdays, and Deja had chosen to go to her dad's hockey game instead of to her mom's. Deja had called Goudge to see if, that week, she could switch nights. Would Ben agree?

My voice went icy. We had no intention, I said, of disrupt-

ing our lives even more by getting involved in weekly schedule negotiations with the kids through Helen Goudge. This week Deja wanted to stay with Ben on Tuesday. Next week she'd ask for another alteration. Then Zoe would start. Dr. Goldstein's schedule was the simplest arrangement, the one the court had ordered, and the one we intended to follow.

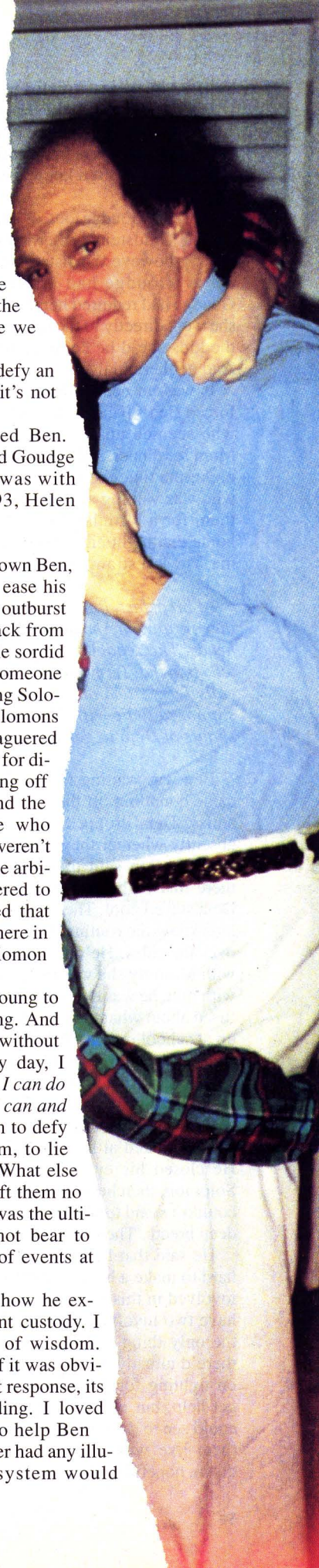
"It's a very serious thing to defy an arbitration," Goudge said. "If it's not honoured, I'll have to resign."

Then Julie Hannaford called Ben. Apparently Terry had just called Goudge to tell her how unhappy she was with her rulings. On April 22, 1993, Helen Goudge resigned.

During the two years I'd known Ben, I'd done what I could to ease his troubles. But since Deja's outburst about camp, I'd pulled back from the situation. Through the whole sordid process, Ben kept hoping that someone would help. He prayed for a King Solomon, but there were no King Solomons in the family court, just beleaguered judges running a clearing-house for divorce, high-priced lawyers living off the avails of human misery and the tell-me-how-you-feel brigade who thought they were getting it but weren't getting it at all. Far too often, the arbitrators of the family court catered to the noisiest voices, or assumed that the truth of a matter lay somewhere in the middle. But the truth, as Solomon knew, was trickier than that.

Deja and Zoe were far too young to understand what was happening. And there was no way to explain without burdening them more. Day by day, I watched the kids slipping away. *I can do what I want and Mommy says I can and you can't make me.* They began to defy Ben's authority, to turn on him, to lie their way out of scary places. What else could they do? The situation left them no other way to cope. For Ben, it was the ultimate indignity, and I could not bear to watch this heartbreaking turn of events at close range.

I asked Dr. Goldstein once how he expected us to make a go of joint custody. I was looking for some words of wisdom. "Stop fighting," he replied, as if it was obvious. I have thought often of that response, its staggering lack of understanding. I loved Deja and Zoe, and I wanted to help Ben parent them well. But I no longer had any illusions that the family court system would



help us look out for the best interests of those children.

With no stamina left even for rage, I began to retreat from a situation I now viewed as hopeless. I still spent time with Ben and the kids, but less time. Although it was too painful for him to speak about, Ben knew what was coming.

With Goudge out of the picture, Ben carried on with Goldstein's alternating weekly arrangement. Terry, however, insisted on the Tuesday sleep-overs that Goudge had arbitrated. Even though she knew Goudge had required her to pick up the kids at Ben's, she went directly to the school to get them. Terry told the kids she'd be coming. But she didn't tell Ben. And neither did they.

It was an accumulation of such indignities that forced Ben's hand in the end: the time he gave Deja, who seemed upset, special permission to see her Mom for dinner, and Terry didn't bring her home that night; the time the kids stood up their grandmother, who was waiting at Ben's place after school to take them for a birthday dinner. The kids didn't come home that night either, or bother to call their grandma. The last straw came on Tuesday, May 18.

At breakfast, Ben asks the kids if they understand they're to come home after school. They nod their heads. The school bus never arrives. The principal tells Ben that Terry has picked up the kids again. Ben calls Terry's and asks Deja why she's there. "We're supposed to be with Mommy," she screams. Terry shouts at Deja to get off the phone; Deja hangs up.

Ben was waiting for the kids the next day. They came bounding off the school bus as if nothing was amiss. Deja dropped her knapsack and wondered absently whether they could have spaghetti for dinner. But Ben said they wouldn't be eating dinner there that night. Zoe cast a furtive glance at Deja. Deja stayed cool. They sat down on the couch. Both kids knew the routine. Dad would be upset. He'd go over the rules. He'd tell them that when they lived with Mommy she was the boss, and when they lived with him, he was the boss. He'd say if they were confused about what to do if Mommy came to pick them up at school on one of Dad's weeks, they should get the principal, Mr. Mokriy, and he would help to clear up the confusion. They'd listen solemnly and tell Daddy that they understood. That way the storm would pass. But something was different about Dad this time.

Ben looked at his two daughters. They were so beautiful. He closed his eyes: if no one had the wisdom of a King Solomon, then he would have to make the terrible choice. He couldn't stand to see his babies cut in half anymore. He took a deep breath. Then he began.

He said that he loved them very much and that he'd tried hard to make a home for them, and that everyone who'd been involved in this terrible situation had agreed that they should have two involved parents. He said that being their Dad was the only thing in his life he'd ever truly wanted to be. But there'd already been too much fighting. They couldn't all go on fighting for the rest of their lives. He'd tried so hard to get help, but no one had helped, and now the only thing he could see to do, so there wouldn't be more fighting, was to let them live with Mommy for a while. When things settled down, hopefully soon, he'd try to work out some arrangements

with Mommy so they could be together again. He knew they were too young to understand all of this right now, but he hoped that when they were older they'd understand. He said that he'd always be there for them, and that he would call them at Mommy's, but he hoped they'd call him, too.

The kids were silent. Zoe's bottom lip trembled. Tears streamed down Deja's face. Then, Ben bent down and drew his children to him. He gave each of them a clutching hug. "I'm sorry," he said. "This didn't have to happen. I love you very much." He told them to gather their things and change into the clothes they were supposed to wear when they went back to their Mom's. Then he put them in a cab and stood watching numbly as it rounded the corner and drove away.

"In this legal system, a spouse who feels wronged can carry on a court battle as long as there's enough money and anger to fuel it"

Ben hopes now that Terry has the kids, she'll take responsibility for making sure her children have a normal relationship with their Dad. But that spring and summer, whenever Ben calls Terry's, a machine picks up his calls. His messages are not returned. Ben writes the kids postcards and letters. No reply. Once, Ben manages to get Terry on the phone. Terry says the kids aren't there, and she doesn't know when they'll be back. Ben's mother calls Terry hoping to see her grandchildren. "Maybe in the fall," Terry tells her, "when they're adjusted." By the fall, a recorded message on Terry's phone says the person at that number doesn't wish to receive their calls. Ben never hears from Terry about child support.

In June, after an emotional encounter in the school hall, Deja falls into Ben's arms. They both weep. Shell-shocked, Zoe wiggles to escape Ben's hug and races for the school bus, chattering about a field trip while Ben tries to keep up. She disappears inside. In October, Deja reluctantly agrees to accompany Ben to lunch; she says Terry has told her and Zoe not to go with their father. He might kidnap them, and then they might never see their Mommy again. Ben

says that he has tried to call often, but, because of the recording on the phone, can never get through. Deja says there's nothing wrong with the phone.

Ben writes his daughters letters, asking what they're up to, saying he thinks about them every day. Every professional he consults says keep writing. I write, Sara writes, the grandparents write, our friends write. No answer. Ben visits the school periodically, drops off letters. Later, the school social worker tells him that Deja has told her that she's been instructed to turn over all his letters, unopened, to Terry, who will tell her if there's anything she needs to know.

Shortly before Christmas, Ben's mother leaves Hanukkah presents for the kids with Terry's parents, and drops off giant felt Christmas stockings at Terry's house. (Though Jewish, she and the kids have always delighted in this ritual.) A courier returns all the gifts to her, unopened. Enclosed are two letters, virtually identical, signed by the children: "Dear Zella, "Thanks but no Thanks. Why did you give me a Christmas present when we are Jewish?...Why didn't you listen to me when I wanted to go to my Mommy's house? You never cared to hear how we felt, but you did what my Dad told you to do."

Someone we know hears the word on the street. "I know Ben is heartbroken," this person tells me, "but there's detaching, and then there's detaching. I don't think I would be capable of not seeing my children. As a man and a father, I have difficulty justifying for myself what Ben did."

Stories drift back to us, rumours, gossip. I hear Ben never gave a shit about the kids—he was only fighting for custody to fuck with Terry's head. I hear Ben isn't paying a cent in child support. I hear Ben abused the children. I hear that when the judge said Terry could buy the house, the next day Ben put the kids into old clothes, stuck them in a cab and sent them away. I hear Ben deserted his kids, never even visits.

People ask questions, offer advice: but can't you go to court? Have you thought of getting professional help?

A lawyer, reflecting on Ben's case and the system that handled it, shakes his head with regret: "Zaldin did a very good job for his client. He got her everything she wanted."

Deja's public-school graduation: June 1995. Ben hasn't had any contact with Deja, Zoe or Terry for almost two years. Concerned that his presence will upset Deja, he seeks the advice of the principal, who says he should attend: "If you don't, Deja can always say you didn't care enough. But if you go, however she views your presence now, the undeniable fact is that you loved her enough to be there." Neither child will meet Ben's eye. Immediately after the ceremony, Terry gathers the girls and leaves. Later, Ben lays a bouquet and modest keepsake, engraved for his daughter, at Terry's door.

August 30, 1995: without warning Terry moves, leaving no forwarding address. We ask the police to locate her, and when they do, she tells them that Ben deserted his kids, "put them in a cab and that was that." She goes on to say that Ben's letters so upset her "kids' psyches" that, after the first, they turned them all over to her—unopened. Then Terry accuses Ben of stalking her. Ben's father and stepmother, too: she has seen them driving down her street many times. Because stalking is a criminal offence, the detective doesn't "feel comfortable" telling Ben where Terry is living. He says Terry's (new) lawyer may decide Ben has the right to know where his kids are in school. "Otherwise, your only avenue is family court." Terry's new lawyer has no instructions. On September 25, Ben learns his kids are enrolled at Thornhill Public School. The law prevents the school from releasing Terry's address. To this day, Ben has no idea where his children are living.

We spend an excruciating forty-five minutes with the kids' new principal, who treats Ben in a rude, judgmental manner. Next, the vice-principal reports that the kids had come to see her to say they knew that their Dad had found them, but they didn't want to go with him; she'd asked the girls whether they were afraid he'd take them away. "No, he'd never do that," they'd said. "We just don't want to go with him." Ben asks her to pass on his letters. They are his only hope that he might reconnect with his children one day.

Approaching a school exit after the meetings, we almost collide with Deja. Startled, Ben blurts out her name. Less than a foot away, and now bearing the slouching, cynical gait of adolescence, Deja keeps on walking, but not before glancing in our direction. In her eyes there is curdled rage.

One summer day Ben and I were strolling in a country town when a notice in a shop window caught my eye. There were photographs of three beautiful children, two girls and a boy, eight, ten and eleven years old. There was also a picture of their father. Transfixed, I stared at his face for several moments. He was a computer systems ana-

lyst, in his forties, five foot nine, 170 pounds, brown hair. He did not look extraordinary in any way. He was wanted for "custodial interference." His children had been missing for a year.

I thought about this man, this father, going on the lam with his children. I thought about the children, their poor mother. The grief. The fractured lives. He'd crossed a line, and I knew it was wrong. I hoped his children would be found. But now I also understood what kind of loss and injustice and helplessness and pain could drive an ordinary man, a decent loving father, to madness.

Just then, Ben strolled over and interrupted my thoughts. He glanced at the poster, but quickly turned away. Reflecting on the suffering of lost children was a road he could not bear to go down. He caught my eye, and for a moment we exchanged a sorrowful glance. Then, in an uneasy silence, the two of us walked on.

THE COSTS

The lawyers' fees

Ken Cole.....	\$2,665
Judith Beaman.....	\$3,800
Tim Lipson (criminal lawyer).....	\$2,000
Moishe Reiter.....	\$175,000 (\$94,635 contested)*
Julie Hannaford.....	\$43,000 (\$15,000 paid)
Robert Schipper..... (contesting Reiter's fees)	\$50,000 (projected)
	\$276,465

The mediators' and assessors' fees

Mario Bartoletti.....	\$1,300
Irwin Butkowsky	
recommendations..... (2/3 of cost)	\$3,900
mediation.....	\$1,000
Dr. Sol Goldstein.....	\$8,200
Helen Goudge..... (1/2 of cost)	\$2,200
	\$16,600

TOTAL PROFESSIONAL FEES..... \$293,065

Loss on the matrimonial home

July 1989..... (appraised value)	\$1,100,000
May 1993..... (sold to Terry)	\$475,000
Approximate loss in value.....	\$625,000
Ben's approximate loss.....	\$312,500

**The process of contesting Reiter's fees began in 1992. The hearing has lasted for twenty-one days over nineteen months, and is unlikely to conclude until the summer of 1996. The Royal Bank (one of Reiter's creditors) is litigating over Ben's house proceeds; the bank appointed Reiter as its agent to collect his accounts. The decision can then be opposed, or leave to appeal can be sought. An appeal will tie up the funds for approximately two more years. Whatever the outcome, due to debts arising from his matrimonial litigation, Ben will realize nothing from the sale of his home.*