



Backdoor Assessments and Counselling In The Middle Of Custody and Access Disputes

Parental separations can be messy matters. When parents see their lawyers, they learn that the one who leaves the home first, in the absence of a separation agreement, forfeits legal custody (decision making) to the parent who remains with the children, pending a settlement on the matter. As per the Children's Law Reform Act (Ontario, Canada), governing custody and access issues between separated parents:

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. R.S.O. 1990, c. C.12, s. 20 (4).

In view of this statute, some parents trick the other parent into leaving the home under the ruse of a trial separation. Once having learned of the fallout from such action, the parent who leaves feels undermined with respect to their relationship and parental authority with their children. From there, the conflict between the parents escalates and the children, subject to parental hostilities, surface with problems in their own right, consequent to the stressors of the situation.

It is at this stage the outraged parent seeks help, particularly trying to marshal support for the legal battle. Many times these parents seek a one-sided assessment, asking the assessor to only meet with them or perhaps them and children, but certainly not to include the other parent.

One-sided assessments have very little weight in family law matters. Further, custody and access assessment Standards of Practice from psychiatry, psychology and social work prohibit one-sided assessments and are grounds for disciplinary action through respective colleges.

The other strategy for gaining a one-sided assessment is to approach the family physician or community mental health clinic or even child protection agency (CAS) and ask for help or counselling for a child in distress.

While it may be self-evident that the child is in actual distress, careful telephone screening reveals that the distress is likely owing to an unresolved custody and access dispute and that what is being sought is a "backdoor" assessment.

These situations are well known to custody and access assessors/counsellors who will quickly realize the larger issues at play. The experienced assessor/counsellor will be aware that the parent calling may not even have legal authority to request counselling on behalf of the child. In view of the larger issues at play, the experienced assessor/counsellor, acting with a view to the statutes and code of ethics in such matters, will deny meeting with the parent and/or child. To meet with the parent and/or child on a one-sided basis actually serves to inflame matters further when the other parent learns of the situation and drags the child next to their assessor/counsellor to redress the concern for imbalance in the dispute. In other words, both parents drag the kid off to separate counsellors, the fight escalates and the child is at greater risk of exposure to parental hostility and distress – let alone conflicting treatments.

When called for a one-sided assessment or counselling for children between separated parents in dispute, the experienced assessor/counsellor will likely advise the parent of the issues involved and would be prepared to work on child related matters with the foreknowledge, consent and participation of the other parent and at times, subject to their lawyers' approval.

Unfortunately to help children in distress consequent to custody and access disputes, the solution can be complex. Referral sources are advised to be mindful of these tactics and issues so matters are not inadvertently made worse. These matters take considerable expertise to manage and require considerable patience to see through appropriately.

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