

Custody/Access Dispute and Choice of Lawyers

It is easy to ratchet up the conflict between separated parents: Send them to litigious lawyers who will tell each respective parent they can win his or her position. Then for added measure, have each lawyer advise their respective parent to obtain as much information as possible that will reflect poorly on the other while at the same time documenting as much positive information about oneself. Put all this information into writing and conclude with a statement indicating how all the aforementioned supports his or her own position otherwise known as, “the children are better off with me and the other parent should be stripped of parental rights”. In short order you will have two very disgruntled parents who hate each other with children stuck in the middle, looking shell-shocked from the parental conflict.

To make matters worse, rather than seeing the above dynamic as the source of increased conflict, have the lawyers step back in favour of each parent documenting the other’s moves and behaviours so that they can be negatively interpreted and held against them. In little time, the parental conflict will have taken on a life of its own to which an assessor can then be introduced. Whichever lawyer is most dissatisfied with the outcome of the assessment can then initiate an attack on the assessor to undermine the assessor’s credibility with the courts. So rather than ever settling, the nature, depth and breadth of the attack can escalate, keeping a resolution at bay seemingly forever. The children get to languish indefinitely, often deteriorating themselves, socially academically and behaviourally. But that can always be blamed on the other parent!

Alternately, conflict between separated parents can be managed in favour of achieving a negotiated settlement. Rather than a litigious disposition where the lawyers encourage undermining the integrity and position of the other parent, they can work towards identifying issues and developing solutions to maintain or improve relationships and parental functioning. In the long run, they can help their respective client appreciate how two well-intentioned and healthy parents can better provide for the long-term interests and needs of their children. They

needn’t shy away from contentious issues, but address them not with the intention of limiting parental involvement or authority, but with the intention of improving parental well-being and hence care and well-being of the children.

As the lawyers reach impasses, they can bring in a social worker or other support, not with a view to determining illness, but with the view of facilitating education on matters related to the well-being of children between separated parents. If mental health issues are apparent, referral to treatment facilities or agencies can be facilitated. The social worker can also meet with the children to ascertain their concerns and facilitate their adjustment to the parental separation. Throughout, the social worker can also help parents make much needed adjustments to their new circumstance. In the end, children can feel supported by both parents who may be apt to act more reasonably and supportive of each other and hence minimize concern or anxiety on the part of the children. They in turn will be better able to concentrate and manage their tasks, such as school.

While presented above as one way or the other, it is clear that some custody and access disputes intensify over time whereas others settle more easily.

The eye on the prize is the well-being of the children. While some parents’ behaviour or bona fide problems are of concern, many can be dealt with in ways that can lead to healthier conclusions. Parents are advised to be cautious that the legal process isn’t the toxic event intensifying problems. Choose your lawyer wisely and choose how it goes.

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Gary Direnfeld is a social worker. Courts in Ontario, Canada, consider him an expert on child development, parent-child relations, marital and family therapy, custody and access recommendations, social work and an expert for the purpose of giving a critique on a Section 112 (social work) report. Call him for your next conference and for expert opinion on family matters. Services include counselling, mediation, assessment, assessment critiques and workshops.