

Hire a Lawyer

There's an old saying in the law that the person who represents him or herself has a fool for a client. However, there are a number of different reasons why persons subject to custody and access disputes choose to represent themselves when at court.

Increasingly, more and more persons cannot afford to hire a lawyer and so they are forced to represent themselves. In other circumstances, some persons are unsatisfied with the direction their case is taking, believe they can do better on their own, and hence seek to act as their own advocate.

Persons who represent themselves should be warned. There are many rules, subtleties and nuances to the law that the novice just will not be privy to. As such the person who represents him or herself is at risk of undermining his or her own interests in the absence of important legal information. The person may miss important deadlines for filing, may not fill in forms properly, and may have mistaken beliefs in terms of what is acceptable information or evidence. Further, the person may not be informed even as to alternate strategies for conflict resolution other than resorting to the courts.

There are also those persons who have cycled through a number of lawyers, never satisfied with the feedback provided or the direction of their case. In these circumstances, the person may have been provided very reasonable and appropriate guidance and their case may be progressing, as it should under the circumstances. These persons may not understand that a good fight does not equal winning and they may have the mistaken belief that the harder they fight, the more likely it is that they will win. These persons who have cycled through a number of lawyers who are then self-represented are at substantial risk of presenting an image of themselves as obstructionist and controlling. They may create an image of themselves in the minds of the court that is thus contrary to their interest. These persons are advised to heed the input of their lawyers particularly when their feedback and guidance is similar.

Not only are persons who are self-represented at risk of poor management of their own file, they may find themselves unable to access other services. Some assessors decline to work with self-represented persons. The concern of the assessor is that he or she may be drawn into providing legal advice to the self-represented client. In no circumstance is an assessor permitted to offer such advice. The only way for the assessor to protect him or herself from that circumstance is to decline the request for service altogether.

If you cannot afford a lawyer yet you feel you must go to court, there are a few strategies that may be helpful in your situation. In many jurisdictions there is government supported legal help, otherwise known as legal aid. You may speak to a lawyer in your area and ask about this. Further, in many courts there are lawyers stationed to provide on the spot advice. In some jurisdictions, these lawyers may be referred to as Duty Counsel. You can contact your local court to ask if there is a Duty Counsel present. Lastly, while you may not be able to afford a lawyer to fully manage your file, some lawyers will agree to act as a consultant to advise you on how to manage your case.

While some persons hold the belief that court is about winning, it's not. At best, court is about having an impartial person learn about your circumstance and where resolution cannot be achieved by any manner of negotiation or discussion, the resolution can be imposed by Order.

While a person may never be satisfied with the outcome, the best process is generally achieved through the use of a lawyer.

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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.