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Courts won't ignore violence

On Family Law

By John T. Syrtash

Q: Two years ago, I spent four months in a shelter with my small children because of the violent behavior of my ex-husband. I now have a full custody of the children, and a restraining order against him. He has no access to the children, but an obligation to pay spousal and child support. Then he left Canada.

He's now back and has sponsored his father to come to Canada. His father has now asked the Family Court for access to his grandchildren on a regular basis. My children have never seen him before. Will the grandfather get access despite the fact that his son, my ex-husband, owes us a large sum, hasn't lived in Canada and is denied from seeing the children and myself?

A: The grandparents of a child can, in theory, apply for access to the child if it is in the child's best interests. This usually applies to "psychological" parents, relatives or grandparents who the child has grown up with and who the child needs to see.

Courts are anxious not to disrupt a child's emotional development if a child has developed an emotionally stable bond with a particular individual that nurtures his or her development, so long as it does not interfere in the normal rights of the child's parents to raise the child.

In Ontario, however, as I have written before, the Ontario Court of Appeal has taken the side of parents against grandparents whenever they have crossed paths over the question of a "right" of access by a grandparent to a child. In this particular situation, if properly argued, I doubt that the Court would allow the children to see a grandparent who they had never seen.

The Court might suspect that his court application was merely a backdoor ruse to permit the father to see the child.

The failure to pay child support is rarely used by a Judge to stop access to a child, since access to one's parent is a right of the child. But having left Canada is somewhat important, and Dad's violent behaviour is key. The Court won't ignore it.

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