

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP

Answers to pressing questions on Family Law.

Facing Access Problems

Question: My wife has refused to allow me to see my six-year-old daughter for the past several months. There is no problem with the child support I pay, but she insists I am a poor influence because we had a bad marriage. What can I do?

Answer: In the absence of neglect or abuse, the courts are generally very conscious of a child's right to have as much contact as possible with both parents, including the parent with whom they do not normally reside. Such contact is actually spelled out in the Divorce Act. Even in the face of a written agreement "access parents" often face problems by primary caregivers who attempt to frustrate access for various reasons. The better way to deal with such situations is good communication, not court action. Head off conflict by trying to stay on excellent terms with your ex. If this becomes impossible a mutual good friend or clergymen will also save you a bundle. If all else fails, a competent family law lawyer can bring a court application to restore your access by enforcing your order or agreement, or commencing access right by application in either Ontario Court of Justice or the Superior Court of Ontario (Family Division). After filling and serving your application, in which you make sure your claims of access denial, a Judge sits in the room with both parties and their counsel and attempts to mediate the decision by clarifying how another Judge at the trial or motion might decide the case. This initial court session is called a "case conference" and is the preferred method of solving matters in the Ontario Family Courts. If the parties follow the advice of this initial case conference judge, the matter often ends right then. But if even one of these parties cannot agree, the judge might recommend that the children's lawyer or other third party professional be appointed to assess what type of access, if any, is best for the child before a trial takes place. In the meantime, the access parent can still ask a judge after the case conference on a "motion" to make a preliminary order before the trial for scheduled access based on evidence that the child is being unfairly denied time with the other parent.

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