

Credible Data in Custody and Access Disputes

Many persons start with the premise that if you tell your story often enough, it must be true. Hence in bolstering child custody and access claims, some parties and lawyers run about gathering as many affidavits and one-sided opinions as possible. Trouble is, most are not worth the paper they are printed on. Even reports from expert sources may not be credible if the data is derived from a single source.

Parties subject to child custody and access disputes are by nature of the situation, vulnerable. It often happens that parties subject to child custody and access disputes engage others by sharing with them the nature of the dispute and their hypothesis underlying the behaviour of the other party. They fear a loss of their relationship to the children as they had envisioned it. They are often feeling desperate in this concern and hence are prone to present their situation in a way that favours themselves over the other party. It may be that they are innocently venting their upset or consternation, or it may be that they are trying to induct others to their version of events to curry support of their position. In any event, the listener, be it family, friend or professional is only privy to a one-sided account. Typically the account provided is emotionally laden and hence the listener is prone to accept the party's version on face value. In the case of counsellors, it is generally their role to provide support and hence they may not be prone to challenge a person's version of events.

In the face of an emotional account of wrongdoing, many persons, professional and otherwise, are moved to action to help correct a perceived injustice. However, in the absence of verifying data or at least contrasting it with input from the other side, the injustice at risk is justice itself.

Experienced assessors are well aware of the above dynamics and that is why, by standards of practice, they are prohibited from forming a final opinion on the basis of a one-sided account or data derived or traceable to a single source. Data derived from or traceable to a single source occurs when one party sees a number of counsellors, doctors or the like, tell their story and then receive letters of support from those professional sources, but based solely upon the

one-sided account. No matter how reliable the professional, the data remains one-sided and hence may not accurately reflect the situation.

Credible data is that which the assessor has tested. Strategies for testing include obtaining data from multiple sources, discussing and contrasting the data with the parties and at times confronting the parties on their version of events in view of conflicting data.

The value of credible data is that it can help the parties and courts achieve a more appropriate resolution to the child custody and access dispute. Credible data may confirm the presence or absence of abuse claims as well as any other positions or hypothesis put forward by the respective parties.

The risk of gathering one-sided data is that it and the process may contribute to an escalation in the dispute as now each side feels compelled to out-do the other in the race to amass support. Further, the process almost requires each side to escalate their positions and claims so as to restore balance to the perceived injustice each brings about to the other.

Credible data as obtained by an experienced assessor through an appropriate process has the advantage of clarifying issues and facilitating a reasonable resolution. Discreditable data collection runs the risk of escalating conflict and undermining an appropriate resolution and can also undermine the well-being of children subject to the custody and access dispute.

Before you run around gathering affidavits and reports, at least remember this: A reasonable assessor can tell the difference between credible and discreditable data and will have concern about a party whose allegations are unfounded or exaggerated.

Gary Direnfeld, MSW, RSW
(905) 628-4847
gary@yoursocialworker.com
www.yoursocialworker.com

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.