

## Settling Custody And Access Cases

Custody and access are positions that are only won by a race to the bottom. Each parent must present the worst of the other while at the same time elevating himself or herself as the better parent. This race to prove who is worst while simultaneously defending oneself is the mechanism for an increase in parental conflict and decline in the child's well-being. In the process, parents and children may present as depressed, anxious, angry or hostile. Settling these cases requires a skillful lawyer, mediator or counselor who understands the emotional impact of separation and can appropriately facilitate the negotiation process.

The process begins by respecting relationships and establishing mutually agreeable goals. Both parents will readily agree to at least two goals: a meaningful relationship with the kids and that their kids grow up well. This provides a starting point of shared interest. Discussion on these interests reduces conflict even though anxiety will continue until the settlement is achieved. Civility over name-calling must reign.

With movement towards mutual interests and goals, then parents may be guided to identify particular interests and particular concerns. Interests may be stated as preferences or value statements, such as "I like...". Concerns may be stated as issues regarding parental behaviour or deportment.

Parents can be helped to find creative or non-traditional solutions in a brainstorming process. When brainstorming, any potential solution can be considered and parents should contribute freely. The process of brainstorming often leads to more discussion. Negotiation follows naturally as parents see viable trade-offs to meet respective interests.

For concerns about parental behaviour or deportment, safeguards can be discussed, negotiated and put in place. Given the concerns are appropriately addressed and goals are met, then the child stands to benefit twice – once by the relationship with both parents and once by the care of a now healthier parent. This too meets the mutual interest of the parents.

Where clinical or safety issues intrude, parents can discuss and negotiate "what if" scenarios that can include treatment or counselling, supervision and schedules of increasing time with the children that is dependent upon meeting goals. The challenge is to help parents frame concerns as observable behaviours and clearly identify the problems they pose. This in turn can lead to constructive discussion on how to facilitate change or manage safety issues. Solutions are proposed that may provide the opportunity for the plan to adapt over time as issues are addressed. This kind of process may provide incentives to improve behaviour or deportment. Thus improved health and hope is encouraged.

With the more defensive parent, the discussion of their behaviour or deportment can stall the process of settlement. The strategy in this situation is to continually bring the parent back to their interest, which is to maintain a relationship with their children and have their children develop well themselves. The parent may then see how embracing proposed solutions and changes can facilitate their goal – likely more quickly, easily and economically than Court.

When the parents achieve a settlement, the agreement can then be detailed into a parenting plan. The plan is theirs as opposed to one determined by an assessor or Court. They own it.

Settling parenting disputes is not for the faint of heart. These can be intense negotiations. Parental anxiety during the process may be excruciating. This is still better than an escalation of conflict that undermines relationships for all involved. Negotiated settlements tend to cost less than litigation, maintain control in the hands of the parents and generally provides for more durable outcomes.

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