



Even Court Orders Aren't Cast in Stone

There is a belief amongst some parents that Court orders regarding parenting matters are cast in stone and unalterable. This is not the case.

Court Orders should be regarded as definitive at the point in time and for the foreseeable future to which they are made. However, children grow and circumstances change. Hence some Orders become no longer relevant or fail to meet the needs of the children in view of developmental change or change in circumstance. In other words, what makes sense today may not make sense tomorrow.

Court Orders make a good “fall-back position”. If parents are in conflict and remain so, the Court Order provides the terms of reference, setting the rules for parents to manage. However, if the parents are not in conflict, they may by mutual agreement, seek to vary the Court Order to reflect new agreements. In such situations, the Court may want to be assured that parents are truly entering into new agreements voluntarily as one or other parent may have been subject to coercion in the process of reaching the new agreement.

Some lawyers, seeking to protect their client's rights or position may seek to hold the Court Order over the head of the other party so as to fend off change. Hence the Court Order may be presented as a final statement and even as a source of intimidation. However, parties need not fall prey to such tactics.

What must be understood though, is that until the Order is actually changed, it remains in effect and must be respected. To not respect a Court Order places the party at risk of being found in contempt of court. In other words, the party breaching the Court Order may be subject to a fine. At the very least, not respecting a Court Order can seriously undermine that party's position and view that a Court Order should be varied.

Thus Court Orders carry significant weight, must be respected, but can be subject to change under certain conditions.

Conditions can be as variable as life itself, but generally would not be expected in the foreseeable future from the date of the Order. Persons who seek to alter an Order prematurely, in the absence of a passage of time, and in the absence of clear and significant change in circumstance run the risk of having their credibility questioned or worse, may be considered abusing Court process to harass the other parent.

If you believe reasonable time has elapsed and there is a significant change in circumstance, you may try to revisit the Court Order with the other parent and see if you can reach a new agreement that could be incorporated into a new Order and failing that, you can consult a lawyer to determine if you have reasonable grounds to review and vary the Order.

If you consult a lawyer, value the opinion if told you do not have reasonable grounds to vary the Order. Further, even if told you may have reasonable grounds, consider the fallout from the situation if met with opposition from the other side.

Often more serious than an Order slightly out of date or touch, is the harm renewed conflict can bring to children. As the saying goes, sometimes it is better to let sleeping dogs lay. So having grounds to vary an Order doesn't necessarily make that option better for the children even though Court Orders aren't cast in stone.

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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.