



High Heat, the Assessment and then Court...

In the heat of some custody and access disputes, one-sided accounts of the situation can be convincing. Both parents have their view and are apt to present the issues more with their own interest at heart.

While the “interest” is supposedly the children, high emotions may reign and hence very personal and emotionally charged issues get confused with those of the children. Parents may talk to anyone who will listen, provide their personal account and gather allies. Lawyers may inflame the situation by taking as gospel, one-sided accounts either from their client, friends and family and even other professionals who may have been inducted first by the client’s one-sided account.

In some of these cases both parents interpret all behaviour of the other negatively. Harmless behaviour may be reframed as inappropriate or egregious or outright abusive. Allegations may intensify with highly charged language taking precedence over a determination of actual behaviour. By-standers can be overcome with the intensity of a parent’s delivery of information. They line up in a high stakes tug-of-war, each convinced of the righteousness of their position.

This may be the starting point for the custody and access assessment. Even the choice of assessor may be hotly debated but finally the assessor does enter this highly charged, polarized conflict.

The task of the assessor is to step back from the position of either party as gospel. The assessment process requires a meta-view with the goal of determining custody and access recommendations. Data is gathered from both sides. The process includes a review of the legal brief; the file containing the account, court documents, exhibits and affidavits regarding the dispute. The assessor may find an “affidavit war”. In an affidavit war, both parents present with a stable of friends, family or employers each of whom supports the position of the respective parent while undermining that of the other. The assessor may rely solely upon the affidavit material or selectively interview some persons. It is sometimes the case in such assessments that the affidavits seem to cancel each other out, rendering the content less useful than their indication of the degree of conflict and

positioning they represent. Hence the utility of affidavits in a custody and access assessment may be as much the indication of how far afield the dispute has run as the information they purport to provide.

Further, and in such cases, there can be a reliance on the input of various professionals, none of whom may actually have a well-rounded view of the dispute and parties. Each parent may trot out their professional to support or undermine respective issues. Again, the role of the assessor is to take a meta-view even with regard to the input of other professionals. Of concern is where a third party professional offers more than behavioral descriptions of their own observations. The third party professional may stray to offer opinion or inferences on the case in the absence of having met and assessed both parties. As such, their opinion may be disqualified as based upon a one-sided account.

Finally and in the midst of a contentious situation, the assessor renders an opinion and recommendations. In some cases, this provides the basis of a settlement. In other cases this is just a renewed starting ground for more conflict as one side takes offence to the opinion and recommendations of the assessor. If that happens and a settlement is not achieved, then off to court the dispute goes. In the new round of conflict, the assessor may be included as a target when the dissatisfied party now looks to undermine the assessor so as to still advance their position.

Matters in such highly charged cases can quickly appear personal. However, the assessor stands distanced from the fray. If court is required, then that too shall be part of the process and the assessor remains available to the court’s scrutiny and tests therein.

Some disputes go all the way. Family in ruins, pity the children. The will of the Court remains.

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