



## Right of First Refusal

In hotly contested child custody and access disputes, a contentious matter that often arises is the *right of first refusal*. Typically this refers to situations where a parent is unable to meet an obligation for the care of the child and that parent may then consider the use of a baby-sitter over the other parent. In such situations, the other parent seeks to have this right of first refusal to care for their child in lieu of resorting to a baby-sitter.

In these acrimonious disputes, both parents seek to withhold the child from the other parent even when they themselves are not available. There is such an animosity, that both do not want to give any perceived advantage of a special relationship with the child to the other parent by virtue of more time. This matter also rears its ugly head when one or other parent has a new partner that the other parent does not accept.

As the parents enter combat over the right of first refusal, the game playing heats up. If the parent who is unable to meet their obligation uses a grandparent or allows the child a sleepover with a friend or other family member from their side, is that contravening this right of first refusal? This becomes a very sticky point, as both parents can be remarkably manipulative at withholding or at least not supporting the relationship with the other parent whilst coming up with ways to beat the rules.

This mess takes on the appearance of two young children fighting over the same toy and then hanging on to it for dear life to assure the other child doesn't swipe it back.

For the children caught in this conundrum, they learn the depths of their parents' mutual animosity. These children also live in fear, needing to keep secrets as to the comings and goings of their parents. They are also inducted into the game-playing and eventually learn to use deception to mitigate their own needs and wants. Because these children live a life where both

parents denigrate the other through this behaviour, the children suffer low self-esteem which in turn leads to greater risk of depression or alternately, acting out behaviour either of which in turn affects school performance. The downward cascade of the child's well-being is predictable and palpable.

Typically the best solution is for both parents to address their respective issues, whether it is unresolved anger at their former partner or jealousy that a new person may enjoy a relationship with the child. It may well be that one or both parents have to face their own insecurities that have little to do with the other parent specifically. Counselling is thus indicated.

In addition to the parents entering counselling, the needs of the child may be served by the parents entering into mediation to resolve conflicts with either a new set of rules or on a situation-by-situation basis. If parents are resolved to never come to some middle ground, then a Parenting Coordinator may be of service to offer the mediation as well as have powers of arbitration to effect decisions on behalf of the child. The goal is to emancipate the child from the parental conflict.

Where matters are so intractable that the parents cannot be moved in a manner so as to provide relief to the child, then counselling would be indicated for the child to help bolster their ego defenses such that they would be less vulnerable to the contamination of the parental conflict.

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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.