

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP

Answers to pressing questions on Family Law.

Fines often deter mothers.

Question: How many mothers have been sent to jail or fined for not letting their children see their father? Are fathers getting more rights or are the courts biased to the mother? If you have a court order to see your children can you call the police to enforce the order? In a previous article you mentioned that you can record your phone conversations but will the court allow such evidence? When do the courts start listening to the children and how often are the children's wishes granted?

Answer: Although courts are reluctant to send mothers to jail, they are far less reluctant to fine them. However, if a mother is indeed providing to be difficult a judge issues an order for her to comply with a threat that the next time she will be imprisoned. At the same time the court often orders the mother to reimburse the father for his legal costs, usually a few thousand dollars. An accumulation of these costs alone can dissuade a mother from acting unwisely. After a number of such warnings and fines the courts have, on occasion, jailed mothers. It is therefore more the court process and the attendant fines and/or costs that lead to results, rather than jail itself. In the course of such proceedings, additional methods such as a court application to switch the child's custody can also be effective. You can call the police to enforce an access order only if the order specifically asks the police to assist in the enforcement. Courts have become increasingly sensitive to the rights of father and their need to have maximum contact with their children. However, much depends upon how well their case is represented in court, which often means how much money you have or how much Legal Aid will fund (if you qualify). At the same time if abuse is an issue, and the woman is well represented, the courts will carefully protect a child or his mother. But once again arranging for qualified legal representation is key. Where one must prove someone is lying or to demonstrate abusive conduct you can tape record a phone conversation using one's own phone and the court will accept the evidence. Courts consider a child's wishes based on his maturity and needs, not his age, and not directly. However, by age 14 the court will listen very carefully. A child must be represented by the government through the "children's lawyer" appointed by the court.

John T. Syrtash, Associate
GARFIN ZEIDENBERG LLP
Yonge-Norton Centre
5255 Yonge Street, Suite 800
Toronto, Ontario, Canada M2N 6P4
Phone: (416) 512-8000 ext 410; Direct (416) 642-5410
Fax: (416) 512-9992
email: jsyrtash@gzlegal.com

John Syrtash is an associate and family law lawyer with the Toronto firm of *GARFIN ZEIDENBERG LLP*. Neither GARFIN ZEIDENBERG LLP nor John Syrtash is liable for any consequences arising from anyone's reliance on this material, which is presented as general information and not as a legal opinion