

**Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP**  
**Answers to pressing questions on Family Law.**

**Don't Be a Wimp: Go for Custody**

**Question:** I am a single mother. My child is three-and-a-half years of age. His father is not in his life and has not seen him or had any interest for over a year-and-a-half (of his own free will). Also, I receive no child support and don't want it. I just want to be able to travel with my son, but need the father's written permission or Foreign Affairs Canada says that should get a court order for full custody. Then, I can get a passport without his permission. Do I really need a full blown custody trial just to travel with my son?

**Answer:** I would first request that dad consent to a court order to give you sole custody, without any access. Also ask for child support based in his annual income after he discloses what he earns. There is no reason why you should not seek it since you are entitled to custody (or at least primary residential care and control). Don't be a wimp. If dad says no or doesn't answer, then I would sue for sole custody in your local Ontario Court of Justice. If he fails to file an "answer" to the court action, then you win almost automatically. After a prescribed time, I can "note him in default" that entitles you to ask the judge for custody and support judgment at a court hearing without his being further notified. The judge only hears you evidence. Sometimes there is no oral evidence in such cases. In a default hearing the judge will occasionally even allow all the evidence to be reviewed in writing. If dad does file an answer in which he claims for custody himself, joint custody, or access, or if he wishes to defend the child support claim, the matter could lead to a contested trial. However, in 90 per cent of these cases the matter is settled well beforehand at a series of one to three consecutive mediation-type sessions before a judge, called a case conference, settlement conference and trial management conference. There, judges work hard to convince parties to settle based on their experience. In many cases like yours, primary caregivers obtain court orders for the right to travel, child support and, at least, for primary care and control if not outright sole custody. If the fellow wants it he gets some form of access scheduled or just left open. And trials are becoming increasingly rare.

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