

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

Courts Will Allow Multiple Religions

Question: I have been separated from my ex-wife for over five years and have custody and primary residency of our son, age six, since he was two years old. Neither myself nor my ex-wife are religious but my ex-wife does celebrate some of the Jewish cultural activities. She claims that our son is Jewish and demands that he miss school on days that are Jewish Holidays, Does she have the right?

Answer: Yes, if she truly practices Judaism Canadian law technically gives you the sole right to decide the child's religious upbringing since you are the custodial parent. However, it curiously also gives the access parent, in this case the mother, freedom to enjoy her religious traditions and to introduce her religion to the child on her time with him, even if it appears to contradict you religion. Normally, these seemingly inconsistent rules are interpreted to mean that the mother can take the child to synagogue and introduce Judaism with the child on her time and you can introduce your take on religion in any way you want when the child is with you. The reason is that Canada is a multicultural country and the courts show great deference to this tradition enshrined in Canada's constitution, particularly Article 27 Canadian children are not, in fact confused by their parents' differing religious positions if the parents are tolerant of each other and don't allow their differences to upset the children. The Courts enforce this principle by allowing the access parent maximum freedom when it comes to religious instruction, subject only the rare situation where a child could be in some physical danger, e.g., Jehovah's Witness cases where a parent refuses to allow blood transfusions for a seriously ill child. In your case I suspect that a Court would likely give your wife extra access to you child on her religious holidays, which by definition means that she could remove the child from school on those days. However, if she simply demanded that the child stay home from school without spending time with him on those same religious days then she may well have a problem. She cannot ask you to practice her religious for her because she is imposing her religious traditions on you. In other words, if she wants her child to act as a faith-based Jew then she must obey her God as well. For further information consult my book, Religion and Culture in Canadian Family Law (Butterworth's, 1992), available at some libraries.

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