

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

Answers to pressing questions on Family Law.

A legal threat may do the trick.

Question: My husband is divorced since 1991 and his children ages 22, 21, 20 and 18, now all working full time. None of them are in school anymore, but he owes tens of thousand of dollars in “arrears” for the time the children were already working full time. His ex wife will not send a letter to the Government child support enforcement office, the FRO, admitting any of this so they are not erasing the arrears. What are we to do?

Answer: Make an application to the court retroactively cancel the arrears on the grounds of a material change in circumstances. Namely, that the children are no longer in school and are working full time. Once you even serve the court document on his wife, she is liable to write the FRO because she may not wish to incur the unnecessary court costs of needlessly defending the lawsuit, especially if she does. Why? If she loses she will have to pay your husband’s legal costs. In fact, an initial letter from a competent family law lawyer with the threat of such a lawsuit may do the trick.

Question: My friend, who recently go her Canadian citizenship, is about to give birth out of wedlock. She wants to remain single and wants her baby to exclusively use he maiden family name, especially on the birth certificate. What are the pros and cons of my friend’s decision regarding the baby’s last name in the long terms from the child’s point of view?

Answer: Legally speaking the mother just may find it more difficult later to make a child support or paternity application to be credible. For the child, there is no technical legal ramifications within Canadian law, other than that he too could be denying himself the right to child support from his Dad later in life, if he so chooses. Knowing his genetic may also become crucial for health reasons at some stage. Also if his Dad is a citizen of another country, such as the U.S.A, there are significant benefits in having him on your birth certificate because the child automatically can benefit from his Dad’s foreign citizenship right if he wishes it. On the flip side, if Dad later wants to have access to the child it will obviously be easier to prove he’s the Dad if his name is on the certificate. But then again, Dad can always legally insist upon DNA tests if he is serious about making a court application for those rights. Finally, the child much later in life may actually resent not knowing.

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