

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

What are my custody rights if I'm pregnant and divorcing?

Question: I am pregnant with my first child and I have been separated from my husband for a month. We have been married for under two years, Back in June I found out he had an affair. I am trying to understand what my rights are legally for custody. I want primary care of this child. I do not want to share custody 50/50 at this point because I don't think that would be good for a new child. I want my soon-to-be ex-husband to have access to the child. I am so confused and frightened that I am going to lose custody of my unborn child.

Answer: Won't happen. If you give birth, stay home with the child, especially if you nurse the child and don't run back to work, you will likely be considered the primary caregiver, if not the parent with sole custody (the next best thing). I get so many letters like yours. It's almost an epidemic. The moment husbands leave their wives or partners, especially, for another woman (or man) certain pregnant women feel so abandoned and emotionally abused that they automatically feel their self respect has' been totally taken away. Accordingly, it is only natural for them to feel this same person is going to take away their baby too. However, despite the Divorce Act's emphasis on the need for children to have maximum contact with both parents, the courts tend to favor mothers having primary care and control of infants, if not sole custody.

Now, if a mother happens to be drug or alcohol dependent, suffering from an extreme case of post-partum depression or some other severe emotional disorder; then there are going to be exceptions where dads will get primary control of infants. Moreover, there are career-oriented mothers, such as certain professionals or business types, who flee back to work shortly after giving birth and whose ex-husbands share residential care of infants without problems. But you don't appear to fit into these categories, so stop worrying because it could affect your health and the health of your fetus.

Question: I let my misbehaved 16 year-old daughter, whose flunking school, to stay with her angry pot-smoking dad and his la-lah wife. Now the summer is over. She won't come home to my more disciplined environment. They're thrilled because, for a change, I'll be paying child support to them. What can I do and what's in store?

Answer: You'll pay. But they'll be begging to have you take her back.

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.*