

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

Answers to pressing questions on Family Law.

Simple Paternity Test Holds Answers

Question: How do I defend myself if I am being wrongfully accused of fathering a child and am now being sued for child support?

Answer: Apply to the Ontario Court of justice to order that you, the mother and the child undergo a DNA paternity test. The court will undoubtedly oblige. Until recently, such tests meant taking blood. Now it is a painless procedure. The clinic takes a swab from inside the cheek from the mouth of each person and compares them - no needles, no pain. The clinic then reports on the high probability of your being the father or not.

Question: My daughter turned 18 years old in March 2006. She also had a baby in March 2006. She was on welfare, up until she started receiving child support (which exceeded the welfare amount) for her baby. Am I still required to pay the mother of my daughter support, since my daughter is now being supported? Some background; The mother dropped out of school in 2004 but is now in a correspondence course. She claims to live at home with her mother, although I know she doesn't (I can't prove it though). When does my obligation end?

Answer: If she receives child support herself, it's questionable that she is still dependent upon her own mother, especially if she is receiving more from the father of the child than she would be receiving from welfare. If she's not in school and is not working, then she now has her own source of income. Her mother likely no longer has a claim to child support. However, the law that says you may have to keep supporting her through her mother says that your obligation stops when she is no longer a "child of the marriage" under the Divorce Act, meaning she is no longer dependent. If the amount she receives in child support while living with you ex is insufficient to meet her needs, your ex may have an argument that you need to keep paying. Much depends on how much your daughter received in support. But your ex will still have a difficult argument. In order to qualify as a dependant child, while not in school or working, your ex would normally have to show that your daughter is ill or emotionally or mentally challenged. In any event, if you are paying your ex through Family Responsibility Office by court order, you will need to make a court application to stop payments – you can't just stop paying.

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