

Custody and Access Disputes: Obligations of Teachers



Introduction

In recent years, teachers have been more frequently approached by parents and legal counsel during custody and access proceedings with the view to obtaining information and requesting the testimony of teachers in such legal proceedings. This often places a teacher in the middle of a difficult, emotional and adversarial process. Further, a teacher may be required to carry on or re-establish an effective working relationship with the student(s) and both parents in the aftermath of such proceedings.

The information in this summary does not constitute legal advice. Rather, the intent is to provide general information about the rights and obligations of teachers in custody and access disputes.

A teacher should contact the STF to seek advice before speaking to a lawyer or getting involved in a custody situation directly resulting from his/her employment as a teacher.

Information You Need to Know

- **DO NOT initiate a call to a lawyer on a parent's request.** This could give the appearance that you are taking sides in the dispute.
- **When faced with a request for information about a student's attendance and academic progress, it is prudent to direct that the lawyer file a request for access to school records with the school board office.** This ensures board policies are correctly followed for the release of this information.
- **You are not required to speak to or discuss a particular student with a lawyer representing one of the parties in a custody or access matter.**

If you do not wish to meet or discuss the matter, advise the lawyer accordingly. If you refuse, the lawyer's only recourse is to serve a subpoena requiring that you attend and testify in Court.

*If you are unsure about whether you want to meet or discuss the matter with a lawyer, you can request that the lawyer provide a written list of questions or areas of discussion before making your decision. Other factors to consider include, but are not limited to, your comfort level with the lawyer in question and the legal process. **Do not agree to be interviewed or provide a written statement to either side without first contacting the STF.***

If you are prepared to meet or discuss the matter further, keep in mind that this is an adversarial process and the lawyer involved has a professional obligation to put forward the facts in the best light for his or her client. You should provide only factual information, avoid speculation and opinions, and do not take sides in the dispute.

- **DO NOT sign an affidavit or provide a written statement to either side without first contacting the STF.** An affidavit is a written statement made by a person who swears that he or she is telling the truth. Such a statement could put you in an awkward position should you be called as a witness in Court and could give the appearance of your taking sides in the dispute.
- **Under Article 2.9 of the Provincial Collective Bargaining Agreement, you are entitled to full salary while absent as a result of being subpoenaed to be a witness in court.** To avoid any disputes with your school board for payment of salary during your absence, it is prudent not to testify without being served with a subpoena. Waiting until a subpoena is served will also avoid the appearance that you are taking sides in the dispute.
- **If you are served with a subpoena, you must attend on the date and time provided in the subpoena.** Failure to comply with the subpoena will place you at risk of being found in contempt of Court. If you are found guilty of contempt of Court, you may be fined or given a jail term.

- **If you are subpoenaed to be a witness in Court, provide only factual information about the child, rather than opinion or conjecture.**

In addition to the formal matters related to academic progress, a lawyer may ask questions which are aimed at getting the teacher to provide insight and observations which could be suggestive of the type of care received by the student. Examples might include observations about:

- the child's grooming, appearance and dress;
- whether the child came to school alert or tired;
- whether the child came to school hungry and with an adequate lunch;
- whether the child ever came to school with bruises;
- whether the child was a latch-key child;
- any other personal observations about the child.

The role of the teacher witness is to answer questions factually and as honestly and accurately as possible and to abide by the Judge's direction with respect to any contentious question. Additional things to keep in mind are:

- try not to use phrases like "I think" or "I guess";
- keep your replies short and try to be as clear as possible;
- answer the question being asked and then stop. Do not give unnecessary or irrelevant information. Do not give opinions or draw conclusions unless you are asked to; and
- if you do not understand a question, ask that it be repeated.

The same considerations apply in answering questions asked of you during the cross-examination. Maintain your composure if the lawyer questioning

you during the cross-examination appears aggressive or picky. It is his or her job to expose any weaknesses or inconsistencies in your testimony. Do not become disturbed by this. The Judge is there to stop you from being badgered or abused.

- **Provided you testify honestly, you do not face any potential liability as a consequence of testifying in Court.**

The Court process eliminates some areas which may otherwise be of concern to teachers in a legal sense, particularly that of confidentiality. For example, a student counsellor may be placed in a difficult ethical and legal dilemma as a result of a confidential disclosure made by a student. If the counsellor was subpoenaed and questioned in Court as to the nature of the disclosure, the counsellor could properly raise his or her concern about confidentiality with the presiding Judge before answering the question. The Judge would then rule as to whether the counsellor is obligated to answer and such ruling would then be binding upon the counsellor.

Summary

In conclusion, it is important to appreciate that each situation should be assessed on its own merits and that there is no single, correct or universal approach to the dilemma faced by a teacher in the context of a custody or access dispute.

Teachers are advised to contact the STF to seek advice before speaking with a lawyer or getting involved in a custody situation.

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