

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

When can my child choose?

Question: At exactly what age can my son legally decide which parent he wants to live with? He turns 12 next year and my ex has been pressuring him already to go live with him. They are Muslim and my ex tells me he will be considered "a man" in their culture and he doesn't need his mother's influence any more.

Answer: Islamic family law has no place in Ontario. The government has made that very clear in its recent changes to the Ontario Family Law Act. The child cannot be bullied into living with his dad and no Islamic court can force him to do so in Ontario. However, the child's opinion as early as age 16 is determinative. At age 12 an Ontario court will listen carefully to him but it is not determinative. However, other factors come into play in determining the child's best interests, such as the status quo, how well he is doing at the school he goes to, his network of friends at the school he attends or in his immediate neighborhood or with his siblings, the relationship with his other caregiver (his mother), any undue influence from his father, such as bullying, and many other factors. These are often considered by an independent and neutral professional observer appointed by the Ontario Court, not by an Islamic court. This observer is called an "assessor" who the court might assign by court order to assess the parents' respective parenting abilities, who would observe which of the two would best be suited to have custody of the child and how the other would have access. Alternatively, the court might appoint the children's lawyer, who might be assisted by a social worker or by a clinical investigator, who conducts his or her own professional assessment. Whether it's an assessor or the children's lawyer, the court receives neutral recommendations on the child's best interests, not based on any one factor, such as Islam and any other religion, as to where a child should live primarily and how and when the other parent should visit with the child and who should make what decisions for him. Sometimes, the children's lawyer does not use a clinical investigator for a boy at the age of 12. The lawyer may just speak to the boy and make a decision to "follow his instructions," like any other client. Given his age, however, the lawyer might indicate to the judge why he doesn't agree with the child's instructions on occasion, if such instructions are not in the child's best interests.

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.