

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

It never hurts to be civil.

Question: Can two brother marry as a gay couple or two sisters marry as a lesbian couple in Ontario then claim tax benefits?

Answer: Yes. And no, this time it is not April Fool's. The Marriage Act Regulations (Ontario and the Marriage (Prohibited Degrees) Act (Canada) bar the lawful solemnization of marriage between a brother and sister, by whole or half blood or by court order of adoption. But these statues are silent about marriages between two sisters and or between two brothers. Further, I cannot find anything in the Income Tax Act or its regulations. Even id there was such a provision it would likely be deemed unconstitutional.

Question: I am currently separated and my ex and I have joint custody. If she decided to move out of the city or that country, can she do that?

Answer: She would have to have your written approval or obtain a court order without your consent is very difficult, although it should be somewhat easier if she had sole custody of, according to the Ontario Court of Appeal. In reality, the trial division courts make decisions on the child's "best interests" on a case-by-case basis, even when the parent leaving has sole custody. However, if a parent with sole custody loses on the trial level, that parent may consider appealing to the Ontario Court of Appeal because sole custodial parents do very well up there on this issue.

Question: I have a one year old child with someone that I no longer have a relationship with not even a civil relationship. All our communication is done via email. He pays his child support on time, but I want something "legal" in writing from him. Do I have to go to court?

Answer: You can either obtain a court order and alienate the guy or you can send him a friendly email – something like "Dear dad of you child who I don't have a civil relationship with anymore. I think it's a good idea for both of us to sign a child support agreement to protect both of us. I attach a draft agreement my lawyer prepared. What do you think? It never hurts to be civil. It doesn't necessarily lead to dancing.

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
