

Custody and Access



When You No Longer Live Together as a Family

Knowing your rights
and responsibilities to
your children

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FAMILY LAW SERIES

Knowing your rights and responsibilities to your children

If you have a child with another person, you both have rights and responsibilities to the child. This includes having the right to spend time with the child and be involved in decisions about the child's life.

If you and the child's other parent are no longer living together, you both need to decide how these rights and responsibilities will continue when you no longer live together as a family. The legal terms for these rights and responsibilities are "custody" and "access".

Custody

Custody focuses on the care of the child. This includes who makes the major decisions about a child's life, such as their education, religion and health care. Custody also includes the physical care of the child, including where he lives and the daily decisions about how he is raised. More than one person can have custody of a child.



Custody is about more than where the child lives, it is about who can make important decisions about his life.

In the NWT, the starting point in all custody matters is joint custody. However, there are four different types of custody arrangements:

- joint custody,
- sole custody,
- shared custody, and
- split custody.

Joint Custody

With joint custody both parents continue to be involved in the major decisions of the child's life. He can live with only one parent or may spend time living with both parents, but usually one parent has day-to-day care and control of the child. The focus of joint custody is on both parents working together to make decisions about their child; one parent can't make major decisions about the child on their own.

Sole Custody

With sole custody, the child lives with one parent who makes the decisions about his life. The other parent usually has access to the child.

Shared Custody

With shared custody, the child lives with both parents roughly the same amount of time: for example, he might spend two weeks with one parent, then two weeks with the other. This works well if both parents live in the same community. This is sometimes called "joint and shared custody".

Split Custody

Split custody is when there is more than one child, and one child lives with one parent, while another child lives with the other parent. Each parent is responsible for the child or children in their care, and the other parent has access to the child or children.

Access

Access is the legal term for the right of the child and parent to spend time together. Usually, a parent who does not have custody will have access to the child. Although she may not have a role in making decisions, a parent with access has the right to receive information about the child's education, health and well-being. Other family members, like grandparents, can also have the right to access.

The right to access is also the child's right. The parent with custody can't refuse access to the other parent because of bad feelings between them or the failure to pay child support.

Types of Access

In situations where a parent or other family member has the right of access, there are different kinds of access. Often a parent has the right to "reasonable and generous access". The actual time, place and length of access is not set, but is left to the parents to work out between them.

If parents can't work out access themselves, the court or an agreement may set out the time, place and length of the access. Finally, if there are concerns about the parent's behaviour or the child's safety, a court may order that access visits be supervised or not allowed at all.

Deciding on Custody and Access

The best custody and access arrangement for your children will be one that you and your spouse come up with and agree to together (*by agreement*). You will both be committed to it and since you both know your children, it will likely be what is best for the children as well.

However, sometimes it can be difficult for parents to reach an agreement. If you cannot come to an agreement, there are other ways to reach a custody and access arrangement. These include:

- mediation,
- negotiation by lawyers, and/or
- going to court.

Lawyer Representation

If the other parent has been violent or abusive, you should consider having a lawyer negotiate on your behalf or going to court. Dealing directly with the other parent may not be a good option when there has been violence in your relationship.

By Agreement

Some terms of custody and access, like joint custody or reasonable and generous access, will only work if you and the other parent can work together. If you agree on a custody and access arrangement, you should write it out as an agreement you both sign. An agreement can also take the form of a parenting plan. In a parenting plan, you clearly lay out and agree to a common approach to key parenting issues and how decisions will be made. Whether it is a custody agreement or a parenting plan, you should have a lawyer review it before you sign.

Mediation

If you and the other parent can't agree on your own, you can choose to try mediation. A mediator is an independent person who will help you reach agreement on custody and access. She won't take sides or make decisions for you.

The mediator will write down the agreement you come to. This could also take the form of a

parenting plan. Because the mediator doesn't take sides, you should have your lawyer review the agreement before you sign it to make sure your rights are protected.

Family lawyers and other professionals can be mediators. The Department of Justice also offers mediation for couples that are separating. Contact the Law Society for a list of mediators, or call the Department at 1-866-217-8923.

Negotiation by lawyers

If you and the other parent can't agree, or you are not comfortable dealing directly with each other, you can have a lawyer negotiate a custody and access arrangement on your behalf. Your lawyer will ask you about the arrangements you want, provide advice and then negotiate with the other parent or their lawyer to reach an agreement.

Going to Court

If none of these approaches work, or it is clear that you can't reach an agreement, you can ask a judge to make a decision on custody and access for you. The judge will receive evidence from you and the other parent and will make a decision based on what he thinks is in the best interest of the child.

Going to court gives you the least control over the final custody and access arrangement, but in situations where you can't agree with the other parent, it is your only option. If you do go to court, you should have a lawyer.

Legal Aid

If you can't afford to pay for a lawyer, legal aid may provide one for you.



Changing Custody and Access Arrangements

If you have an agreement on custody and access, you can change it as long as both of you agree on the changes. If it is a major or permanent change, you should make the changes to your written agreement or parenting plan and both sign it. You should speak to a lawyer before agreeing to any major changes.

If the other parent won't agree to a change, you'll need to try mediation, negotiation and/or go to court to have the agreement changed.

If the court ordered a custody and access arrangement, it can be changed if you both agree. If you don't agree, you have to go back to court. If you and your spouse agree to a temporary change, you don't need to have the order changed. If the change is permanent, the process is simple and you can bring forward a joint motion asking the court for a change. You should speak to a court worker or lawyer for more information on the process.

If you and your spouse don't agree, you will have to provide information to the court to show that there has been a change in what is in the child's best interest or the parent's ability to care for the child.

Temporary Custody and Access

Because reaching an agreement or going to court can take a long time, you can ask a judge for an interim custody order right away. An interim order will decide who has custody of the children until a final decision is made. If you and the other parent can agree on custody for the short term, you don't need an order.

Interim custody orders often become permanent because it is less disruptive for the children for them to remain in one place with one parent. If you do not have interim custody, it is in your interest to reach an agreement or go to court for a final decision quickly.

Child Support

Another thing that needs to be resolved when discussing custody and access is the payment of child support. Who pays child support and how much is paid are determined by your custody and access arrangement and the income of the person paying. The Child Support Guidelines set out the amount of support that will be paid based on income.

For more information on child support, please see the brochure “Child and Spousal Support”.

Important Contact Information

Legal Services Board

(Legal Aid) 867-873-7450

Collect calls are accepted from outside of Yellowknife

Legal Service Board

Court Workers 867-873-7450

Child Support Guidelines

(Federal Justice). 1-888-373-2222

<http://canada.justice.gc.ca/en/ps/sup/index.html>