

# 4 Legal Decisions

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When you separate, you need to make some very important decisions:

- Who the children will live with?
- What role will the extended family have after separation?
- Who will decide:
  - How much child support should be paid?
  - What school the children will attend?
  - How the children will be raised spiritually?
  - Which doctor the children will see?
  - When the children will see the parent they do not live with?

## In the Best Interests of the Children

Decisions about children must always be made **in the best interest of the children**.

It is in the best interest of the children to have a close, stable and ongoing relationship with both parents whenever possible. Sometimes this is not possible, especially in cases where there is violence or abuse against a parent or children.

If it is possible for both parents to maintain a close relationship with their children, the children benefit greatly because they can get:

- Support to deal with separation.
- Help to become emotionally healthy.
- Relief from feeling divided loyalties.
- Help to lessen any guilt that he or she may feel.
- Continued parental authority.
- Parents willing to provide support.
- Continued relationships with his or her extended family.
- A demonstration that the parents can unite around parenting despite their personal differences.



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## About the Children: Custody, Access and Child Support

Custody, access and child support are three issues that need to be decided either by agreement, by mediation or by the court when parents separate.

### Custody

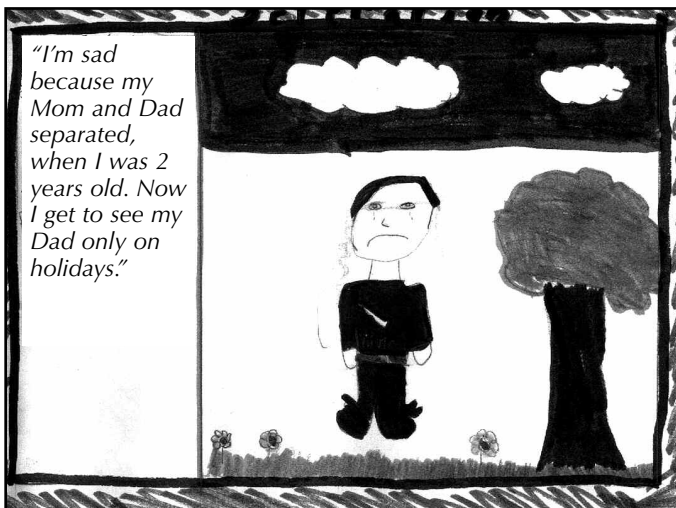
When parents live together, both parents have custody of the child. Having “custody” of a child allows a parent to make the major decisions for the child such as the child’s education, religion and medical treatment and managing the child’s property.

When parents separate, there are four possible custody arrangements:

- *Sole custody*: One parent has the responsibility of caring for the child’s day-to-day needs and making the major decisions that affect how the child is raised.
- *Joint custody*: Both parents are able to jointly make the major decisions that affect how the child is raised. Under a joint custody arrangement, the child can have a primary residence with one parent, or the child can live a portion of time with both parents.
- *Shared custody*: The child lives at least 40% of the time with each parent. This is a term used in the Child Support Guidelines.
- *Split custody*: Each parent has one or more children residing with them.

A judge may make any of these arrangements into a court order. In some instances interim or temporary orders are made - referred to as interim orders, especially if things are in a state of flux/change.

If there is a change in circumstances you can apply to have your order changed.



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### Access

This is the child’s right to spend time with the parent that they do not live with. Other adults, who the child does not live with, can also have access. For example, a grandparent can have access.

An agreement or court order can detail the access days, and times that the visiting parent can see the children. Agreements that detail the exact access arrangements allow children to know what to expect and parents know what is expected of them. This lessens the potential for conflict.

An agreement or court order can describe access as reasonable or generous, which leaves it up to the parents (or children, if they are older) to decide when access will take place. This type of access works well for parents who can communicate well. Some people find “reasonable and generous” access vague, which may lead to misunderstanding or conflict.

When abuse or violence is involved, the court may order access to be supervised. When the child may not be safe in a parent’s care, the court may order no access.

### **Access is not tied to child support**

There is no link between the child’s right to see both parents and the paying parent’s responsibility to make regular child support payments.

## **Child Support**

Child support is the right of the child. When parents separate, each parent has the legal duty to financially support the child. Usually, the parent who does not live with the child pays support to the other parent to assist with some of the child’s financial needs.

In most provinces, children are entitled to support if they are:

- under 19 (under 18 in some provinces); or
- over 19 (over 18 in some provinces) and still require support because of illness, disability, attending school or other reasons.

### ***Child Support Guidelines***

The Child Support Guidelines are legal rules that determine what the fair amount of child support should be, by considering;

- The income of the paying parent,
- The number of children, and
- The province where the paying parent lives.

### **The Child Support Guidelines are designed to:**

- Ensure children continue to be supported by both parents after separation,
- Reduce conflict and tension between parents by having rules determine child support,

- Make it easier for parents to calculate an amount for child support, and
- Ensure that children are treated the same everywhere in Canada.

### How much Child Support

You can find the basic amount in the **Child Support Tables** attached to the Child Support Guidelines.

- To find the amount, you must know how much money the paying parent earns, and how many children there are.
- The taxable income can often be determined by looking at the payer's Income Tax Return.
- Each province and territory has its own set of tables for calculating support.

### When support amounts can be changed

If the child has special or extraordinary expenses, the court may order that a higher amount of child support be paid. These expenses can include childcare, health-related and education expenses, and the cost of a child's after-school activities.

If the support amount causes difficulty for either of the parents or the child, then either parent can ask the judge to change the amount.

### What may affect child support

- If the paying parent does not pay taxes because he or she lives or works on a reserve, the Child Support Tables do not automatically apply. In these cases, child support is determined by an agreement between the parents or by the court.
- If the paying parent has the child in his or her care at least 40% of the time, the tables may not apply.
- The *Indian Act* makes some provision for the support of dependents. For example, the Minister may make an order that an Indian person's annuity or interest money be paid to the spouse or family (Section 68).



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- Sometimes the *Indian Act* may be used to protect the property interests of an Indian child living on a reserve. The Minister can administer or provide for the administration of entitled property of an Indian's infant child or may appoint a guardian for this purpose (Section 52).

### **Income tax rules**

As a general rule, if your child support order or agreement was made since May 1, 1997, these rules apply:

- Parents who pay child support do not deduct the child support from their income.
- Parents who receive child support do not declare it as income.

There are different rules for child support orders made before May 1, 1997. You can get more information from Revenue Canada at 1-800-959-8281.

Income earned by a status Indian while working or living on a reserve is not taxed. This may affect the Child Support Guidelines. If you or the other parent is a status Indian, think about this when you are calculating your income.

### **Find out more about the Child Support Guidelines and Tables**

You can get detailed information about the Child Support Guidelines by calling the toll-free Child Support Infoline: 1-888-373-2222. To get the correct table, tell them:

- where the paying parent lives
- whether both parents live in the same province or territory, and
- the number of children to be supported.

In some larger communities the Family Justice Services Centre has Child Support Clerks who can help you calculate the amount of child support.

## **How Do We Decide?**

When you are making your decisions about the children and your separation you have three options:

1. You and your partner can reach an agreement.
2. You and your partner can get help to agree by using a neutral third party such as a mediator.
3. You can get a lawyer to represent you in court.

