

# Custody & Access

**Haberman v Haberman, 2011 SKQB 415 (CanLII)**

<http://canlii.ca/t/fnr31>

This case dealt with custody of a 12 year old child. The child was living with his father and he was supposed to visit with his mother at specific times, but he refused to go. The father argued that the child was disconnected from his mother because of her poor behaviour. However, the court found that the father had attempted to turn the child against the mother (parental alienation). The mother was asking the court for a change to the primary residence of the child. Although there were reports that dealt with the relationship between the parents and the child, the Judge in this case took the unusual step of also meeting with the child to find out himself what the views of the child were. The judge left immediately after the court case was heard and went to the child's school to interview him. The judge found that despite the alienation of the child from his mother as a result of the father's actions, the child should not be forced to change his primary residence. This would have too negative of an impact on him. Instead, the judge ordered that the father attend counseling and make sure that the child had access with the mother at least twice a week at specific times. He also attached a letter written directly to the child at the end of his decision.

Read the letter below and discuss whether it is a good idea for the courts to consult directly with children in custody cases and whether an attempt should be made by judges to explain their decision to the child.

Letter to the child of the parties (Haberman v. Haberman, 2011 SKQB 415 (CanLII):

*Dear Dakota:*

*Thanks for meeting with me and Sheriff Dave. Getting to see you and talk with you means a lot to me. I hope you were sincere when you told me you appreciated our coming to your school to meet you.*

*Well the judgment is finished. It is long and covers lots of stuff that really will not interest you. But I am writing this letter to you to explain what I have decided would help you and your parents.*

*You told me you would obey my judgment. I have accepted your word. This means a lot to me. First, you showed me respect and respect for the hard job I do. I want to remind you again, that the judge tries his or her best to do what will be best for you. You are 12 years old and some of the things I want you to do may not make complete sense to you right now. But here is where you have to trust me. That is why your promise to obey the judgment made me proud of you.*

*Dakota, I have heard lots of good things about you. You and I talked about your visiting old people in the nursing home and your being a clown with grandma — trying to cheer people up. I want you to continue to be a giver and to do good things for other people. Right now your mom needs your love and to spend time with you. So please give her your best effort. It is okay for you*

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*to show your love and feelings to both your mom and dad. They must understand that you need and love both of them. They must respect you at all times when you are with them and when you express your happiness and love to either one of them. A parent's love for a child should be unconditional. I have told them this in the judgment.*

*I have decided not to move you out of your dad's home. This is where you belong and you have shown me this is where you are most comfortable.*

*You told Sheriff Dave and myself that there are two things which really bug you when you visit your mom: She yells at you too much and she does not play and give you enough attention. You know what? Nobody is perfect. I have told your mom to put more effort into planning things to do with you. But you have to make an effort to plan and do things with your mom. There is give and take in life — remember that Dakota, that is an important lesson in life. So try harder and be more patient with your mother. She will try harder. I believe the two of you can make your relationship work.*

*To help both you and your mother I am ordering that you go to mom's on Wednesdays after school until 8:30 p.m. I am also ordering that on Sundays you will go to your mother's from 1:00 p.m. until 8:30 p.m. This way your time together is more often, but for shorter periods of time with no sleep overs. So you should not get bored and no one should get angry. When you and your mom are ready, you can do more. On school breaks and summer holidays I have decided that you should spend more time with your mom and just as much time with your dad. Because that is fair. That is when sleep overs will occur. I have also told your parents to talk with you about making holiday plans.*

*I understand that you need time to do your homework, to play with your friends, or if you make the school basketball team or want to play other sports or join clubs, you should have the freedom to do so. Both mom and dad must make sure you get to all of these activities when you are in the care of either one of them.*

*I do not want you to use your cell phone when you are at your mother's. You will only be there for a few hours at a time and anything you have to tell your dad can wait until you get home.*

*I want you to continue to see Mr. Hughes or the school counsellor to help you to understand your feelings. If you need to talk to another grown up at any time go and see your school principal — he understands your situation. Everyone wants to help you.*

*It is now up to you and your parents to obey this judgment. Good luck and take care of yourself.*

*JUDGE SANDOMIRSKY*

## **DISCUSSION POINTS:**

- 1) Should a child be consulted on custody and access decisions?
- 2) Should a separate decision be provided specifically for the child by the judge?