



205 - 414 Graham Avenue, Winnipeg, Manitoba R3C 0L8  
Phone: (204) 943-2382 Fax: (204) 943-3600 E-mail: [info@communitylegal.mb.ca](mailto:info@communitylegal.mb.ca)  
Web: [www.communitylegal.mb.ca](http://www.communitylegal.mb.ca)

# CUSTODY and ACCESS

**Custody** means more than physical custody. It also includes care and decision-making authority.

The Court always takes into account the best interests of the child. When deciding what is in a child's best interests, the court will look at:

- the nature, quality and stability of the relationship between the child and each parent;
- the nature, quality and stability of the relationship between the child and other significant individuals in the child's life;
- the child's physical, psychological, educational, social, moral and emotional needs, including the need for stability, taking into account the child's age and stage of development;
- the impact on the child of any domestic violence;
- whether the parents can cooperate on issues affecting the child;
- the ability and willingness of each parent to communicate and cooperate;
- the willingness of each parent to promote the relationship between the child and the other parent;
- any special needs the child has for care, treatment or education;
- the proposed plan to care for the child and the capacity of each parent to provide a safe home, adequate food, clothing and medical care;
- the history of who has cared for the child;
- the effect of disruption on the child's sense of continuity;
- the views and preferences of the child (where the court considers it appropriate to find out what they are);
- and the child's cultural, language, religious, and spiritual upbringing and heritage.

Both parents still have the right to information about the child. Unless a Court orders otherwise, the non-custodial parent has the same right as the custodial parent to receive school, medical, psychological, dental and other reports about the child. The non-custodial parent does not have the right to make decisions about those things, unless it is specified in a court order or agreement. Parents will want to make sure that daycares, schools, doctors and dentists are aware of each parent's contact information and make arrangements to receive information.

**There are 4 types of custody – Sole Custody, Joint Custody, Shared Custody, and Split Custody.**

**Sole Custody** - If the parents never lived together after the child was born, the parent who the child lives with is presumed to have sole custody. The parent who has sole custody has the authority to make decisions about the child and physical care and control of the child. Where there has been concern about a parent abducting or moving with the child, or there has been parental alienation or abuse, a Sole Custody Order is often considered.

The other parent will usually have access (visitation) with the child. Courts will often specify when access is to take place and under what conditions (if any). Access by the non-custodial parent may be ordered to be supervised when the courts are concerned about the safety of the children – for example if there are concerns about abuse. Agencies like Winnipeg Access Agency or Brandon Access Agency supervise access.

**Joint Custody** - Parents are presumed to have joint custody if they lived together after the child was born. After separation, one parent may have primary care and control and the other parent has care and control as can be agreed or as outlined in an Order. One parent may have final decision-making authority or decision-making may be shared. Joint custody does not mean that parents have the child or children for an equal amount of time. It means that both parents have the right to make decisions. If the parents cannot reach an agreement, they may have to go to Mediation or Court, unless someone has final decision-making power. When making an Order, the Court considers the principle that the children should have as much contact with each parent as is consistent with the best interests of the child. Therefore, the Court will consider the willingness of the parent asking for custody to promote that contact.

**Shared Custody** - In shared custody, parents share decision-making and care and control of the child or children. Each parent has the child in his or her care at least 40% of the time.

**Split Custody** - Split custody is possible when there are two or more children. Each parent has custody of one or more of the children. This means one or more children live with one parent more than 60% of the time in the year, and one or more children live with the other parent more than 60% of the time in the year.

**Relocating** – A parent can move away with the children, if the other parent gives consent. If the other parent will not consent, you will need to go to Court and get a Court Order that will allow you to move away with the children. Where a parent has specific access rights and the other parent moves away with the child, without consent, or without a Court Order, the moving parent may be found in contempt of a Court Order. It is possible that the parent may be charged with abduction under the *Criminal Code*, where the child is under 14.

When deciding whether a parent can move with the child, a Court will consider:

- the existing custody arrangement and the relationship between the child and the parent with custody;
- the existing access arrangement and the relationship between the child and the parent with access;
- that it is desirable for the child to have maximum contact with both parents;
- the child's views;
- the reason for the move, if it is relevant to the parent's ability to meet the needs of the child;
- the disruption of a change in custody; and
- the disruption as a result of moving away from family, schools and community.

**Mediation** – Sometimes lawyers refer clients to mediation before going to Court. A Judge can also refer parties to Mediation at any stage of a legal proceeding if the Judge thinks an effort should be made to resolve an issue out of Court. Mediation is available through Family Conciliation and through private mediators. Family Conciliation also works closely with the Family Division of the Court of Queen's Bench to resolve child custody and access matters.

In mediation, a neutral, third-party, skilled, professional counsellor helps parents make decisions about the ongoing care of their children after separation. Mediation can help parents make decisions about custody issues, like how the children will spend time with each parent on weekdays, weekends, holidays and how they will continue to make major decisions about education, religion, health care and activities. Mediation is a voluntary process. It is not personal therapy or marriage counselling, although a mediator can help parents obtain these services.

The **For the Sake of the Children Program**, offered through Family Conciliation, tries to help reduce conflict between parents after separation in order to allow them to co-parent more effectively. The program is free of charge. Parents do not have to attend together. Call 204-945-4257 to register.

**Family Conciliation Services**

2nd Floor - 379 Broadway

Winnipeg MB R3C 0T9

Phone: 204-945-7236 Toll Free: 1-800-282-8069 Fax: 204-948-2142

**Denial of Access** - If one parent is being denied access to their children by the other parent, they can contact the police for help in locating them and getting access to them. They also have the right to ask for the Court's assistance by applying for a **Variation**, which is a change of the original Order. If the Court finds the parent denying access to be in **Contempt of Court**, the Judge can order imprisonment, order a fine, order that costs be paid, or order that property be seized.

Parents with custody can request the return of their children (under 16 years of age) from another country, under The Hague Convention on the Civil Aspects of Child Abduction.

The following statutes govern child custody and access in Manitoba:

**Divorce Act** (a federal law) <http://laws-lois.justice.gc.ca/eng/acts/d-3.4/>

**The Family Maintenance Act** (a Manitoba law) <http://web2.gov.mb.ca/laws/statutes/ccsm/f020e.php>

**The Child and Family Services Act** (a Manitoba law) <http://web2.gov.mb.ca/laws/statutes/ccsm/c080e.php>

**The Child Custody Enforcement Act** (a Manitoba law) <http://web2.gov.mb.ca/laws/statutes/ccsm/c360e.php>

**The Court of Queen's Bench Act** (a Manitoba law) <http://web2.gov.mb.ca/laws/statutes/ccsm/c280e.php>

**The Court of Queen's Bench Rules** <http://web2.gov.mb.ca/laws/rules/qbr1e.php#>