



**Metropolitan Action Committee on
Violence Against Women and Children**

**Community Justice Program
Legal Information for Women Experiencing Violence
Workshop Kits**

**Custody, Access and
Child Support**

PART I	Proposed Agenda	- For Distribution
PART II	Activity: Myths & Realities	- For Distribution
PART III	Speakers' Notes	- For Facilitator Use
PART IV	Brochures	- For Distribution

The Legal Information Workshops for Women Experiencing Violence were developed by the Metropolitan Action Committee on Violence Against Women and Children (METRAC) and the Ontario Women's Justice Network (OWJN) with funding support from the Law Foundation of Ontario, ©2001. Updated 2013.

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This material does not replace legal advice or representation. It is intended to provide women and their service providers with basic legal information. Any woman considering taking steps in her life that have possible legal consequences is strongly urged to speak with a lawyer who can provide her with detailed legal advice based on knowing the specifics of her situation.

Custody, Access & Child Support

Proposed Workshop Agenda

- | | |
|--|------------|
| 1. Introductions and Check-ins | 10 minutes |
| 2. Myths and Realities Activity | 20 minutes |
| 3. Presentation | 60 minutes |
| <ul style="list-style-type: none">▪ What is "custody and access"?▪ How do I apply for custody?▪ Leaving your partner▪ Common custody and access issues▪ What is child support?▪ How do I get child support?▪ How is child support calculated?▪ How do I change an order for child support?▪ How do I get the order enforced? | |
| 4. Questions and Answers / Discussion | 30 minutes |
| 5. Distribution of Resource Material | |
| 6. Closing Remarks | |

Note: We recommend a 10-15 minute break during the workshop.

Myths and Realities – Activity for Participants

1. *If I have been the primary person taking care of my children, then I do not need to apply for custody if I leave my partner, because it is automatically mine.*
 - True
 - False

2. *Joint custody means the children spend equal amounts of time with both parents.*
 - True
 - False

3. *If I have sole custody of the children, it means they don't have to see their other parent.*
 - True
 - False

4. *If my children do not want to see their other parent, I do not have to make them.*
 - True
 - False

5. *If my partner has abused me, s/he will not be able to get custody of or access to the children.*
 - True
 - False

6. *Mediation is a good way to resolve family law issues more quickly and less expensively.*
 - True
 - False

7. *The child support guidelines only apply to me if I am married.*
 - True
 - False

8. *If I have a child support order and my ex leaves the province, there is nothing I can do to get the support for my children.*
- True
 - False
9. *If my ex is self-employed, the child support guidelines do not apply.*
- True
 - False
10. *Only biological parents have to pay child support.*
- True
 - False
11. *If my ex does not make his or her child support payments, I can deny access to the kids.*
- True
 - False
12. *Child support ends when the children are 18 years old.*
- True
 - False
13. *If my ex is on welfare, s/he will not have to pay child support.*
- True
 - False

Myths and Realities – Answers

1. *If I have been the primary person taking care of my children, then I do not need to apply for custody if I leave my partner, because it is automatically mine.*

FALSE: In Canada, the law says that in most cases both parents have the right to raise their children and to make decisions about how the children are cared for. Unless the two of you agree about who is to have custody, you must go to court to get a court order setting out what the custody and access arrangements are for your children.

2. *Joint custody means the children spend equal amounts of time with both parents.*

FALSE: Joint custody means both parents share in the decision-making responsibility for their children. The children may live primarily with one parent and have access time with the other.

3. *If I have sole custody of the children, it means they don't have to see their other parent.*

FALSE: The parent who does not have custody will usually always have some kind of access even if you have sole custody. Only in rare circumstances, where the children's safety is at risk, would the other parent be denied access.

4. *If my children do not want to see their other parent, I do not have to make them.*

FALSE: If there is an access order in place, you must not interfere with it unless you have serious concerns about the safety of your children. If you do prohibit access for some reason, you should speak to your lawyer immediately.

5. *If my partner has abused me, s/he will not be able to get custody of or access to the children.*

DEPENDS: Courts do have to consider violence or abuse in custody and access applications. Decisions about custody and access are made based on the "best interests of the children"; the past conduct of your spouse/partner if there is a history of violence or the court feels your partner's conduct is relevant to his ability to parent; and whether your partner has at any time committed violence or abuse against: you; your child or any child; or any member of the household. This does not automatically mean that your spouse/partner will not get custody of, or access to, the children. It is important that you or your lawyer make the court aware of any violence or abuse that your spouse/partner has committed.

6. *Mediation is a good way to resolve family law issues more quickly and less expensively.*

DEPENDS: This depends on your situation. If you feel confident negotiating with your ex-partner, mediation might work well for you. If your ex-partner has been abusive or is controlling and intimidating, you should not consider mediation. Even if you use a mediator, a lawyer should review any agreement before you sign it.

7. *The child support guidelines only apply to me if I am married.*

FALSE: The federal child support guidelines apply to people seeking child support as part of a divorce. However, all the provinces and territories also have child support guidelines which apply to people who are not applying for a divorce or not married.

8. *If I have a child support order and my ex leaves the province, there is nothing I can do to get the support for my children.*

FALSE: All the provinces and territories have “reciprocal agreements” that allow them to assist one another in collecting child support no matter where in Canada the payor parent is.

9. *If my ex is self-employed, the guidelines do not apply.*

FALSE: The guidelines apply to everyone. However, where the person paying the support is self-employed, it is very easy for him or her to hide income and it is much more difficult for the Family Responsibility Office to enforce payment of an order, especially if he or she works under the table.

10. *Only biological parents have to pay child support.*

FALSE: Any person who has played the role of a parent to a child may be obliged to assist with child support payments.

11. *If my ex does not make his child support, payments I can deny access to the kids.*

FALSE: Non-payment of child support can never be used as a reason to deny access. One does not depend on the other.

12. *Child support ends when the children are 18 years old.*

DEPENDS: This depends. If a child continues in full time education after the age of 18, the child support obligation may continue past the age of 18. If a child leaves the custodial parent and lives independently before the age of 18, the child support obligation may end before the age of 18. The child support order may specify under what terms the child support obligation of the paying parent ends.

13. *If my ex is on welfare, s/he will not have to pay child support.*

FALSE: All parents have a legal obligation to support their children no matter what their income is. Realistically, however, a parent on welfare or any other form of social assistance will only be required to pay a very low amount of support. If s/he doesn't make the payments, it will be difficult for the FRO to collect from him or her.

Custody, Access and Child Support

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SPEAKERS' NOTES

Custody, Access & Child Support

A. Presentation Outline

- What is "custody and access"?
- How do I apply for custody?
- Leaving your partner
- Interim custody and access
- Common custody and access issues
- Child support
- Calculating child support
- How do I change an order for child support?
- How is a child support order or agreement enforced?

B. What is "custody and access"?

When parents separate, they must decide who will have responsibility for the children. **Custody** means having the legal right and responsibility to make all of the important decisions about the child's life. This includes things like:

- Choosing the child's school
- Choosing the child's religion
- Making medical decisions for the child

If you have custody, you are called the "**custodial parent**". If one parent gets custody of the child, the other parent will usually get access. **Access** means the parent has the right to visit and spend time with the child, and to know about the child's health, well-being and education. These visits may take place in the access parent's new home, in public places, at the home of other family members, or in some situations at supervised access sites staffed by other parties. The parent with access is called the "**non-custodial parent**". Even a parent who has not spent much time with his or her child can usually get access. In very rare cases, (i.e. where there is concern for the child's safety), the other parent may be denied access.

If you can talk easily and honestly with your child's other parent, you can make an informal arrangement about custody and access between yourselves. It is a good idea to put your agreement in writing, with the date, and get both parents to sign it. It is best to have a lawyer look at it and to file it with the court.

More often, however, this is not possible. In these more difficult situations, the parents are likely to hire lawyers and begin court proceedings to work out their child's custody and access. **If you cannot get along with the other parent, or if the relationship is or was abusive, it is safer, for you and your child, to get a lawyer and consider going to court to make custody and access arrangements.**

It is usually best to begin an application for custody as soon as possible after you separate from your partner. Unless there is a written agreement in place with the child's other parent, custody has not been determined and you cannot limit the other parent's access to, or his or her activities with, the child. However, if the child lives with only one parent and the second parent consents to or accepts the living arrangement, then the second parent loses the right to custody, and only has the right to access with the child, until an agreement or Court Order changes the arrangement.

i. Types of Custody

There are two main types of custody arrangements:

1. Sole Custody

If you have **sole custody**, you can make major decisions by yourself about things like your child's health, education and religious teaching.

The other parent usually has the right to know about the decisions you make, but cannot tell you what decisions to make for the child.

2. Joint Custody

If you have joint custody, you and the child's other parent both have the right to make major decisions about the child's life, which requires you to work together. If the Court knows the parents do not get along, or if there is or was abuse, the Court is less likely to order joint custody.

Joint custody does not necessarily mean that the child spends the same amount of time living with each parent.

While the Court is deciding on a final custody arrangement, it may award **interim or temporary custody** to one of the parents. This arrangement will apply until the Court makes a final custody Order. Interim custody is important because the Court usually wants to continue the arrangement that is already working for the child.

ii. Types of Access

The Court can make many different types of access Orders. Some are very open while others are more specific.

1. Reasonable Access

A Court can order that one parent gets custody and the other parent gets "**reasonable access**". This allows you and your child's other parent to make your own access arrangements that you both agree to.

2. Fixed or Limited Access

If you do not get along with your child's other parent, you can ask the Court for an Order that sets out the terms of the access visits, such as when, how long and how often the access visits will be. This is called **fixed or limited access**. If your relationship is or was abusive, you can ask the Court to set dates and times for visits so that you do not have to talk to the other parent about these details.

3. Graduated Access

Sometimes the Court may set up a **graduated access schedule**. This means that the access parent has very limited time with the child at first, but gradually has more access over time. A graduated schedule gives your child a chance to get to know and trust the access parent. The Court may use a graduated schedule if your child has not spent much time with the access parent or if you separated when your child was very young.

4. Supervised Access

The Court may order **supervised access** if it is worried about the child's safety with the access parent, or if the access parent and the child have not spent much time together. Supervised access means that the parent cannot be alone with the child. The person who supervises the visits can be a member of the family, or someone else. Supervised visits can also happen at places called **supervised access centres**, where there are staff who monitor the visits.

The Court can also order **supervised access exchanges** if it is worried about conflict or safety when you and the other parent meet to transfer the child. Supervised access exchanges can take place at a supervised access centre, where staff will help to transfer the child between you and your partner so

that you can avoid contact with one another. The access exchange can also be at a safe location such as a police station.

5. No Access

In very rare cases, a parent will be **denied access** to his or her child. This will only happen if the Court believes the child will be physically or emotionally harmed by that parent, and supervised access will not provide enough protection.

iii. Where the Child Lives

If you have sole custody, the child will usually live with you most or all of the time.

But custody does not always determine where the child lives. If you have joint custody with the other parent or if the other parent has access, the child may divide the time living with both of you. The child might sometimes stay with the other parent for nights, weekends, weeks or holidays, depending on what you agree on, or what the Court orders.

Usually, a child spends more time with one parent than the other. When this happens, the home where the child spends more time is called the child's **primary residence**.

The parent who cares for the child most of the time is called the **primary caregiver**. Courts often decide that child should live with the parent who has been the primary caregiver for most of the child's life, or who is the primary caregiver at the time that the Court is deciding custody.

C. How do I apply for custody?

There are two different laws in Canada that apply to custody and access.

1. The *Divorce Act (federal law)*: Applies only if you are married to your child's other parent and you are applying for custody at the same time as you are applying for a divorce.
2. The *Children's Law Reform Act (provincial/Ontario law)*: Applies if you are separating, but not getting divorced, if you were in a common law relationship or if you have never lived with the other parent of your child.

i. How do I apply for custody under the *Divorce Act*?

If you are applying for a divorce, it will be easiest to sort out custody at the same time. Your lawyer will include an application for custody in your application for a divorce. This will save you time and money.

The application for custody will include information about why you are seeking custody and why it is in the best interests of the child to be in your custody.

- The *Divorce Act* does not say what factors the court will consider in deciding the best interests of the child. The following information, however, will assist the court in determining the **best interests of the child**:
 - Include information about your home life, who has provided most of the care for the child in the past
 - Information about your plans for the future, and your plans for your child
 - If your partner was abusive to your child, you should include information and details relating to this because the judge will consider it very seriously.
 - If your partner was abusive to you, you need to describe this as well, particularly the impact you believe it has had on your child.
- It is especially important to include information about your plans for allowing and supporting access to the child by the other parent.
- The court will not look at the past conduct of a parent, including past abusive behaviour, **unless the past conduct affects the parent's ability to be a parent**. In other words, the court will only consider past abuse if the child was abused, involved somehow or affected by the abuse.

The custody application will be dealt with at the same time as the other divorce issues. It may be dealt with at trial or during negotiations.

To apply for a divorce in Ontario, you have to have been living here for at least one year. You can file for a divorce as soon as you and your partner have separated, but the judgment will not be granted until you and your partner have been living "separate and apart" for at least a year. During this period, you should make an *interim* custody arrangement. If you and your ex-partner can agree on an arrangement, the court will likely accept that arrangement. If you cannot agree, you may have to *mediate* an agreement. If you agree to mediate, bring a lawyer and do not allow your ex-partner to intimidate you.

Special Note: Avoid mediation if your ex-partner is abusive or if you feel afraid or unsafe disagreeing with your ex-partner.

If mediation fails, your lawyer will bring an application for interim custody in court. **It is important to note that the court rarely changes such an interim custody decision later on.** For this reason, applications for interim custody are often bitterly contested. It is important that you take this part of the process seriously and provide as much evidence to support your application as you possibly can. You need to work with your lawyer to determine what types of conditions you want specified in the interim order.

ii. How do I apply for custody under the *Children's Law Reform Act*?

There are some advantages to applying for custody under the provincial *Children's Law Reform Act*:

- The application can be made without a legal divorce. In other words, the application can be made if you are separated but do not plan to divorce, or if you were never married in the first place.
- The application can also be made in the interim period before a divorce is final.

The procedures for applying for custody under the *Children's Law Reform Act* are generally the same as those under the *Divorce Act*. You and your lawyer will make an application for custody that outlines why it is in the best interests of the child for him or her to be in your care.

The *Children's Law Reform Act* outlines factors that the court will consider:

1. The love, affection and emotional ties between (i) the child and each person claiming custody, (ii) other members of the child's family who reside with the family, (iii) others involved in the care of the child.
2. The views and preferences of the child.
3. The length of time the child has lived in a stable home environment.
4. The ability and willingness of each person applying for custody to provide guidance, education, necessities, and special needs.
5. Plans for proposed care and upbringing.
6. The permanence and stability of the family unit in which the child will live.
7. The ability of each person applying for custody of or access to the child to act as a parent; and
8. The relationship by blood or adoption between the persons applying for custody.

The *Children's Law Reform Act* also requires that the court, in deciding a person's ability to act as a parent, consider whether an individual has at any time committed violence or abuse against: his/her spouse; a parent of the child to whom the application relates; a member of the person's household; or any child.

If your partner abused you, you need to make the court understand the impact this has had on the child. More and more professionals are beginning to understand the seriousness for children who witness abuse of one parent by another. You may want to have an assessment of the child prepared. There may be daycare workers, teachers or others who can give evidence of the impact on the child. Of course, your partner may do everything s/he can to either deny the abuse or to say that the child was unaware of it. You need to be prepared to contest his or her arguments with strong evidence. Be aware also that reports of abuse in the household may trigger the involvement of the Children's Aid Society.

iii. What should be in my affidavit?

An affidavit is a legal document that you swear, in writing and in front of a witness (usually a lawyer), is the truth. It is your chance to tell your story to the court. It is a key piece of evidence in an application for custody, and both you and your partner will prepare at least one and possibly several affidavits over the course of custody proceedings.

Once your affidavit is prepared, a copy is sent to your partner (or your partner's lawyer) before it is filed with the court. This means your ex will read everything you put in your affidavit. Likewise, any affidavits that your former partner prepares will be provided to you through your lawyer or directly to you if you do not have a lawyer.

Reading your partner's affidavit can be difficult, as s/he may manipulate the truth or even lie to try to paint a negative picture of you and a positive one of him or herself. Always remember that you have the opportunity to reply in your own affidavits to anything your partner says that is inaccurate or untrue.

You may want to consider having other people swear affidavits if they have information that is relevant to the custody of your child. If your child's babysitter knows that you always drop off and pick up the kids and that she does not even have a work contact number for the child's other parent, this could be helpful information for the court. If you have discussed your partner's violence with your family doctor or religious leader, their comments could also be very helpful. The same is true if a work colleague has heard your partner harassing you at work. Often, however, third parties may not want to get involved in your case. This can be especially frustrating.

You may want to include information in the affidavit relating to any violence or abuse committed by your partner at any time either against you; your child or any child; or any member of your household. To support your affidavit you can attach supporting documents such as medical reports, police reports, art or stories created by your child to your affidavit, if they are relevant to the issue of custody. These supporting documents will generally be referred to in the content of your affidavit and are called "exhibits".

An affidavit should be:

- clear
- detailed and precise
- written in logical order, like telling a story
- legible – if you are preparing your own affidavit and do not have access to a computer, print as neatly as you can

Affidavits are written in the first person (using the word "I" to describe yourself) as though you are talking directly to the court. As affidavits are sworn statements, they generally include information that you know first hand or directly; rather than information you may have heard from someone else.

Your affidavit should answer the following three questions:

1. Who is my family?

- names, ages and dates of birth of all the children
- information about any children who are not part of the custody application (for example, a child from a previous relationship or a child who is over 18 years of age) and what the arrangements for them are
- your full name and the full name of the child's other parent
- the type of relationship you are in (married, common law, not living together)
- who everyone is living with right now
- any informal arrangements for custody and access that are in place right now and for how long
- when you separated and briefly why

2. What do I want?

- custody: joint/shared or sole (definitions appear in the Glossary at the end of these Notes)
- access: how much time, supervised or unsupervised, scheduled or unscheduled
- child support
- spousal support
- division of property
- exclusive possession of the matrimonial home
- restraining order

3. Why?

This is the section where you provide evidence (proof) to the court about why you need what you are asking for. For help with affidavits, visit a Family Law Service Centre or a Family Law Information Centre or ask your local women's shelter or women's organization.

The Ministry of the Attorney General's website also provides a self-help guide to Guide to Procedures in Family Court: <http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/default.asp> and a guide to parenting affidavits for custody orders: http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/Parenting_Affidavit_Self-Help_Guide-EN.pdf

D. Leaving Your Partner

i. What if I leave my partner and take my child with me?

Special Note: There is a greater risk of violence when an intimate relationship is ending. If you are in immediate danger, call 911. If you or someone you know is at risk, call the Assaulted Women's Helpline 1-899-863-0511 for information on getting support. Here are some examples of situations you could find yourself in and possible resolutions:

- You and your partner agree to separate. Together you have come up with a short-term arrangement that allows you to live apart and both spend time with the children. Once you leave, you will get lawyers and begin to work out a Separation Agreement. Most often, the children in these situations will simply remain with whichever parent had the most

responsibility for them during the relationship. Any such informal agreement should be written down and signed by both of you.

- You and your partner, who does not abuse you, have agreed to separate but have not yet worked out the children's arrangements. You decide you need to move out now and do so, taking the children with you. You need to keep your partner informed of your plans and ensure that he has plenty of access to the children. All communication should be in writing as well as verbal, and you should keep copies of everything. This is very important for the children, who are experiencing a big change in their lives. It is also important for you: in your custody case later on you will be able to show the judge that you did not try to keep the children from their other parent. Begin a custody claim immediately.
- You are leaving your partner to escape violence and you take your child with you. You may be able to tell the court that taking the child was in the child's best interest, because you had concerns about the child's safety or because you had always been the primary caregiver and had to leave to protect yourself. Once again, getting evidence of the danger you were in and the abuse you suffered is important. Even in this situation, you should, if safe, allow access by the children's other parent. **BEGIN A CUSTODY CLAIM IMMEDIATELY.**

The law says that both parents have an equal right to the custody of their child unless a court has ordered otherwise or the two parents have agreed otherwise. Therefore, if you are leaving your partner, **you do not have an automatic right to take your child when you leave, even if you were the main caregiver or if the relationship was abusive.** If you take your child and leave your partner without communicating with him/her in some formal manner, you could be charged with kidnapping or abduction, which could negatively affect your future custody claim.

Although you must ensure that your ex-partner knows where the child is and that the child is safe, it can be very difficult to communicate with your ex at this time, especially if you are concerned about your safety and the safety of the child. You must write down (document) your actions or gather witnesses so that your ex-partner cannot claim you abducted the child. Witnesses also offer a certain level of safety. Below are a few options for communicating with an ex-partner that do not require face-to-face contact but do record your actions in some way. You may consider using all three options.

- Have your lawyer contact your ex-partner immediately after you leave with information about the child's safety and possible access options.
- Leave a note for your partner saying that you have taken the child, that she is safe, and that you will be in contact to arrange visits with the child. Give a specific time and location for this contact. Make a photocopy of your note and take it with you.
- If there is a history of police involvement because of your partner's abuse, consider calling the police before or immediately after you leave. Let them know that you are leaving or have left with the child. Tell them that you want to ensure your child's access to their other parent as well as the child's and your safety.

ii. What if I leave my partner and leave my child behind?

If you need to flee for your safety, or if you leave your child behind for some other reason, you should keep in frequent contact with the child and begin custody proceedings as soon as possible. You do not want to place yourself in a position where your former abusive partner tries to convince the court that you abandoned your child.

If you do need to leave your child for some reason, do everything you can to ensure that the child is safe, understands what is happening, knows you love him/her and knows how to contact either you or someone else s/he trusts.

**If it is unsafe to contact your ex-partner, speak to a lawyer about getting access to the child.
Never forget your own safety.**

E. Interim Custody and Access

Obtaining a permanent custody order can be a time-consuming process, particularly if you and your former partner are not in agreement about the appropriate arrangements for the child. In the meantime, a temporary arrangement will usually need to be made. This is called an **interim agreement** or order and can address custody and access, as well as other issues.

If you and your partner are able to agree on a short-term arrangement for the child's custody and access, you can have your lawyers prepare an interim agreement that you will both sign. You will then have to live by the terms of this agreement until you come to a final, permanent agreement.

If you and your partner are not able to agree, then you will need to bring a motion in family court for an interim custody and access order. Both of you will then have to follow this interim order until a final order is made by the court.

It can take many months to obtain a final agreement or order, especially if the matter has to go to a trial, so if you are considering an interim arrangement, think carefully about whether or not you will be able to live with it for some time. Do not hastily agree to an interim order or agreement that you do not like, thinking it is only short term. You should also consider the fact that, very often, final custody and access orders reflect whatever the interim arrangement has been. This means that family law courts look at what arrangements already exist. This is called the **status quo**. If the child's living arrangement is working well, the court does not usually want to make big changes.

If you feel that your former partner is trying to bully or coerce you into agreeing to something you do not want to do, seek assistance from a lawyer or from your local women's shelter.

F. Common Custody and Access Issues

It is important to write down (document) any difficulties you have with your custody and access agreement. You can use this documentation if you and your ex-partner return to court.

i. Can I deny my ex-partner access?

For a variety of reasons, you may feel like denying your ex-partner access to your child. For example, the child may not want to visit the other parent; the child may often return from access visits extremely upset, angry or acting out; he or she may return appearing neglected or abused or report neglect or abuse; the other parent may not be paying child support and/or may often fail to show up for access time.

These are difficult situations to manage.

If you have an agreement or Court Order for custody and access, you must follow it. Either you or the child's other parent can ask the police to help you enforce the custody Order. If you do not allow the other parent to see his or her child as set out in the Order, the Court could transfer custody of the child to the other parent, if he or she applies for it. The law requires the parent with custody to support and encourage access by the non-custodial parent even if it is inconvenient, the child do not want to go or you are not entirely happy with what happens during the visits.

If you believe that your child will be harmed, especially physically or sexually, during a visit, the law does allow you to refuse the visit. Emotional harm is hard to document so it is more difficult to deny access based on a concern about emotional harm. Anytime you deny access, you should immediately notify your lawyer, who can be prepared for any contact from your former partner or his or her lawyer. Your lawyer can advise you as to whether you should also be calling the Children's Aid Society for their assistance.

Again, it is important to document in detail any difficult access situations. What happened? When? Did you deny access? Why? What was the other parent's reaction? Were there any witnesses? What other actions did you take? Write down in detail any instances where your ex-partner fails to or is late showing up for an access visit. It is often helpful to have a witness who will be willing to testify or provide you with an affidavit present when your ex is going to pick the child up for an access visit.

Remember that the courts have a strong belief that it is good for child to have a close relationship with both parents. If you interfere with your child's relationship with the other parent, you need to have strong grounds for so doing or this can be used against you in making future custody decisions. As the custodial parent, you have a legal responsibility to ensure that your child is safe and to protect him or her from harm. These two realities may conflict with one other from time to time. Talk to your lawyer, women's shelter or other support person to assist you in identifying the correct path of action.

ii. What can I do when my child does not want to visit his / her other parent?

This can be a very difficult situation to deal with. Often it seems that it would be better parenting to accommodate your child's wishes, especially if you experienced abuse at the hands of your ex-partner and have fears about your child's safety.

Legally, however, you must follow the access agreement unless you have reasonable concerns for the safety of the child as discussed above. In those cases, if you deny access, contact your lawyer immediately. As discussed earlier, document the circumstances in detail.

If your child is consistently extremely agitated about spending time with his or her other parent, you may want to consider getting help from a counsellor or therapist. There may be underlying issues that the child needs to share with a professional. If a safety issue arises from these conversations, the counsellor or therapist would be in a position to support a court proceeding to limit the access. If, on the other hand, the child's reluctance is due to reasons other than safety (perhaps feelings of disloyalty to you by visiting your ex-partner, insecurity about the new situation or discomfort around the other parent's new partner), a skilled therapist or counsellor may be able to assist your child in working through these issues.

In any situation where there are access difficulties, it is important for you to document them. For example, if the child cries and screams when being picked up by his or her other parent, have a neighbour, teacher or day care worker witness this behaviour. If the other parent is always late or calls at the last minute to cancel the visit, record this information. You may be able to use the information to go back to court and ask for the access order to be changed.

iii. What can I do when my child's other parent does not use his or her access rights?

Sometimes, one parent will fight for access and then not show up to see the child during the ordered access time. This can be upsetting for the child, but unfortunately, there is nothing the law can do to force the access parent to visit. Once again, document the cancelled visits, late pickups or irregular drop offs and any other details that indicate the child's other parent is not interested in spending time with the child.

If the other parent tells you s/he is withdrawing from access for a specified period of time – either short or long term – confirm this formally. Send a registered letter stating that you are confirming that s/he will not be exercising access at the following specific times at his/her request, and that you will not have the child available for visiting at those times. Indicate that you look forward to the other parent resuming access on such and such a date and that the child will be ready at that time.

In any of these situations, you should keep in touch with your lawyer, as you may want to consider returning to court to vary the access order on the basis that the other parent is not exercising it.

iv. What if I need or want to move outside the area?

A difficult issue that can arise when parents do not live together, is whether the parent the child lives with, can move the child out of the city, the province or even in some cases, out of the country. You may want to move to be closer to other family members for support, or for a job opportunity. Such a move may make it difficult for your child's other parent to see the child on a regular basis. Depending on the distance of the move, the cost of access visits may also be an issue.

Like all decisions dealing with a child, the Court will decide whether to allow the move based on the best interests of the child. If you are allowed to move with your child, the Court may change the access Order to allow for longer visits with the access parent, or it may reduce the amount of money

you receive in child support because the other parent will have expensive travel costs to visit the child.

In some cases, the Court may say you are not allowed to move with your child, if the other parent does not agree.

As set out above, judges will almost never make an order allowing a parent to move a child to another area until a custody order has been made. Custody and access cases are heard in the jurisdiction where the child is “habitually resident,” which means in the area where the child usually lives. If you leave your partner and move with your child to another area (for example, to stay with a friend until you can find housing), any custody hearing would usually take place where your child lived before the separation. You cannot simply take the child to a different place and get a custody order there. It is important to make sure that you bring your court proceedings in the correct place. Talking to a lawyer, a community legal worker or a clerk at the family court can help you figure this out.

v. What if my ex-partner takes the child out of the country?

Sometimes, one parent takes the child outside Canada without the other parent’s permission. This is very serious. This is called child abduction. Child abduction is a serious crime in Canada.

There is no way to make absolutely sure your child is never taken outside of Canada without your permission, but there are some things you can do to help protect your child. Make sure that the custody Order or agreement:

- is as clear and detailed as possible;
- specifically says that the child cannot travel outside of Canada without your permission.

The Order can also say that you or the Court must keep the child’s passport or the other parent’s passport.

If you think that your child has been taken out of the country you should:

- Call the police right away. The police will send an alert to border officials in Canada and the country where the other parent might take your child.
- Call the Consular Affairs Bureau right away, toll free at 1-800-387-3124 or 1-800-267-6788. Their office is open 24 hours a day, 7 days a week.

If your child is taken outside of Canada without your permission, you should also talk to both an immigration lawyer and a family law lawyer right away.

The main law that may be able to help you get your child back is the *Hague Convention on the Civil Aspects of International Child Abduction*. It is an international treaty signed by many countries. The countries who signed the treaty agree that they will work together with one another to find and return children who have been illegally moved from one country to another.

If your child is taken to a country that did not sign the Convention, it will be much harder to get your child back to Canada. If this happens, you can fight for custody using the laws of the country where your child was taken. You can also try to negotiate with the abductor and his family.

For more information about how to prevent an international abduction, read *International Child Abductions: A Manual for Parents*. This booklet was produced by Foreign Affairs Canada. It also says what to do if your child is taken out of Canada without your permission. You can order a copy from Foreign Affairs Canada or read the Manual online at <http://www.voyage.gc.ca/>. Click on "Children and Travel" and then on "Child Custody/welfare".

vi. What if I take the child to another country?

In most cases if the other parent has custody or access, you cannot take the child outside Canada without the other parent's permission. That means if you want to travel with your child, you will need the custody Order and a letter from the other parent that gives permission for the child to leave Canada. The letter should be notarized by a lawyer.

When you leave Canada and/or try to enter another country, you should expect border officials to ask you to prove that the child's other parent has agreed to the child's travel. If you remove your child from Canada without a custody order and start custody proceedings somewhere else (or if you have brought your child to Canada from another country and started a custody application here), your partner can apply under the Hague Convention to have the child returned to the place he or she used to live.

The Hague Convention makes an exception to this rule, if you fled with the child for reasons of safety, and you can prove to the court that returning the child would endanger him or her.

G. Child Support

i. What is child support?

Children have the right to financial support from both of their parents. If you and the other parent do not live together, you must share the costs of caring for your children.

Child support determinations are focused on the needs of the child. Support is based on the income of the payor, not on his or her needs or spending habits.

ii. Who pays child support?

If you have physical custody of your children (they live with you most of the time), you are entitled to **child support** from their other parent. This person is called the **payor**.

Parents must support their children even if:

- they do not live with the children;
- they do not see the children;

- they are not married to the other parent; or
- they never lived with the other parent.

The payor can be a birth (biological) parent or an adoptive parent. A step-parent who has acted as a parent may also be required to pay child support. As a result, more than one parent may have the legal duty to pay child support for the same child. For example, a biological parent as well as a stepparent may be required to pay support, although in most of these cases the amount that each parent is paying will be lower than if there was only one parent paying support.

iii. How do I get child support?

You and your child's other parent can make your own arrangements about child support. It is a good idea to put your agreement in writing, with the date, and get both parents to sign it. It is best to have a lawyer look at it, and to file it with the Court.

If you cannot agree about the amount, or if the agreement breaks down, you can ask the court to make an order for child support. If you have physical custody of the child and need to get child support, talk to a lawyer.

iv. How long must a parent pay child support?

Child support must be paid as long as the child is still a dependent. In most cases, this means at least until the child turns 18. Children under 18 are no longer dependent if they get married or leave home. The payor parent may have to keep paying child support after the child turns 18 if the child cannot support herself because she is sick, has a disability, or is a full-time student.

The parent with physical custody is entitled to receive child support even if she remarries or starts to live with someone else. In most cases, the income of your new spouse does not impact the amount of child support you will receive. There are exceptions for claims of undue hardship (see below).

H. Calculating Child Support

i. How does the court decide the amount of child support?

The federal and provincial governments decide the basic amounts that payor parents should pay for child support. The amounts are based on the cost of living in each province. These amounts are called the **Child Support Guidelines**.

In almost all cases, the courts must use the Child Support Guidelines for court orders dealing with child support. The Child Support Table in the Guidelines is used to determine the amount of support to be paid. There is a different table for each province and territory.

The table that applies is based on where the payor lives in Canada. For example, if both parents live in Ontario, the Ontario table applies. But, if the payor lives in another province or territory, the table for

that province or territory applies. If the payor lives outside of Canada, and the parent with custody lives in Ontario, the Ontario table also applies.

The basic amount that a payor must pay is based on:

- the payor's **gross annual income**. This means how much income the payor had before he or she paid any taxes or made any deductions, and
- how many dependent children the payor is responsible for supporting.

In many cases, the court will order the payor to pay the basic amount from the Guidelines. However, in certain cases, the courts will order an amount that is different from the Guidelines, such as:

- when support payments are made for a child who is over 18;
- if a child spends almost the same amount of time with each parent;
- if there are multiple children of the relationship, and both parents have a child living with them;
- if the payor has a very high annual income; or
- if the court orders both a step-parent and a birth parent to pay child support.

In these cases, the court will look at your family's situation. The amount of support will be based on the income of both parents and what the children need.

You may also be able to get extra child support for **special expenses** such as fees for daycare, education or unusual health care costs. If your child has special expenses, you and the other parent must share the cost. The amount that each of you will pay depends on your income.

In rare cases, the court may reduce the basic amount of support. The court will only do this if the payor parent can prove that the Guideline amount would cause him **undue hardship**. This means that he would not be able to pay for his own living expenses. For example, the court could reduce the amount of support if the payor has a disability or if he is paying support to other dependents.

Before a claim for undue hardship can be accepted, the court will look at the income of every member of both households to compare the standards of living in each household. This means that if you or the other parent has remarried or is living with a new partner, the court will take that into account as well.

Note that when filing income tax returns, the payor cannot claim the amount of child support he pays as a tax deduction. You do not have to declare child support payments you receive as income.

ii. How do I calculate child support if I am separated or was never married?

The Federal Child Support Guidelines only apply to parents who are divorced or will be divorced in the near future. If you are separated or were never married, you must calculate support using the Ontario Child Support Guidelines.

The Ontario Child Support Guidelines are identical to the Federal Guidelines. Therefore, the amount of child support received under the Provincial Guidelines will be the same as that received under the Federal Guidelines.

iii. How can I get information about the payor's finances?

If you apply for, or are receiving, child support, you have the right to know the truth about the payor's finances. This is called **financial disclosure**. You need this information to make sure that the payor is paying the right amount of child support. The law says that the payor must give you information about his income every year and that you do not need to ask for it unless you have agreed otherwise.

Sometimes, the payor parent does not cooperate. He may:

- not give you the information you ask for, or;
- choose to be unemployed or work in a job that does not pay much money, just so he does not have to pay child support.

If this happens, the court can estimate what it thinks his income is or should be. This is called **imputing an income** to the payor parent. The court will use the imputed income to decide how much child support you should receive.

iv. How do I calculate child support if my ex-partner and I share custody of our child?

If each parent has the child for at least 40% of the time, the Guidelines call this "shared custody" and child support calculations will be done differently. The Guidelines do not say exactly how to calculate support in a shared custody situation, so it is not easy to predict what a judge will decide. It is recommended that you get advice from a lawyer.

In these situations, the court looks at the incomes and expenses of both parents. Usually, the parent with the higher income provides support to the parent with the lower income but the amount is less the Child Support Table amounts because both parents are paying for the child's expenses. The court will use the Table as a starting point, and also consider any additional costs the parents might have for bedding, shelter, and clothing for the child. The judge will evaluate each parent's situation, including whether each parent lives with a new spouse that shares expenses or has other dependents to support before making the final order for child support.

It is up to the parent who says they have shared custody to prove that the child is with them at least 40% of the time. This is not always easy to figure out. What counts is the actual time that the child spends with each parent, not what the separation agreement or court order says.

v. Does the fact that I was abused play a role in determining child support?

The fact that you were abused will not play a role in the amount of child support you will receive. Neither the Provincial nor the Federal Child Support Guidelines have calculations that take abuse into account.

If you are on social assistance, however, the usual requirement for you to seek support from the other parent may be waived if he was abusive (see below). This does not mean that you will receive more social assistance; it simply means that you will not receive less social assistance.

vi. What are my obligations if I receive social assistance?

If you are on social assistance (Ontario Works or Ontario Disability Support Program) you must still try to get support from the other parent. If you do not, your social assistance may be cut or cancelled. If you are receiving social assistance, every dollar you get in child support will be deducted from the amount of social assistance you get each month.

If you do not have a support order, the government can apply for support on your behalf. You will be expected to cooperate with the application. The government can choose not to apply for support if they cannot find the other parent or if you were abused by the payor and there is concern for your safety.

Payor parents on social assistance are still expected to pay some child support, as set out in the Guidelines. The payor may be expected to pay child support even if his annual income seems very low.

I. How do I change a child support agreement or court order?

If you and the other parent have an existing agreement and you both agree that the amount of child support needs to change, you can sign a new agreement. If you and the other parent cannot agree about changing the existing agreement, either of you can ask the court to make an order about child support.

If you have a court order already, you have to ask the court to change the amount of child support or any other terms in the existing order. This is called varying the child support order.

The court will only change the amount of support if the situation has changed a lot, for example, if the payor's income has increased or decreased, if the child's living arrangements have changed, or if there are new special expenses.

Another reason the court could change the amount of support is if new Guidelines become law. Child support amounts in an existing order or agreement based on the previous Guidelines do not change automatically when the law changes. If the new Guidelines would change the amount of child support you receive, you will have to ask the court to vary the child support order. If you are receiving child support, it is a good idea to check every few years, to find out if there are new Child Support Guidelines. A family law lawyer can also help you with this.

J. How is a child support order or agreement enforced?

i. The Family Responsibility Office (FRO)

Orders for child support are enforced by the **Family Responsibility Office (FRO)**. The FRO is a provincial government office. Every court order for child support is automatically filed with the FRO.

If you and your ex-partner have an agreement about child support, you can choose to file a copy with the FRO, to make sure it is followed.

ii. How does the FRO work?

When a support order is filed with the FRO, the other parent must send all child support payments to the FRO. Once the FRO gets the money, it sends it to you.

The FRO has many files. Because the office is so busy, you may have to wait several months after you file the order before you will start to receive child support money. Unfortunately, the FRO system is very, very slow. It is difficult to get information about the status of your file simply because the office is understaffed and has thousands of files where the payor is in arrears. Be as patient as you can. Consider calling your local MPP for assistance if you are in dire financial straits without your support payments.

iii. What happens if the payor does not pay?

Sometimes, the payor is late or misses a payment. Here is what the FRO can do to collect the money:

- If the payor is working, the FRO can order his employer to take money for support payments from his wages.
- If the payor is unemployed or self-employed, the FRO can try to take money from his bank account. This is called **garnishing** his account. The FRO can also put a **lien** on his personal property such as a car or home. If he tries to sell this property, the FRO will get the money the payor owes.
- If the payor is always late or owes a lot of money in child support, the FRO can try to force him to pay by suspending his driver's license and/or cancelling his passport. It can also take money that the government owes him such as a tax refund or employment insurance benefits, to make child support payments.

Remember, you **cannot** deny the payor parent access to your child because he is late paying child support or behind in his payments. You can only refuse to allow access if you are afraid for your child's safety and in that situation, you should get help right away.

iv. What if the payor doesn't live in Ontario?

The FRO can help you collect support if the payor parent lives anywhere in Canada or the United States. This is because all of the provinces and the states have signed agreements that allow FROs to collect support orders across these boundaries. Ontario also has agreements with some other countries including Bermuda, Ghana, Hong Kong, the Czech Republic and the United Kingdom.

If the payor parent lives in a country that does not have an agreement with Ontario, the FRO cannot help you enforce the support order. The only way you can collect support is to use the laws of the country where the payor lives. To do this, a lawyer may be able to help.