

Families and the Law

Child Custody and Parenting



This booklet explains the law about custody and parenting in Alberta. There is information about:

- custody
- guardianship
- parenting plans
- how to make agreements with the other parent
- common problems and suggestions on how to resolve them

We've also included some tips and hints that will help you if you are representing yourself in an application.

Centre for
Public
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Legal Education
Alberta



Edmonton Community
Legal Centre

Who is this booklet for?

This booklet explains the law and parenting in Alberta. There is information about custody and guardianship, parenting plans, how to make agreements with the other parent, common problems and suggestions on how to resolve them.

Family law is complicated. Finding out about the law and your options is a very good first step. There are a lot of people and organizations who can help you. We've listed these referrals at the back of this booklet.

There are other booklets in this series that can help you. Go to www.cplea.ca to find out more.

There are things that you can do to help your children.

- Explain to the children that the break up is between the adults and that it is not their fault. Keep explaining this to your children as they will need to hear that often.
- Tell them that you both still love them and that you will always be a family.
- Don't blame the other parent in front of the children.
- Give lots of affection.
- Let anyone who looks after the children (teachers, day care) know about the break up and ask them to give the children extra attention.



There is a *Parenting After Separation* course that most parents attend when they are making arrangements for children. Find more information about the course at www.albertacourts.ab.ca/fjs/education.php.



Edmonton Community
Legal Centre

Alberta **LAW**
FOUNDATION



Department of Justice
Canada

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The Centre for Public Legal Education Alberta is a non-profit organization whose mission is to help people understand the law as it affects their everyday lives. We develop plain language booklets, presentations and other learning materials to help people recognize and respond to their legal rights and responsibilities. We have a variety of programs, and provide legal information and referral on many legal topics. For more information, please go to www.cplea.ca.

The contents of this booklet do not constitute legal advice. We make no claims or promises about its accuracy or completeness. If you require legal advice, you should consult a lawyer.

June 2014



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LOOK FOR THE FOLLOWING SYMBOLS TO FIND:



Additional resources and useful links where you can find more information.



Definitions of some of the common terms used throughout the document.



Tips and things to consider that may apply to your situation.

This booklet is based on **Alberta** law.
The law may be different in other provinces.



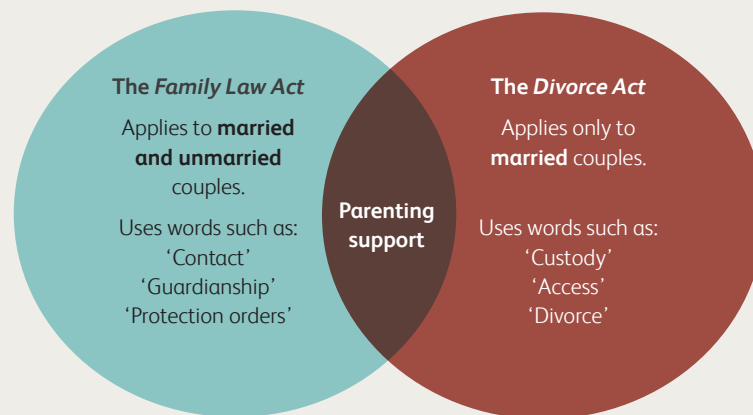
You can read the copies of the law online by going to the Canadian Legal Information Institute www.canlii.org

The Laws

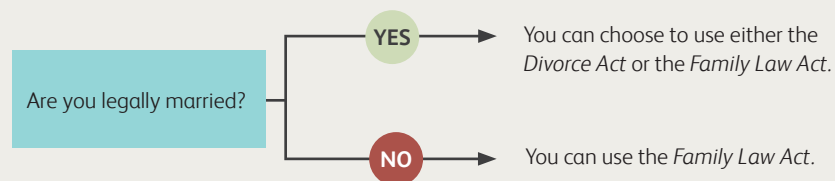
What laws apply to parenting?

The *Divorce Act* and the *Family Law Act* both deal with parenting. You need to decide which law applies to your situation. The *Divorce Act* is a federal law, and it only applies to people who are married to each other. The *Family Law Act* is an Alberta law, and it can be used if you are married or unmarried. These laws overlap in some areas, and they use different words to describe similar things. If you are going to make an application in court, then you need to know ahead of time which law you want to use.

DIFFERENCES BETWEEN THE *FAMILY LAW ACT* AND THE *DIVORCE ACT*



WHAT LAW CAN I USE?



Which level of court do I use?

The **applicant** gets to decide which law to use. If the applicant decides to use the *Divorce Act*, then the application must be made in the **Court of Queen’s Bench**. The Court of Queen’s Bench is the higher court in Alberta. If the applicant chooses the *Family Law Act*, then the application can be heard in the Provincial Court or in the Court of Queen’s Bench. The applicant gets to decide. The **respondent** is the other parent, who must respond to the application. There are also some matters that can only be dealt with in the Court of Queen’s Bench.

If you are applying to change an order, then you need to apply to the same level of court.

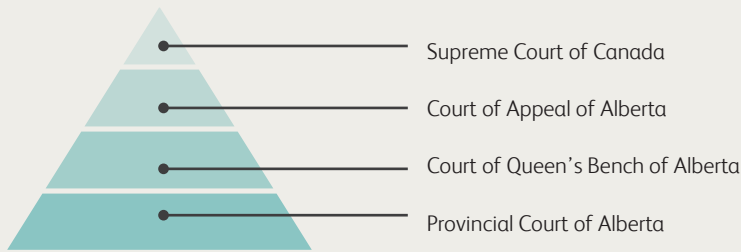


Applicant is the person who is making the court application.

Court of Queen’s Bench is the superior court in Alberta.

Respondent is the other person involved in an application, who responds to the application.

THE LEVELS OF COURTS IN CANADA



For more information about making a court application, go to the Alberta Courts website

www.albertacourts.ab.ca

DIFFERENCES BETWEEN THE COURT OF QUEEN’S BENCH AND THE PROVINCIAL COURT

Provincial Court	Court of Queen’s Bench
More locations across the province (72 locations)	Fewer locations (13 locations)
More people represent themselves without a lawyer	More lawyers than in Provincial Court
A judge has the ability to allow you to talk about your evidence in court.	It is not very common for you to be able to talk about your evidence. Instead, your evidence must be written.



Custody is a term under the *Divorce Act* and means the ability to make daily and major decisions about the child, and where the child will live.

Access is a term under the *Divorce Act* and means the time that the child spends with a parent who does not have custody. A person with access has the right to make inquiries and be given information about the child. If someone who is not a parent wants to spend time with the child, then they can apply for contact. See page 10 for more information.



Joint custody is the most common arrangement between parents. Sole custody is rare and usually only granted in exceptional circumstances (for example, if a child is being abused or neglected by a parent).

The Legal Terms

What are the legal words that explain parenting?

Each law uses its own words to define the relationship between you and your children, and you and your partner. The *Divorce Act* uses custody and access, while the *Family Law Act* uses guardianship, parenting, and contact.

The *Divorce Act* and Parenting

Custody means the ability to make daily and major decisions about the child, and where the child lives (which can also be called residency). There are different ways that custody can be arranged.

Access means the time that the child spends with a parent who does not have custody. If a parent has access to a child, then that parent has the right to information about the child. A parent with access does not usually have a say in major decisions about the child.

WHAT CAN CUSTODY LOOK LIKE?



Sole Custody

One parent makes all the decisions for the children.

The children live with one parent who has sole custody. The other parent might have access to the child.



Joint Custody

Each parent makes day-to-day decisions for the children when they are with that parent. Major decisions (like medical treatments, which school the children will attend) must be made by parents together.

Children can live with both parents, or mostly with one parent. If the children live with one parent more than 60% of the year, then the children have primary residency with that parent.

The *Family Law Act* and Parenting

The Responsibilities of Guardianship

Usually both parents are guardians of a child. Guardians are responsible for the care and well being of the child. Guardians are responsible for:

- making daily decisions about the children;
- supervising daily activities of the children;
- deciding where the children will live;
- deciding who the children can have relationships with;
- making decisions about the children's education;
- making decisions about the children's extra-curricular activities;
- deciding the children's cultural upbringing;
- deciding the children's religious and spiritual upbringing;
- deciding if the child should work and other employment matters;
- consenting to the child's medical treatments;
- granting consent when a guardian's consent is required;
- receiving and responding to any notices that a guardian is entitled to receive;
- dealing with any legal proceedings relating to the children;
- appointing someone to act on the guardian's behalf in an emergency situation or when the guardian is temporarily absent;
- receiving health, education and other information that affects the child; and
- exercising other powers necessary to carry out the responsibilities of guardianship.

Do all children have guardians?

In Alberta, every child has a guardian unless the child has married or become an adult interdependent partner.

Can a child have more than two guardians?

Yes, a child can have multiple guardians at the same time. A child's guardian does not have to be the child's parent.

Who can apply to become a guardian?

You can apply to become a guardian if you are:

- the child's parent but not a recognized guardian, or
- an adult who has had care and control of the child for more than six months. You usually have to be from Alberta, or ask for special permission for the residency requirement to be waived.



Guardian is the person who is responsible for the care, maintenance and well-being of the child, and they have powers, responsibilities and entitlements under the *Family Law Act*.



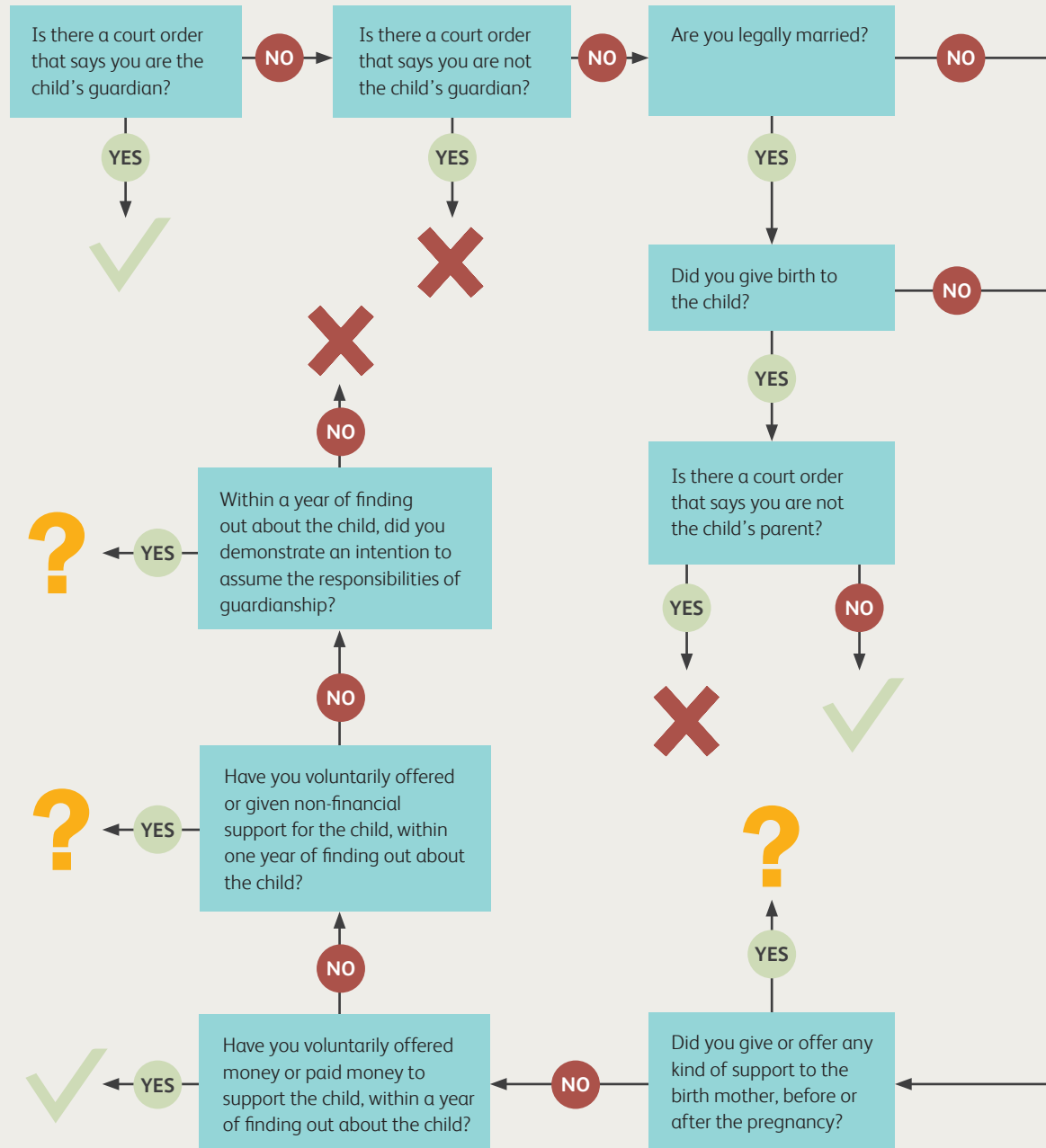
If you don't know if you are a guardian, take the test on the next page to find out.




Resolution Services
(Family Justice Services)
has an online version of this
chart. Go to


www.albertacourts.ab.ca/fjs/selfhelp/am-i-a-guardian.php


HOW DO I KNOW IF I'M A GUARDIAN?

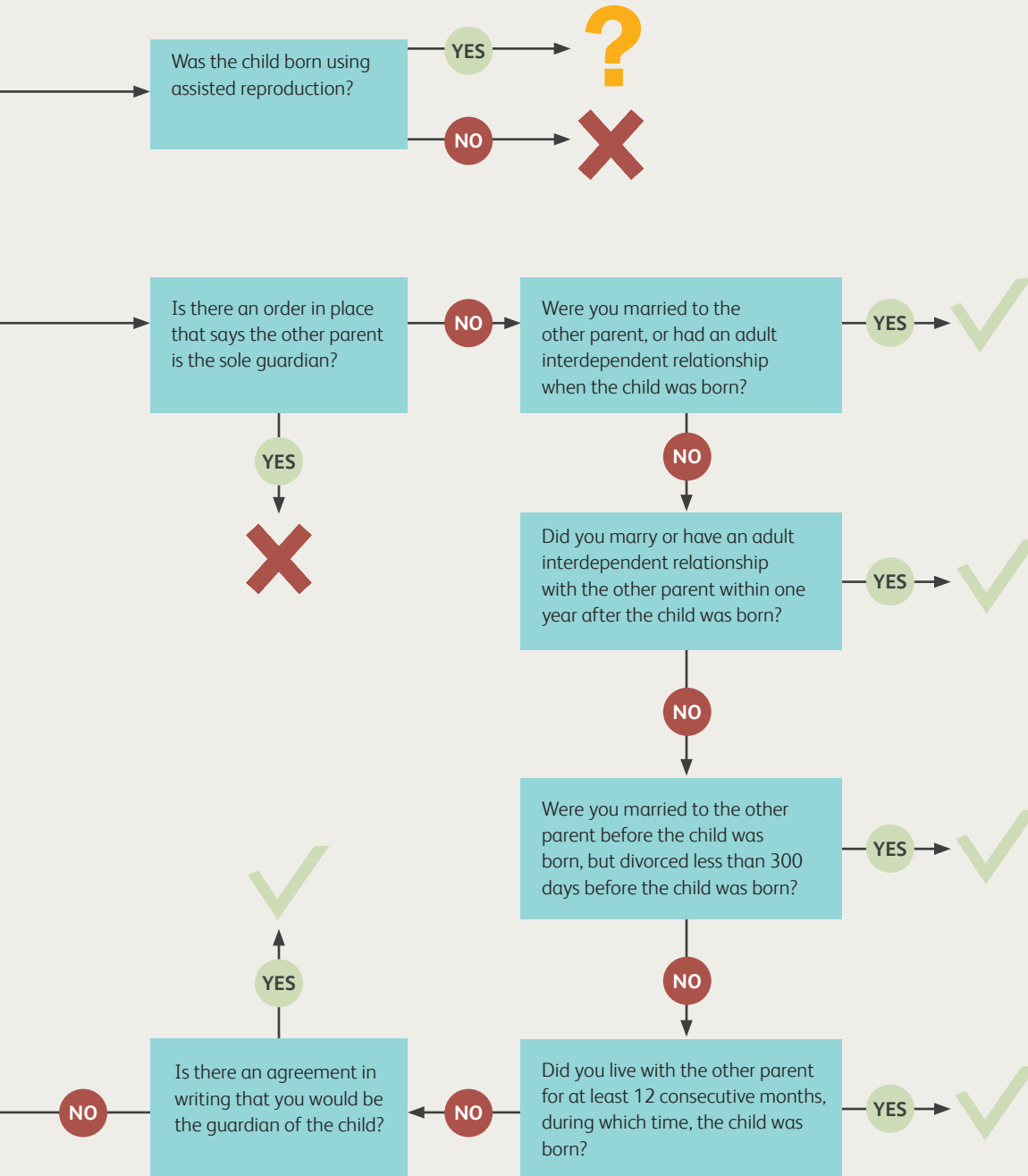


LEGEND

 You **are** the child's guardian.

 You **are not** the child's guardian.

 You might be the child's guardian. You should **seek legal advice**.



WHAT CAN GUARDIANSHIP LOOK LIKE?



Javier and Maria were married for a long time and they have one child together. Both parents are very involved in the child's life, and the child divides his time equally between the parents. Maria and Javier work together to make decisions for their child.

Who are the guardians?

Javier and Maria

Who makes decisions for the child?

Javier and Maria



Kristy and Tom lived together for a year and had a baby. Tom acknowledged that he was the child's father, but he works out of town and hasn't been involved with the child that much. He only sees the child once or twice a year. Kristy wants to be able to make all of the decisions for the child without needing Tom's consent. She applied to change the responsibilities of guardianship. Now she has a court order that says she can make all of the decisions for her child, and does not need Tom's consent. Tom's only right is to receive information about the child.

Who are the guardians?

Kristy and Tom

Who makes decisions for the children?

Kristy



Yolande and Martin are both 16 years old and they just had a baby. Yolande lives with her mom, Wendy, and the baby. Wendy helps with the baby a lot and takes the baby to doctor's appointments and to daycare. They all decide together that it would be a good idea to have Wendy be the baby's guardian too, since she is so involved with the baby.

Who are the guardians?

Yolande, Martin and Wendy

Who makes decisions for the child?

Yolande, Martin and Wendy



Ashley and Joshua have a very brief relationship. Ashley gets pregnant and has the child. Joshua doesn't believe that he is the father, and he doesn't want anything to do with Ashley or the child. He's angry when the paternity test proves that he is the father. Ashley applies for sole guardianship, and Joshua doesn't fight her application so the judge orders sole guardianship. Joshua is ordered to pay child support.

Who are the guardians?

Ashley

Who makes the decisions for the child?

Ashley

Contact occurs when someone who is not a guardian spends time with the children. This could be a parent who is not a guardian, or other family members, like grandparents. It is important for children to continue to have significant relationships with family members. People who are not guardians do not get to make decisions about the children's lives, and are not responsible for the well-being of the children.

The contact that can be asked for might be physical contact (visiting in person), or contact by phone, email or through some other means (like skype).

What is a parenting plan?

A parenting plan is an agreement about where the children will live, how you and the other guardian are going to look after them, and how you are going to make decisions for them. The plan should focus on what is best for the children rather than just what you and the other guardian want to happen. A good plan is easy to understand and lets everyone know what is expected of them.

Your parenting plan should answer a lot of questions about the children.

PARENTING PLAN CHECKLIST

- How will the guardians make decisions about the children? What about big decisions, like where the children will go to school, or consenting to medical treatment?
- Who will the children live with?
- What time will the children spend with each guardian? Do you have a schedule?
- What time will the children spend with other people? Will the children have specific days when they can visit grandparents and other family members?
- What activities will each guardian do with the children? Before enrolling the children in any activity, will you talk to each other?
- What events will both guardians attend? Will you both attend school events? Sporting events?
- How will the children stay in touch with the other guardian? If the children are with the other guardian, how are you going to communicate with the children? By phone? Email? Skype? Are there specific times when this communication can occur?
- Where will the children stay during statutory holidays? Birthdays? Mother's and Father's Days? Christmas? School holidays? Summer vacation?
- What happens if one guardian wants to move? Does that guardian have to give notice? How much notice?
- What process will the guardians follow if there is a disagreement, or if one guardian wants to change the parenting plan at a later date?

If your children spend more time with the other guardian, it doesn't mean that you love the children any less, or are less important to the children.



Contact is when someone who is not a guardian spends time with the children and is a term used in the *Family Law Act*.



Most people need to ask for a judge's permission before making an application for contact with children. Grandparents don't have to ask permission if the parents are the children's guardians and:

- The parents are living separate and apart, or one of them has died;

AND

- The contact between the children and the grandparent has been interrupted because of the guardians' separation or because of the death of the guardian.



Parenting plans will usually have to change as the children grow up. You will need to make changes a few times to accommodate the needs of the children.

Parenting plans can be temporary or permanent. Sometimes a temporary plan is called an "interim parenting plan."



Parenting plan is an agreement about where the children will live, how the guardians are going to look after them, and how the guardians will make decisions for them.



You can find Parenting Plan worksheets online in the Parenting After Separation Program workbook

www.albertacourts.ab.ca

There are a lot of private mediators too. You can find one by going to the ADR Institute of Alberta

www.adralberta.com

You can find collaborative lawyers by going to

www.collaborativepractice.ca



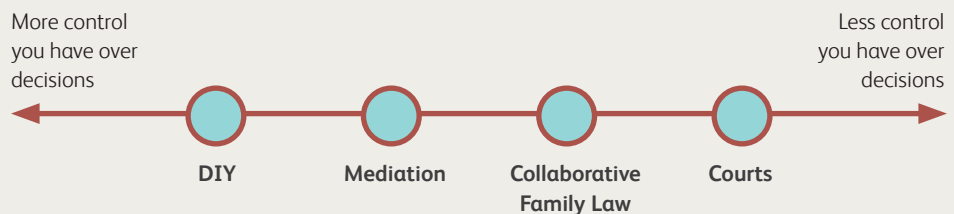
If you have children and one parent makes less than \$40,000 per year, you might qualify for mediation services through Resolution Services (Family Justice Services)

www.albertacourts.ab.ca/fjs

Making a Parenting Plan

How can you make a parenting agreement?

TYPES OF PARENTING PLAN AGREEMENTS



DIY

You and the other guardian can make an agreement yourselves about how you are going to care for the children. If you make an agreement yourselves, you will save money and time. You will also have control over what your agreement says.

Mediation

A mediator helps you work with the other guardian to come up with a plan that will work for everyone. The mediator is a neutral person, and won't take sides. The mediator won't force an agreement on you, but will help you come up with an agreement that you both can accept, and that is in the best interests of your children.

Collaborative Law

You and the other guardian each have your own lawyers, but you agree that you will work together to come up with parenting solutions. You all sign an agreement that says that you will all work together, and that you won't go to court. If you can't reach an agreement and end up in court, then you have to hire new lawyers. Most of the communication occurs in four way meetings, with the lawyers, you and the other guardian present, and everyone is encouraged to be honest and openly share information.

Courts

If you cannot agree on a parenting plan, then you can apply to the court. A judge will decide your parenting plan for you, and will issue a court order. The courts should be a last resort.

REASONS TO AVOID GOING TO COURT

- It costs a lot of money. Even if you qualify for Legal Aid, you have to pay that money back. Wouldn't you rather spend that money on your family?
- It takes a long time and it is out of your control. Once a case starts, the people involved usually feel powerless.
- There are a lot of rules that have to be followed and it can be very stressful. The children may also feel stressed.
- Fighting in court can make it harder to have a good relationship with the other guardian later on.

You should try your best to avoid court. Sometimes there are reasons to go to court.

- 1 You are concerned about the children's safety when they are with the other guardian. Your concerns must be real, and a good question to ask is, "If we were still in a relationship, would I leave the children alone with the other guardian?"
- 2 If you feel unsafe or intimidated.
- 3 If one guardian is preventing the other from seeing the children. Judges can make orders that enforce time with the children.
- 4 If one person is ignoring the situation and won't deal with the break up. Sometimes a court application can act as a way to get a conversation going between the guardians. You can stop the court process at any time if you are able to make a parenting agreement yourselves.
- 5 If one guardian has taken the children and can't be located. If you are concerned that the other guardian will take the children somewhere without permission, you should talk to a lawyer right away.

A judge will try to come up with a parenting solution that is fair, and that will work best for the children. It's not about being right or wrong. Many people think that a judge will tell them that they've done everything right and that the judge will somehow punish the other guardian for their behaviour. If this is your goal when you're going to court, you will be disappointed.



Limited scope retainer

is an arrangement where a lawyer provides legal services for part of your legal matter, but not all of it.



If you think that you want to represent yourself with some help from a lawyer, then you might want to find a lawyer who offers a limited scope retainer. In this arrangement, a lawyer provides legal services for part of your legal matter, but not all of it. The part that the lawyer will be responsible for is something that you make an agreement over before starting to work together. For example, you could hire a lawyer to draft all of the court documents, but you would represent yourself in the actual application. Or you could hire a lawyer to act like a coach, who would provide you with legal advice when you need it, but you would do all of the other work. You will have to call law firms or look online to find out if a lawyer offers this kind of service.



If you end up in court, then you might need extra help. If you don't have a lawyer to help you, you should contact Resolution Services (Family Justice Services or Family Law Information Centre) to find out if there are people who can help guide you as you make an application.

www.albertacourts.ab.ca/fjs



Get more information about consent orders at Resolution Services (Family Law Information Centre)

www.albertacourts.ab.ca/fjs/flc.php

Some people think that if they compromise, their children won't think that they are loved. As if by fighting in court, the parents will prove to the children how much they love them. Your kids don't want you to fight. Your children need you and they need the other guardian too.

If you've tried one way to come up with a parenting plan and that didn't work, try a different way. If you haven't tried mediation, why not try it now? Do everything you can to avoid having to go to court.

Do I need to hire a lawyer to help me?

Lawyers can be helpful in a lot of ways. They can give you advice, tell you court procedure, negotiate for you, and represent you in court. Sometimes it is a good idea to have a lawyer look at the parenting plan before you sign it. The lawyer can tell you if the agreement follows the law or not. You will have to see a different lawyer than the other guardian. If you are going to make an application, you don't need a lawyer to go to court. People who do their own court application are called self-represented litigants.

How do I make an agreement legal?

You should not sign any agreements if you are feeling pressured or forced. You should be sure that you understand what you are agreeing to, and that what you are agreeing to is legal. You can ask a lawyer to review the agreement before you sign it. Once you feel prepared to sign the agreement, then both you and the other parent should sign it. You do not need anyone to witness your signature if all you are agreeing to is a parenting plan, but you can arrange for a witness if you want to do so.

You could also choose to formalize your agreement as a consent order with the courts. If the agreement is in the form of a court order, then it can be enforced through the courts. You can only use a consent order form if you and the other parent agree on all the terms that you are including in the order. You will need to start an action with the courts and may need to pay a filing fee.

Lawyers can give you advice, tell you court procedure, negotiate for you, and represent you in court.

Sometimes it is a good idea to have a lawyer look at the parenting plan before you sign it.

Parenting and the Courts

How does a judge decide what to order when it comes to parenting?

The judge will consider the best interests of the children when making an order.

What are the best interests of the children?

When guardians and judges make decisions about children and parenting, the law says that the only thing they should consider is the children's best interests. This means that the parenting plan, agreement or court order must protect the child's physical, psychological, and emotional safety, and must consider the children's needs and circumstances.

The factors that a judge will consider include:

- the love, affection and emotional ties between the children and the guardians, other family members and other people who have been involved in raising the children;
- the stability of each guardian's home and the length of time the children have lived there;
- who has cared for the children as they have grown;
- the children's cultural, religious and spiritual upbringing and heritage;
- the children's views and preferences, where it is appropriate;
- the plans that are proposed by the guardians for the care and raising of the children;
- if there has been any family violence, and the impact that the family violence has had on the children;
- the abilities and willingness of each guardian to provide for the children's needs and to communicate and cooperate with the other guardian; and
- how willing each guardian is to exercise the responsibilities of guardianship.



The applicant will give evidence verbally or in writing. Whenever an applicant is giving evidence, the applicant must swear that they are telling the truth. If they lie or mislead the judge, then they could be found to have committed perjury. There are serious consequences for lying in court.

What's an example of the best interests of the children test?

In order to make a decision about parenting, the judge will need to have access to evidence about those factors. Let's say that the applicant is applying for a parenting plan for the children. The applicant wants to have the children the majority of the time, and have the ability to make most major decisions for the children. She needs to provide evidence that her parenting plan is in the best interests of the children. This means that the applicant would want to have evidence about:

- her relationship with the children;
- the relationship of the other guardian to the children;
- specific details about the relationship between the two guardians (when the relationship began and ended, if they were married or living together, etc.);
- where the children have been living and with whom (Are there other children living in the home? Is there a new relationship?);
- details of the current parenting arrangement (How often are the children with her? How often do the children see the other guardian? Do the children spend more time with one guardian over the other? What activities do they do together? How long has this arrangement has been in place?);
- her role in caring for the children (Has she always been the primary caregiver? Were those responsibilities shared equally between the guardians?) and the role of the other guardian;
- any reason why the other guardian would not be as good a choice as her to be the primary guardian for the children (any history of violence, abuse of drugs or alcohol, or neglect); and
- Plans that she has for the children (What is she going to do for childcare? Does she have living space for all of the children? Does she have plans for the children's education? And any other plans).

The other guardian will have a chance to bring their own evidence to the judge. The respondent will also bring evidence about what is in the best interests of the children. A judge can order guardians to hire a parenting expert for assessments if the judge thinks it is necessary.

The judge will consider the child's best interest before making an order.

Can the children have a say in the parenting plan?

You can incorporate the views of the children into your agreement. If you are involved with the courts, the judge may consider the views of the children, depending on their age and maturity. Teenagers are more likely to have a say than young children. Even when the judge hears from a child, this doesn't mean the child's opinion will determine the issue. The judge will make the ultimate decision based on their opinion about what is in the child's best interest.

The other guardian ended our relationship. Can they still apply for a parenting order?

Yes, the other guardian can apply for a parenting order. It does not matter whose fault it was that the relationship ended. The judge will not consider the behaviour of the guardian, unless that behaviour relates to their ability to act as a parent. For example, if one guardian has an affair, that does not mean they are a bad guardian.

Where will the children live while we wait to go to court?

If you and the other guardian cannot come to an agreement, then a judge can make an interim parenting order. This is a temporary parenting order, and will only apply until there is a final order.





You don't want the children to feel like it's their fault that the other guardian does not visit. You might need to come up with an explanation that doesn't blame the other guardian, for example: *"Your mom is so sad and angry about the divorce that she just can't manage visits right now."*



Enforcement order is an order that allows a judge to punish the guardian who is preventing the children from spending time with the other guardian.

Living with a Judge's Decision

What can I do if I don't agree with the judge?

You can appeal the judge's decision. You should talk to a lawyer before you take any steps. There are only certain reasons that an order can be appealed, and there are specific legal tests that must be met. If you are thinking of appealing an order, then you should contact a lawyer quickly because there is a time limit on how long you have to appeal an order. Appeal courts do not interfere or change the original judge's decision lightly.

What can I do in situations concerning the other guardian?

What can I do if the other guardian isn't obeying the parenting order?

If the other guardian is blocking time that you are supposed to have with the children, then the wording of your current court order matters. Were you granted specific times with the children (are the exact dates and times specified in the order?) or were you granted reasonable or generous time with the children (which means there are no dates and times set out in the order). If you have an order that does not specify the exact times and days of the week that the children are to be with you, then you can apply to change your order to be more specific.

If you have an order that does specify exactly when you are supposed to have the children, but the other guardian isn't cooperating with that, then you can apply for an **enforcement order**. The judge can order:

- that you be given extra time with the children, to make up for the time that has been lost;
- that the other guardian reimburse you for the expenses that you've incurred as a result of being denied your time with the children (for example, missed wages, travel expenses);
- that the other guardian must provide security that will be held in trust until the parenting order is followed;
- penalties of up to \$100 per day, to a maximum amount of \$5,000 for denying parenting time; or
- a prison term.

What can I do if the other guardian stops paying me child support?

Child support and parenting time are separate issues. Not paying child support does not affect the right of your children to see the other guardian.

What can I do if the other guardian stops visiting the children?

This is a very hard situation. Try not to let the children know how angry you are with the other guardian. The children need to know that it's not because of anything that they've done. Perhaps the other guardian could come up with some other ways to show the children that they care, like emails, calls or texts. If you think it is in the best interests of the children, you could apply to change the parenting order so that the time with the other guardian is lowered or eliminated.

What can I do if I'm concerned about the safety of the children while they are with the other guardian?

You can make an application for the other guardian to have their parenting time supervised. This means that there will be another person with the other parent during their access time with the children. You will need evidence of why supervised access is in the best interests of the children. You can either agree on the person who will be there, or hire someone from an agency.

What can I do if other guardian is constantly harassing me?

If there are problems when you pick up or drop off the children, then you might want to consider doing the exchanges in a neutral place. You could use the parking lot of a friend's house, social service agency, restaurant, or mall. You can apply to have the location changed if you have a court order.

If the other guardian is using the courts to harass you, then you can ask a judge for specific things to help with your situation. This kind of harassment can include the other parent threatening to go to court all of the time, making up emergency situations to go to court without notice or on very short notice, making trivial applications, making multiple applications on an ongoing basis, getting friends or family members to make false affidavits, and many other tactics. If this is happening to you, then you can ask a judge to:

- require that the other guardian must get the court's permission to make any further applications;
- require the other guardian to pay money into the court before making applications;
- dismiss or strike out court applications; or
- require that the other guardian pay you money (also called costs).



For information about child support, go to our Families and the Law: Financial Support booklet at

www.cplea.ca

Changing an Agreement or Order

Can we change the court order?

You can change the court order if you both agree to the changes. You can do this by a consent order, which is when everyone agrees to what the changes will be, and you apply to change the order together.

If you don't agree on what changes should be made, then you can make an application to change the parenting order. This is called an application to vary the parenting order.

Whether or not the judge will change the order depends on if the judge thinks that the circumstances have changed since the original order, and if the requested change is in the best interests of the children.

Can we change the parenting agreement?

You can only change the agreement if the other guardian agrees to the change. If the other guardian won't agree to a change, then you should look to see what your parenting plan said you would do if you couldn't agree. If the parenting plan says that you would try to resolve your conflict through mediation, then you have to try mediation. If you and the other guardian cannot work things out, then you can make an application for a parenting order.

Can we change a court order informally?

If you have a court order, then it is not a good idea to informally change that order. If you want to make changes to the order and you both agree on those changes, then you should make a consent order. If you don't follow the court order, and instead come up with a new agreement, you can't enforce that agreement in court.

If you don't follow the court order, and instead come up with a new agreement, you can't enforce that agreement in court.

Traveling with Children

Do the children need passports to travel with me?

Yes, all children need their own passport when traveling outside of Canada. This includes newborns.

Can I apply for a passport for my children?

You can apply for a passport if you are:

- the parents of the children;
- the parent who has custody (if you are divorced); or
- the legal guardian

You will have to provide some documentation of your status. For example, if you are applying as a parent, then you'll need proof that you are a parent of the children. This could be the long form birth certificate or an adoption order that lists you as one of the parents. If the child has another parent, then the other parent should sign the application. If you are applying as a guardian, then you'll need to provide proof of guardianship, which would be a court order.

Do I need the consent of the other guardians to apply for the children's passports?

Yes, if the children have another guardian, then you will need the guardian's consent. The other guardian must sign the application. If they refuse or can't be located to sign, then a judge can give you permission to sign alone for the passport.

A judge can give you permission to sign alone for a child's passport.



You can find a sample letter at www.travel.gc.ca/travelling/children



Lawyers are notaries, and you can call ahead to find out if there is a fee.

Do I need a letter to travel outside of Canada with the children?

Yes, you will need a signed letter from the other guardian or parent that says that they consent to the children traveling with you. If you don't have a letter, you might be delayed or not allowed to enter or leave different countries.

Does the letter have to be witnessed?

While there is no legal requirement to have a witness to the letter, border officials will be more likely to accept a letter as authentic if it is witnessed by an official, like a notary public.

What can I do if the other guardian refuses to provide consent for the passport, or the letter?

A judge can issue an order that says that you don't need the other guardian's consent to apply for a passport. You can also apply for an order that says you have permission to travel with the child. You will need to have an itinerary and the judge will consider if the travel is in the best interests of the child.



What can I do if I think the other parent is not going to bring the children back?

You can apply to the court to have the children's passports taken away from the other guardian. You can make an application **ex parte**, which means you can make an application without notice to the other side. If you are concerned that the children won't be returned, you should get legal help immediately.



Ex parte application is an application that is made without notice to the other side.

From: Javier <parentjavier@emailaddress.ca>

Date: June 30, 2014 3:52:41 PM MDT

To: Maria <parentmaria@emailaddress.ca>

Subject: Travel Consent

Hi Maria,

I'm emailing you to let you know that I am planning on taking Sam to San Diego with me in February when he is on school break. As we share joint guardianship over Sam, I will need you to fill in a consent letter saying that he can travel with me. I will be booking the flight within the next month, and then I will provide you with a letter that has our exact travel information. If you have any concerns, please let me know by July 10, 2014.

Thanks,

Javier

Here is a sample email of one guardian requesting the consent of the other guardian to travel with the child.



If one guardian moves, it often means that the visits with the other guardian will be less frequent. But when the visits do occur, they might be for a longer period of time.

Moving with the Children

Can I move with my children?

If a guardian is thinking of moving with the children, then there are a lot of things to consider.

What should I do first?

You should talk with the other guardian and anyone who has contact with the children before you take any steps to move. You might be able to work out a parenting schedule with the other guardian, and avoid a court application. You could also use a mediator to come to a new agreement. For example, you might be able to agree that the children will be with the other guardian on all school holidays and for an extended period of time over the summer months. You could also suggest ways that you could use to ensure that the guardian remains in contact with the children using technology (for example, purchasing a cell phone so that the other guardian can send text messages, use Facetime, send videos and can call the children at any time).

You could also talk to a lawyer to find out what your chances of being allowed to move with the children are, before taking any steps.

Do I have to give the other guardian notice of the move?

Yes, if you have a parenting agreement or court order, then those documents will usually require that you give notice. Even if you don't have a formal agreement or order, moving will usually have a pretty big impact on the children's relationship with the other guardian so it's usually best to provide them with notice.

If you choose to take the children and move without providing the other guardian with notice, you might be accused of abducting the children. The other parent could apply for an order for the children to be returned, and there could be long-term consequences on the parenting arrangements.

What if the other guardian doesn't want me to move with the children?

The other guardian can bring an application in court. The applicant would be asking the judge to order that the children cannot move with you.

The judge has to look at certain factors when deciding if a move is in the children's best interests.

FACTORS THE JUDGE WILL CONSIDER

- The judge will think about the existing parenting arrangement and the relationship between the children and each guardian. The person who wants to move would want to have evidence of a close relationship with the children.
- The law says that it is desirable for the children to have maximum contact with both guardians. The person who wants to move may want to have some plans in place about how the contact between the children and the other guardian will continue, and what efforts the moving person is willing to undertake to ensure that this occurs.
- The judge will consider the views of the children, if it is appropriate. A very young child will not usually have a say in the move, while an older child or teenager would probably be asked to provide their opinion.
- The judge can also look at the reason why the guardian is moving. For example, the judge may want to know if the guardian is moving for an economic reason, like a job transfer or a better employment opportunity, or to have increased family support by moving back to where the extended family is located.
- The judge will also consider the disruption that would occur to the children if there were to be a change of who the children live with. For example, if the moving guardian has always spent the most time with the children, what effect would it have on the children if the other guardian were to become the primary caregiver?
- Finally, the judge will think about the disruption to the children that would occur because of the removal from family, schools and the community. If there is an extended family in the current community that the children spend time with, and the moving guardian wants to go somewhere where there are no other family members, this will have a large impact on the children. Moving schools can also be very hard for children, especially if the child is involved with school activities. The judge will consider all of these factors before making a decision on what is in the children's best interests.

Contacts

Legal Aid Alberta - Service Centres

Offers information, referral and representation services to those who meet financial guidelines across Alberta.
1 866 845 3425

ADR Institute of Alberta

Has a roster list of private mediators.
www.adralberta.com
1 800 232 7214

Collaborative Divorce in Alberta

Has a list of lawyers who practice collaborative law in Alberta.
www.collaborativepractice.ca

Law Society of Alberta Lawyer Referral Service

Can provide the contact information for three lawyers you can contact. You should receive a half hour free consultation.
1 800 661 1095

Family Justice Services

Offers a variety of low cost and free programs to help individuals find solutions to family law issues.
www.albertacourts.ab.ca/fjs/index.php

Family Law Information Centre

Can help you with court procedure, forms and child support calculations, as well as provide you with information and referral.
www.albertacourts.ab.ca/fjs/flic.php

Legal Clinics

Clinics can provide you with legal information and advice.

Calgary Legal Guidance

403 234 9266
clg@clg.ab.ca

Central Alberta Community Legal Clinic

1 877 314 9129
info@communitylegalclinic.net

Children's Legal & Educational Resource Centre (CLERC)

403 207 9029
clerc@clerc-calgary.ca

Edmonton Community Legal Centre

780 702 1725
intake@edcc.ca

Lethbridge Legal Guidance

403 380 6338

Grande Prairie Legal Guidance

780 882 0036
gplg@thecommunityvillage.ca

Student Legal Assistance (Calgary)

403 220 6637

Student Legal Services (Edmonton)

780 492 8244

The **Families and the Law** series has several booklets to help you understand Family Law in Alberta:

- Child Custody and Parenting
- Financial Support
- Property Division for Married and Unmarried Couples
- Representing Yourself in Family Court
- Young Parents

To find these booklets and more, go to www.cplea.ca

Families and the Law

Child Custody and Parenting

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