

Family Law

on Children and Custody

This pamphlet provides some information about family laws that deal with children and custody, and where you can get more information.

Family Law Information Centres at the Supreme Court (Family Division) in Halifax Regional Municipality and Cape Breton. See their website at www.gov.ns.ca/just/flic/

Child Support Guidelines:

www.justice.gc.ca/eng/pi/fcy-fea/sup-pen/index.html

Nova Scotia Maintenance Enforcement

Program: <http://www.gov.ns.ca/just/mep/>

Information on **Family Law in Nova Scotia:** <http://nsfamilylaw.ca/>

For more information on Family Law, please see the pamphlet called **What Newcomers Need To Know About Family Law On Marriage, Separation, And Divorce.**

This pamphlet provides general legal information. It does not give legal advice.



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● **Can I ask the court to change an order for custody or access?**

Yes, the child's parent or their guardian, or a person with access, can apply to the court to change, suspend or end a court order.

Before changing an order, the court must be sure that there was a change in the child's needs or situation after the first order was made and that changing the order is in the child's best interests.

Information

Start with LISNS' online legal information

- we bet you'll find the answers you're looking for: www.legalinfo.org

Call our **Legal Information Line** at **1 800 665-9779** or **455-3135** to get free legal information.

Need a lawyer? Call our **Lawyer Referral Service** at **1 800 665-9779**

or **455-3135** to request a lawyer referral.

You can plan a 30-minute meeting with a lawyer for \$20 + HST. This will give you answers to important questions. If you are in police custody or criminal court, you can get free interpretation services.

Just want to listen to a recorded message on a particular legal topic?

Call **Dial-a-law** at **420-1888**.

For more answers to questions about **Family Law in Nova Scotia**, go online to: www.legalinfo.org/family-law.

● **If I am married and planning to travel alone with my child, do I need a letter of consent from my spouse?**

Yes. You will need a letter of consent from each person who has the legal right to make major decisions on the child's behalf and who is not going with the child on the trip.

● **I want to visit another country and I am separated from my spouse. Can I take my child with me?**

If you do not have sole custody, you will need the permission of the other parent or person with custody to take the child out of the country. You will need a letter of consent from each person who has the legal right to make major decisions on the child's behalf and who is not going with the child on the trip.

● **Can I move out of the province or country with my child after I get a divorce?**

It depends on the custody and access agreement or court order.

If you have custody, you may just need to get a consent letter from the other parent or guardian, or from the court. Consent means that he or she agrees to let the child go.

If the other parent or guardian does not consent to the move, he or she can apply to the court to prevent the child from being moved. You can also apply to the court to ask the judge to allow you to move the child. The court will decide what is best for the child. The court can order that the child stay where they are, order that custody switch to the other parent, or order that custody will change only if you choose to move with the child.

Family law deals with family issues and relations. Family law includes such things as marriage, separation and divorce, common law relationships, and child support, custody and access.

● **Who has custody of the children?**

Custody means the care and control of children. In Canada, both parents have equal custody of the children unless a court order gives custody to one parent or unless the parents agree on separation that one parent will have custody. If parents are unable to provide care for a child, a court may give another person care and control over the child. This person is called a guardian. A parent or guardian with custody has the right to decide what the child can do and how he or she will be raised.

● **How do I become the guardian of my adult disabled child?**

If you think you need to be appointed as a guardian for an adult child, you should get legal advice. Only a judge can appoint a guardian for an adult.

Guardianship allows you to be responsible for your child's personal and financial interests if he or she is mentally incapable of caring for his or her own interests.

It gives you the legal right to make binding decisions for your child and to access information, including medical information, about your child without his or her consent.

● **Can I leave my children alone at home when I go out?**

There are two laws that apply to this situation. The Criminal Code of Canada says a person is breaking a criminal law if they abandon or put in danger a child under the age of 10. You should not leave a child under the age of 10 years old alone at home because you can be charged with a criminal offence.

The other law is the Nova Scotia Children and Family Services Act. The Nova Scotia Children and Family Services Act is the Nova Scotia law that protects children from being hurt. The Act does not say at what age a child can be left alone. Each child is different, but some questions to think about before you leave a child alone are:

- Is the child mature enough to leave alone?
- Will they be safe?
- Do they know what to do if they need help?
- How long will they be alone?

The province can remove the child from the home if they believe that the child is in danger or neglected.

● **Can I spank my child?**

The Criminal Code of Canada says that a parent or parent-substitute can use some force to correct a child he or she is taking care of, if it is reasonable under the circumstances. Force used must be short-lived and must not harm the child. Hitting a child under the age of two is not reasonable force because the child is too young to understand why they are being spanked. Force is not reasonable if you use an object, such as a belt or stick to spank a child, hit a

child on the head, or injure a child. It is also unreasonable to hit a teenager.

Parents have been charged with assault for using too much force to spank a child.

● **Can my child's daycare worker or teacher spank my child?**

No. The Nova Scotia Day Care Act does not allow a person in a daycare to spank or hit a child. The Nova Scotia Department of Education does not allow a teacher to hit a student.

● **I am getting a divorce. How can I get custody of my child?**

There are two types of custody:

Joint Custody: where both parents share care and control of the child

Sole custody: where one parent has care and control of the child and usually the other parent has access.

Access means the right of children to have contact with and visit the other parent after separation or divorce.

You may be able to agree with your spouse about who will have custody or you may agree to share custody. Even if custody is shared, usually the child will live with one parent. You should talk to your lawyer about what custody arrangements would work best for you or your children before you sign a custody agreement with your spouse. If you and your spouse cannot agree, you can go to court and ask a judge to decide on custody. The judge will decide what is best for the child.

● **If I do not have custody, how do I get access to my child?**

In Canada, we believe that children benefit from having contact with both parents. If parents separate or divorce, usually the parent who doesn't live with the child is given access visits with the child. You can agree with your spouse on access visits.

If you do not agree with your spouse on access visits, you can apply to the court for a judge to decide about access. A judge will make an access order that he or she sees as best for the child.

Other family members, such as grandparents, can ask a court for permission to apply for access.

● **Does my spouse have to support the children if we separate or divorce?**

Yes. In Canada, both parents have a responsibility to support their children. When parents separate or divorce, usually the parent without custody pays child support to the parent with custody. In Nova Scotia, the responsibility to pay support may continue until the child is 19. The responsibility to pay support may continue after the child is 19 if he or she is attending university or college and needs support, or because he or she is unable to support him or herself, for example, because of a disability. There are federal and provincial child support guidelines to help parents work out how much support should be paid. There is a link to the Nova Scotia Maintenance Enforcement Program at the end of this pamphlet.