If you speak French

In many cases you have the right to government services and legal proceedings in French, including hearings before French-speaking decision-makers.

If you have a legal problem, you can ask a lawyer or a community legal clinic about your French language rights.

Si vous parlez français

Il existe de nombreuses situations où vous avez droit à des services gouvernementaux et à des procédures juridiques en français. Ainsi, vous pouvez avoir droit à ce qu’une audience à laquelle vous êtes partie soit tenue devant un décideur qui parle français.

Si vous avez un problème juridique, vous pouvez demander à un avocat ou à un intervenant d’une clinique juridique communautaire de vous informer des droits linguistiques liés au fait de parler français.
# Table of Contents

- **Introduction** ......................................................... 1
- Who will the child live with? ................................... 1
- What is custody? .................................................. 2
- What are the different types of custody? ................. 2
- What is access? .................................................... 3
- What are some of the different types of access? .......... 4
- Does child support affect a parent’s right to access? .. 5
- Can someone other than the parents get custody and access? .................................................... 6
- Travelling with a child ........................................... 6
- Can a parent move with their child? ........................ 7
- How are parenting plans decided? ......................... 8
- Finding a lawyer ................................................. 14
- Getting more information ..................................... 15
- What if I cannot afford a lawyer? ............................ 16
- Other information and resources ........................... 19
**Introduction**

When parents separate, they need to decide how they will take care of their children. They have to make important decisions about things like:

- Where will our child live?
- How will we make major decisions about how to care for and raise our child?
- How much time will each of us spend with our child?
- What role will each of us have in caring for our child?

These issues are referred to as **custody** and **access**. If parents agree on these things, they can make a written **parenting plan**.

When we use the words “both parents” in this booklet, it refers to all parents a child might have.

**Who will the child live with?**

Some children of separated parents live mainly with one parent, and some divide their time between their parents.

A child’s living arrangement can be anything that is in their best interests. For example, a common plan when a child lives mainly with one parent, is for the child to
spend one mid-week day and every second weekend with the other parent.

### What is custody?

Custody is the right to make important decisions about how to care for and raise a child. For example, parents with custody can make decisions on their child’s:

- education
- religion
- health care

Custody is not about which parent the child lives with or how much time a child spends with each parent.

For example, even if only one parent has custody, the child might spend equal time living with each parent. Or the child might live mainly with one parent, but both parents have custody and share the decision-making.

### What are the different types of custody?

**Joint custody**

Joint custody means that both parents must agree on major decisions that affect their child. One parent cannot decide these things without the other parent agreeing to it.
Joint custody works best when parents share similar ideas about how to raise their child. It takes a lot of co-operation.

Sometimes parents with joint custody divide the decision-making. For example, one parent makes decisions about the child’s healthcare, while the other parent makes decisions about their education.

**Sole custody**

Sole custody means that one parent makes all of the important decisions about the child. Sometimes the parent with sole custody must talk to the other parent before making the decision, but the other parent does not have to agree with the decision.

When one parent has sole custody, the other parent usually has **access**.

### What is access?

When a child lives mainly with one parent, the child and the other parent usually have the right to spend time together. This is called access.

A parent with access also has the right to ask for, and get, information about their child’s health, education, and well-being from the other parent or places, such as schools and hospitals. But for some health information
requests, such as hospital records, the parent with sole custody may need to agree in writing first.

### What are some of the different types of access?

#### Reasonable access

If the parents are able to co-operate, access plans can be left open and flexible. This is sometimes called **reasonable access** or **liberal and generous access**. This allows the parents to informally make plans that can easily be changed if the situation changes.

#### Fixed access

Sometimes access plans include a specific and detailed schedule. This is often called **fixed access** or **specified access**. The plan’s terms may cover things like holidays, long weekends, children’s birthdays, and religious occasions. It may include where access will take place, who is responsible for pick up and drop off, and other conditions.

#### Supervised access

In some situations, access may need to be supervised by another person. For example, if the parent with access has:
● a drinking or drug problem,
● abused the child in the past, or
● threatened or tried to take the child away from the other parent.

The person who supervises might be a relative, a friend, a social worker, a worker at a supervised access centre, or a Children’s Aid worker.

**No access**

In the most extreme cases, a parent might not have any access to their child. For example, if they have seriously neglected or abused their child, or if their child’s safety cannot be protected.

***Does child support affect a parent’s right to access?***

No. Access and child support are separate legal issues. A parent cannot be denied access because they have not paid child support. And a parent might still have to pay child support even if they do not have access. For more information, see CLEO’s publication *Separation and Divorce: Child Support.*
Can someone other than the parents get custody and access?

Usually it is the child’s parents who get custody or access. But in some cases, other people might get custody or access, such as a step-parent, grandparent, or other relative. Or it could be someone outside the family who has a close relationship with the child.

A parent with sole custody can choose who gets custody of their child for the first 90 days after their own death. This does not have to be the other parent. The person they choose, or anyone else, can apply to court to have custody after that.

Courts decide custody and access based on what is in the best interests of the child.

When we use the word “parent” in this booklet, it usually means anyone who has custody or access.

Travelling with a child

Before travelling with a child, a parent should check their agreement or court order to see if they:

- need the other parent’s permission to travel
- have to give the other parent information about their travel plans, such as flight details and emergency contact numbers
Even if they have sole custody, a parent may still need the other parent’s permission to travel with their child.

Officials in Canada or in the country they are travelling to, can ask a parent for documents to prove they can travel with their child. These officials can decide whether to let the parent and child in or out of the country.

To avoid delays or being refused entry or exit at the border, it is safest to have a travel consent letter signed by the other parent. A parent should also bring a copy of any agreement or court order that deals with travel.

To get a passport for a child under 16, both parents must usually sign the application.

Can a parent move with their child?

A parent can usually move with their child if the move does not affect the other parent’s access. If the move does affect access, the parent needs to make an agreement with the other parent or get a court order that changes access. If they go to court, the parent who wants to move has to convince the judge that the move is in the best interests of the child.
How are parenting plans decided?

Parents can try to agree on custody, access, and parenting plans on their own or with the help of someone they both trust, a lawyer, or a mediator.

When parents agree, they can make a written parenting plan called a parenting agreement, a separation agreement, or a paternity agreement.

A parent does not need a lawyer to make a parenting plan. But it is a good idea for each parent to get their own legal advice before signing one. Parents cannot get advice from the same lawyer. For more information about getting legal help, see Finding a lawyer on page 14.

Both parents and a witness have to sign the parenting plan. Once signed, both parents have to follow it unless they agree to change it, or a judge decides that there is a good reason to change it.

Parents who cannot agree on a parenting plan can get help from a family law professional, such as a mediator or an arbitrator. Or they may decide to go to court and ask a judge to decide.

Mediation

If parents cannot make an agreement on their own, they may want to use a mediator.
A mediator is a person trained to help parents discuss their issues, understand each other’s position, and try to reach an agreement.

Mediators do not:

- give legal advice
- make decisions
- take sides

Family mediators are usually professionals such as social workers, lawyers, or psychologists.

A parent does not need a lawyer to go to mediation. But it is a good idea for them to have their own lawyer review any agreement they make and to get legal advice before signing it.

Sometimes mediation may not be a good idea. For example, if there has been violence or abuse, or if there are serious mental health or drug abuse issues.

The Ministry of the Attorney General offers free and sliding-scale mediation services in family courthouses. Sliding-scale means the amount a parent pays depends on their income and number of children they have to support.
To find out more about these services, search for “Family Mediation Services” on the Ministry’s website at www.attorneygeneral.jus.gov.on.ca.

Legal Aid Ontario also offers a mediation service to people who qualify financially. To find out more, call Legal Aid Ontario at 1-800-668-8258.

Parents can also hire a private mediator.

**Arbitration**

An arbitrator, like a mediator, is a person trained to help parents discuss their issues and try to reach an agreement. But unlike mediation, if parents cannot agree, the arbitrator makes a decision.

Arbitrators are usually retired judges, mental health professionals, or lawyers experienced in family law. Usually, both parents must pay for the arbitrator.

In Ontario, arbitrators can make legally binding decisions. This means that both parents must follow the arbitrator’s decision as if it is a court order.

But this is true only if the arbitrator follows certain rules. The 2 most important rules are:

- Usually each parent must get their own legal advice before agreeing to arbitration.
The arbitrator makes a decision based only on Canadian family law and the best interests of the child. This means the arbitrator cannot base their decision on any religious, cultural, or other rules. The arbitrator must apply the same laws that a judge would apply in a Canadian court.

People sometimes choose to discuss their family law issues with a religious or community leader or another person they trust. But this person does not have any legal power to make the decision unless they followed all the rules to make a legal family law arbitration and both parents agreed to give them this power.

A parent does not need a lawyer to go to arbitration. But it is a good idea for them to have their own lawyer review any agreement they make and to get legal advice before signing it.

For information about arbitration, search for “Family Arbitration” on the Ministry of the Attorney General’s website at www.attorneygeneral.jus.gov.on.ca.

**Court**

Going to court can be a complicated process and take a lot of time. It can be stressful and expensive, but it is sometimes necessary to decide the issues.
Judges decide custody and access using a legal test called the **best interests of the child**.

Judges usually assume it is better for a child to have a relationship with both parents. Some of the things judges look at are:

- the relationship between each parent and the child
- the emotional ties between each parent and the child
- how long the child has lived in a stable environment
- each parent’s plan for the child’s care and upbringing
- each parent’s ability to care for the child
- in some cases, the child’s views and wishes
- if there has been abuse against any family member or any child

Judges do not consider the past behaviour of a parent unless it makes them less able to act as a good parent. For example, a judge will not take into account which parent was to blame for the family break-up. But the judge must take into account if a parent was ever violent or abusive towards:
● their partner,
● anyone in their household,
● a parent of the child, or
● their own or any other child.

Assessments

Sometimes a judge wants an independent professional’s opinion about what is in the best interests of the child before making a decision about custody or access. This is called an assessment. An assessment is a report prepared by an expert such as a psychologist, social worker, or mental health professional.

A judge may:

● order the parents to have a private assessment and to pay for it, or

● ask the Office of the Children’s Lawyer (OCL) to prepare a report. If the OCL accepts the case, there is no fee.

If a parent needs the court to decide a specific issue before trial, they can ask the judge to make a temporary order.

Even after the court process has started, parents can stop the process by making an agreement. Many steps in the court process encourage parents to agree.
The flowcharts in CLEO’s **Steps in a Family Law Case** can help parents understand and follow the court process. Visit [www.familycourt.cleo.on.ca](http://www.familycourt.cleo.on.ca).

### Finding a lawyer

**Law Society of Ontario**

The Law Society of Ontario (LSO) has a directory of all lawyers who can practise law in Ontario. Make sure the lawyer you hire has experience with family law. The Law Society also has a Directory of Certified Specialists who focus on family law.

Visit the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca) and click on “Find a Lawyer or Paralegal”, or call them at:

- **Toll-free** .......................... 1-800-668-7380
- **Toronto area** ........................ 416-947-3300

The **Law Society Referral Service** is an online service that gives you the name of a lawyer in your area who can give you a free consultation for up to 30 minutes. You can ask for a lawyer who speaks your language, or a lawyer who accepts Legal Aid certificates. For more information on Legal Aid certificates, see *What if I cannot afford a lawyer?* on page 16.

You can also call them on their crisis line if you cannot use the online service, for example, if you are in
custody, in a shelter, or in a remote community without access to the Internet. This line is available from Monday to Friday, 9 a.m. to 5 p.m.

Visit [www.findlegalhelp.ca](http://www.findlegalhelp.ca) or call:
- Toll-free Crisis Line .................. 1-855-947-5255
- Toronto area Crisis Line .............. 416-947-5255

**Legal Aid Ontario**

Legal Aid Ontario also offers a searchable directory of lawyers. You can search for family law lawyers by location and language at [www.legalaid.on.ca/en/getting/findingalawyer.asp](http://www.legalaid.on.ca/en/getting/findingalawyer.asp).

### Getting more information

**Family Law Information Centres (FLICs)**

The Ministry of the Attorney General has a Family Law Information Centre (FLIC) in every courthouse that deals with family law. All FLICs have free pamphlets. Many FLICs have staff who can give information and refer you to community agencies and legal services. To find a FLIC in your area visit the Ministry of the Attorney General website at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca).
Advice Lawyers

At FLICs, advice lawyers from Legal Aid Ontario are available at certain times to answer questions, give general legal advice, and review legal documents on family law issues. Contact your local FLIC to find out when the advice lawyer is available.

What if I cannot afford a lawyer?

You may be able to get help from Legal Aid Ontario (LAO). LAO helps low-income people get legal assistance through a range of services. Your income must be low enough to get most of these services. Call LAO to find out if you are eligible.

Visit www.legalaid.on.ca or call them at:

- Toll-free ............................. 1-800-668-8258
- Toll-free TTY ....................... 1-866-641-8867
- Toronto area ....................... 416-979-1446
  (accepts collect calls)
- Toronto area TTY .................. 416-598-8867

Some of the services LAO offers are:

Family Law Service Centres

At Family Law Service Centres you can get help with documents, get a lawyer to represent you, and get
referrals to other types of services. These centres are located in several places in Ontario.

**Family Law Offices**

There are Family Law Offices in Kenora, Ottawa, and Thunder Bay that can help with issues like custody, access, support, child protection, and restraining orders.

**Family duty counsel**

Family duty counsel may be able to give you advice about family law issues and basic court process, help negotiate a settlement, and help you in court. But they cannot represent you at trial. Most courts in Ontario have these services.

**Summary legal advice**

You may be able to get free advice about your family law issue from a lawyer for up to 20 minutes. This service is only given over the phone.

**Certificate program**

You can apply to LAO for a certificate to cover the cost of a lawyer to represent you for a certain number of hours.
This could pay for a lawyer to help you through the mediation process, or to help you negotiate a separation agreement.

You may also be able to get certificates for other situations such as family violence, child protection, or complex family law cases.

**Faster certificates for victims of family violence**

If you are a victim of family violence and let LAO know this when you call them, you are placed in a priority line for help with applying for a certificate. In urgent cases, you may be able to apply in person and get a certificate, possibly on the same day you apply.

**Law school clinics**

Each law school in Ontario has a legal aid clinic staffed by law students who are supervised by lawyers. These clinics are located in Kingston, London, Ottawa, Thunder Bay, Toronto, and Windsor.

Law school clinics can help with child custody, access, and child support issues. Some of them can also help with other family law issues such as property division and spousal support.
Other information and resources

Community Legal Education Ontario (CLEO)

CLEO has a series of family law information resources available online and in print. Other topics in the series include child support, child custody, spousal support, and property division. To order these publications or view them online, visit www.family.cleo.on.ca or call 416-408-4420.

CLEO’s Steps in a Family Law Case has 3 interactive flowcharts that help people understand and work through the family law court process. Visit www.familycourt.cleo.on.ca.

CLEO’s Steps to Justice is a website that gives step-by-step information about common legal problems, including family law issues. Steps to Justice has practical tools like forms and checklists, and referral information for legal and social services. Visit www.stepstojustice.ca.

Ontario government family law website

The Ministry of the Attorney General has information on many family law issues at www.attorneygeneral.jus.gov.on.ca/english/family. The site also has information about the family court process.
and a publication in 9 different languages called *What you should know about Family Law in Ontario*.

**Family Law Education for Women website**

This website provides online resources on women’s rights under Ontario family law. These are available in 14 languages and in multiple formats. Visit [www.onefamilylaw.ca](http://www.onefamilylaw.ca).

**Family Law Information Program**

The Family Law Information Program is an online resource for those about to enter the family court system. It is available on the Legal Aid Ontario website at [www.legalaid.on.ca](http://www.legalaid.on.ca).

**Ontario court websites**

Two of Ontario’s family courts have information about their court process. Go to the Ontario Court of Justice website at [www.ontariocourts.ca/ocj](http://www.ontariocourts.ca/ocj) and search for *Representing Yourself at Your Family Law Trial – A Guide*. Go to the Superior Court of Justice website at [www.ontariocourts.ca/scj](http://www.ontariocourts.ca/scj) and search for *A Guide to Process for Cases at the Superior Court of Justice*. 
This booklet gives only general information. You should get legal advice about your own situation.

Published by:
CLEO (Community Legal Education Ontario/Éducation juridique communautaire Ontario)

With funding from:
Legal Aid Ontario
Department of Justice Canada

CLEO has more free publications on family law and other legal topics. We revise our publications regularly to reflect changes in the law. Our Discard List tells you which publications are out of date and should be thrown away.

To view our publications, order form, or Discard List, please visit www.cleo.on.ca. You can reach us by phone at 416-408-4420.