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Child Custody and Access: Ideas for Single Mothers

June 16, 2016

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www.onefamilylaw.ca

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METRAC, Action on Violence

- works to prevent violence against women and youth
- a not-for-profit, community-based organization

www.metrac.org

METRAC's Community Justice Program

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, Family Law Education for Women in Ontario

- provides information on women's rights and options under Ontario family law and other relevant laws when families break down
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca

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Presenters

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Topics to be Covered

1. What is Child Custody
2. What is Access?
3. Types of Custody
4. Types of Access
5. Who Can Get Custody or Access
6. Deciding Custody and Access
7. Tips for Dealing with a Difficult Other Parent
8. Additional Resources

Accurate as of the date of this webinar presentation, June 16, 2016



What is Child Custody?

What is Child Custody

- **Custody** is the legal right and responsibility to make all of the important decisions about your child's life, such as:
 - your child's school
 - your child's religion
 - major medical decisions
- "Child" is under 18 years old and unmarried (in Ontario)

What is Child Custody

- The law assumes that the mother and father of a child have an equal right to custody of their child
- Parents do not have to be married
- A parent's right to custody can change by the parents' agreement or a Court Order

(Ontario *Children's Law Reform Act*, s. 20)

What is Child Custody

- Custody does not determine:
 - where the child lives
 - how much time the child spends with a parent
 - which parent gets child support payments
- Child Support is a monetary payment by one parent to the other, based on where the child spends most time

See FLEW webinars: “*Child Support*” and “*Financial Support After Breakup*” www.onefamilylaw.ca



What is Access

What is Access

- **Access** is the legal right:
 - to visit and spend time with a child
 - to know about the child's health, well-being, and education
- A parent with access might be involved in decisions about the child's life, but does not have the *legal right* to make significant decisions about the child's life

Custody and Access

- When parents end their relationship, they have to decide how their child will be raised and cared for:
 - both parents can have custody
 - one parent can have custody, and usually the other parent will have access
- Parents can agree to a parenting arrangement about custody/access, or the Court can decide



One Family Example

One Family Example

Dora and Ivan have been in a relationship for 7 years, and they have a 5-year-old son, Shilo.

Ivan lost his job a year ago, and since then he and Dora have started arguing a lot. Sometimes Ivan yells at Dora, and sometimes she is afraid he is going to hit her.

Shilo loves both his mom and dad, but he starts to cry now, when Ivan yells.

Dora and Ivan have decided to separate, and they are discussing where Shilo will live, and how they will be parents to Shilo when Ivan moves out.



Types of Custody

Joint Custody

- **Joint Custody** means that both parents have custody of their child
- When parents have joint custody, they will have to *agree* about all major decisions in the child's life
- Joint custody does not mean the child will spend equal time with both parents
- A parent can have custody of one or more children

Sole Custody

- **Sole Custody** means that only one parent has custody of their child
 - a parent with sole custody does not have to get the other parent's permission to make decisions about the child's life
- **De facto Custody** means the child lives with only one parent and the other parent's behaviour shows they accept this arrangement, which gives the caregiving parent sole custody, until an agreement or Court Order

Sole Custody

- When one parent has sole custody:
 - the other parent might not have a role in the child's life
 - the other parent might have access to the child
- The law and the courts say that usually a child should have contact with both parents, as long as it is in the best interests of the child



Types of Access

Types of Access

- **Reasonable Access:** both parents work together to agree on access arrangements that they think are reasonable
- **Fixed Access:** a set schedule of terms about access, including time, frequency and other details about access
- **Graduated Access:** the access parent slowly gets to spend more time with the child, on a set schedule
- **Supervised Access:** all access visits are supervised by another person
- **No Access:** in rare cases the Court can deny access or contact between a parent and child, even if the parent wants contact, because it is best for the child

Review: True or False

1. Sole Custody is where only one parent has the right to make major decisions for the child – True or False?

Review: True or False

1. **True.** Sole Custody gives one parent or person the right to make major decisions for a child's life and well-being.

Review: True or False

2. Sole Custody also means the parent who does not have custody has to pay child support – True or False?

Review: True or False

2. **False.** Sole Custody does not determine who pays child support. But often the parent with sole custody looks after the child most of the time, and is entitled to child support from the other parent.

Review: True or False

3. After separating from Ivan, Dora became more active in her religious community. Even if Dora gets sole custody of her son Shilo, she will need Ivan to agree that Shilo can be raised as a member of Dora's faith – True or False?

Review: True or False

3. **False.** Choosing whether to give a child a religious upbringing is one of the major decisions a parent with custody can make for a child. If Dora has sole custody, she does not need anyone's permission to decide if her young child will be raised as a member of a religious community or get religious instruction.

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Who Can Get Custody or Access

Who Can Get Custody or Access

- In most cases, natural/biological parents get legal custody of or access to their child
- Other family members or caregivers can apply, and be awarded custody or access, such as:
 - grandparent, aunt, uncle
 - step-parent
 - parents who have adopted a child

Who Can Get Custody or Access

- A parent can apply for access, even if:
 - separated from the other parent
 - never married to the other parent
 - never lived with the other parent
 - doesn't have an ongoing relationship with the child
 - has never had contact with the child



Deciding Custody and Access

Deciding Custody and Access

Parenting Agreement

- If you can talk reasonably and agree with the other parent, you can decide about custody and access for your child in a parenting plan
- It is important to write out the details, such as:
 - who will have custody
 - where will the child live at specific times (days, weeks, weekends, vacations and special holidays)
 - when/how will access visits occur
 - any special arrangements such as school, activities, religious teaching
 - an agreed process for how to come to decisions

Deciding Custody and Access

Parenting Agreement

- it is a good idea for each parent to review the parenting agreement with their own lawyer
- it is important for both parents to sign and date the agreement, with a third person to witness (with signature and date)
- it is a good idea to file the agreement with the Court, to help enforce the agreement in the future
- if there is any abuse or bullying in the relationship, it is important to talk to a lawyer and consider going to Family Court

Deciding Custody and Access

Court Orders

- When the Court decides custody and access, it must be based on the **“best interests of the child”**
- Factors that affect the best interests of the child include:
 - love, affection, emotional ties between child and parent/person
 - views and preferences of the child
 - length of time child has been in a stable home environment
 - stability of the family where child will live
 - ability of each parent to provide guidance, education, necessities of life and special needs
 - plan to care for and raise the child
 - ability to act as a parent

Deciding Custody and Access

Ideas for showing the Court how you can support and provide for your child's best interests

- **Love, affection and emotional ties** between child and parent/person
 - how do you spend time with the child
 - what are your leisure activities together, such as watching tv, playing games
 - how does the child choose to spend time with you
 - do you offer comfort when the child is upset, frightened, hurt
 - does the child go to you for comfort
 - do you help the child with specific emotional or physical needs
 - younger children are usually assumed to need more nurturing from parents
 - how does the child interact with others, and talk about each parent

Deciding Custody and Access

Ideas for showing the Court how you can support and provide for your child's best interests

- **Child's views and preferences**
 - if they can be determined, usually from children 12 years and older
 - are the child's preferences reasonable, and in the child's best interests
 - is the child being unreasonably influenced by one parent against the other
 - real concerns about the child's safety should always be raised

Deciding Custody and Access

Ideas for showing the Court how you can support and provide for your child's best interests

- Length of time living in a **stable home environment**
 - does the child have strong ties with another person in the home, such as a sibling or grandparent
 - is the child doing well at school
 - does the child have neighbourhood friends and activities
 - if there was abuse in the home, has the child moved to be safe, and is the home environment safe now

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Deciding Custody and Access

Ideas for showing the Court how you support and can provide for your child's best interests

- Ability to provide **guidance, education, necessities, special needs**
 - do you provide structure and discipline, such as monitoring homework
 - do you support the child's interests and activities
 - do you help the child with individual needs such as health, tutoring, or a disability
 - if the child has ties to a religious or cultural community, can you support those ties

Deciding Custody and Access

Ideas for showing the Court how you support and can provide for your child's best interests

- Your **parenting plan to care for and raise the child**
 - how will you provide basics such as a home, food, clothing, including a financial plan
 - how will you organize the child's schooling
 - how will you provide for the child's special needs
 - if you have to be away, how will the child be cared for, such as daycare, babysitter, family caregiver
 - how are you willing to support the child's relationship with the other parent or relatives

Deciding Custody and Access

Ideas for showing the Court how you support and can provide for your child's best interests

- Your **ability to act as a parent**
 - are you the **primary caregiver**, the person who does the most to look after the child's needs, such as:
 - preparing meals, cleaning clothes
 - being involved with school, teachers, homework
 - taking the child to activities
 - putting the child to bed
 - arranging doctors appointments
 - is there past behaviour that affects your ability to be a good parent
 - the Court must consider a person's **abusive behaviour**

Deciding Custody and Access

The court must consider a parent's past **physical, sexual, emotional or financial abusive behaviour**, including towards:

- the other parent, or anyone else either parent has been in a relationship with
- anyone who has lived in the family's home
- any child
- any other person, if the court thinks it should be considered

Deciding Custody and Access

- Some issues about violence that are important to tell the Court:
 - abuse directed at the child
 - abuse of the other parent or another person in front of the child
 - effects on the child of a parent's alcohol or substance abuse
 - angry or controlling behavior towards the other parent
 - denial of anger or abuse
 - refusing to go to therapy
- The Court will not consider lying or affairs outside of the relationship, unless it directly impacts the child

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Review: Sample Scenario

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Erin and Fara are the parents of Eden (age 8). Erin decided to go back to school, which completely changed their home life. Fara complained and criticized Erin about the decision for months.

Erin ended up having an affair. When Fara found out, there was so much tension, Erin decided to move out of the family's home.

Fara has been looking after Eden ever since, trying to keep their routine and home life the same, as much as possible.

It's been hard for Fara to juggle work and look after Eden, even though Erin helps by taking Eden to school three days a week.

A babysitter looks after Eden several evenings a week, while Fara looks for a space in after-school daycare. But Fara always tucks Eden in at night.

Erin makes sure to visit Eden every weekend and always brings a little gift or treat for their afternoon together.

Review: Sample Scenario

1. Fara is very angry at Erin, and wants to get sole custody of Eden. Erin wants to fight for custody of Eden too. Which of these factors would help persuade the Court to award sole custody to Fara?

- a) Erin decided to move out, so Fara now has de facto custody.
- b) Erin had an affair, which shows Erin is not fit to be a good parent.
- c) Fara is now Eden's primary parent, so Fara should get sole custody of Eden.
- d) None of the above.

Review: Sample Scenario

1. Which of these factors would help persuade the Court to award sole custody to Fara?

d) None of the above

Even though Erin moved out, Erin has maintained contact with Eden, contributes to Eden's care, and Erin clearly wants custody. This behaviour does not suggest Erin accepts giving de facto sole custody to Fara.

Erin's affair has not had an impact on the ability to be a parent, and would not likely be considered by the court in a custody decision.

Fara is the primary parent of Eden now, but the Court will want to know how Erin took care of Eden when they were living together, and how long Eden has been living in the current situation. Even if Fara is the primary parent in a stable situation now, joint custody or sole custody could be an option.

Review: Sample Scenario

2. Erin is still going to school, and for now is living with her parents. She wants to fight for custody of Eden, and thinks she has a strong case. Which of these factors would help persuade the Court to award custody to Erin?

- a) Erin is in a stable home, living with her parents.
- b) Eden loves these grandparents, and they really spoil her.
- c) Fara's job is so demanding, she has to get a babysitter or daycare to help look after Eden, instead of spending time with Eden.
- d) Fara has anger issues.
- e) A) and B) above.
- f) All of the above.

Review: Sample Scenario

2. Which of these factors would help persuade the Court to award custody to Erin?

e) A) and B)

It is important that Erin is in a stable home environment, and living with her parents could be part of a plan for support, if she needs it to look after Eden.

It is also important that Eden has a loving relationship with her grandparents. Erin is the parent responsible for structure and discipline, so unless the grandparents are interfering with Eden's best interests, it doesn't matter if they spoil her.

Fara has a reasonable plan to manage the demands of her job and Eden's care, by getting help and also spending regular time with Eden, such as bedtime.

The Court will need more details about Fara's angry behaviour. Only if she has been abusive to Eden or Erin or another family member will this be considered when the Court decides on Fara's ability to act as a parent.

Review: Sample Scenario

3. Erin says Fara is still so angry that it is very difficult for them to talk reasonably. Fara often takes the opportunity to be mean and critical when Erin picks up Eden. What would be some reasonable custody and access options for Erin to consider?

- a) Try to come up with a parenting agreement with Fara and file it in Court.
- b) Apply for sole custody of Eden, because it is not likely that Erin and Fara will be able to agree if they have joint custody.
- c) Talk to a lawyer about joint custody or custody and access, with a clear schedule for Eden's time and care.
- d) All of the above.

Review: Sample Scenario

3. What would be reasonable custody and access options for Erin to consider?

c) Talk to a lawyer about joint custody or custody and access, with a clear schedule for Eden's time and care.

With the current angry and abusive communications between Erin and Fara, it is not a good idea for Erin to try to negotiate a parenting agreement directly with Fara, because bullying might lead to a situation that is not really what Erin wants for herself and Eden.

It is not reasonable to expect that Erin could get sole custody, because Fara is already looking after Eden well, and they have a good, stable relationship and home life that the Court is not likely to disrupt.

Joint custody or custody and access would give Eden an ongoing relationship with both parents. A clear, detailed plan can help reduce fighting and abusive contact. A lawyer can help with this, with or without going to Court.



Tips for Dealing with a Difficult Other Parent

Dealing with a Difficult Other Parent

Some ideas to avoid conflict:

- stay focused on the child, don't discuss other issues
- find a place or way to communicate that makes you feel safe
- set ground rules for how to communicate
- write out what to say before you talk
- write down everything that happens
- use non-threatening language
- end useless interactions
- talk with, or using a neutral third person
- use a book or email to communicate

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Additional Resources

Family Law Resources

- **Ontario Women's Justice Network (OWJN)**
www.owjn.org
- **FLEW (Family Law Education for Women)**
www.onefamilylaw.ca/en/resources/
- **FODF (Femmes Ontariennes et Droit de la Familles)**
www.undroitdefamille.ca/
- **Your Legal Rights**
www.yourlegalrights.on.ca
- **Separation and Divorce: Custody, Access, Parenting Plans** www.cleo.on.ca/en/publications/custodyaccess

Family Law Resources

- **Family Law Information Program (FLIP)**
www.legalaid.on.ca/en/getting/flip.asp
- **Family Law Information Centres (FLICs)**
www.legalaid.on.ca/en/getting/type_family.asp
- **Family Law Services Centres (FLSCs)**
www.legalaid.on.ca/en/contact/contact.asp?type=flsc
- **Family Responsibility Office**, Ministry Community & Social Services
 - Toll -free: 1-888-815-2757

Finding a Lawyer

- **Legal Aid Ontario**

- Free telephone interpretation services for languages other than English & French
- Toll -free: 1-800-668-8258; TTY: 1-866-641-8867

www.legalaid.on.ca/en/getting/default.asp

- **Community legal clinics**

- Toll -free 1-800-668-8258

www.legalaid.on.ca/en/contact/contact.asp?type=cl

- **Canadian Family Law Lawyers Network (National)**

www.cfln.ca

Finding a Lawyer

Law Society of Upper Canada Lawyer Referral Service

- Online: www.findlegalhelp.ca (English) or www.recherchejuriste.ca (French)
- Crisis line: 416-947-5255 or Toll free: 1-855-947-5255

Justice Net

- Reduced fee lawyers for low income people not eligible for Legal Aid
- [1-866-919-3219](tel:1-866-919-3219)
www.justicenet.ca/directory/search/

Finding a Lawyer

See FLEW Webinars:

- Where to Look for a Family Law Lawyer
- Your Day in Family Court: How to Prepare and What to Expect

www.onefamilylaw.ca/en/webinar/

Toolkit for a good Client-Lawyer Relationship

schliferclinic.com/vars/legal/pblo/toolkit.htm

- Barbra Schlifer Commemorative Clinic

Court Resources

Ontario Courts

www.ontariocourts.on.ca/

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
 - Superior Court of Justice www.ontariocourts.ca/scj/en/famct/
 - Ontario Court of Justice www.ontariocourts.ca/ocj/family-court/overview/

Ontario Court Locations

www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario

Family Court Support Workers

- Check local community agency or call
- Toll -free:1-888-579-2888 or 416-314-2447

Ministry of the Attorney General

www.attorneygeneral.jus.gov.on.ca/english/

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

Court Resources

- **Ministry of the Attorney General's website** also provides some guides to Family Court:
 - **Guide to Procedures in Family Court:**
<http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/default.asp>
 - **Guide to parenting affidavits for custody orders:**
http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/Parenting_Affidavit_Self-Help_Guide-EN.pdf
- You can get more information about family law, forms and processes at:
 - **Family Law Service Centres** (Legal Aid Ontario)
 - **Family Law Information Centres** (in family courthouses)

Domestic Violence and Abuse

For information, if your partner is abusive or violent:

- **Assaulted Women's Helpline** www.awhl.org
 - 24 hours/7 days; multiple languages
 - Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- **Ontario Coalition of Rape Crisis Centres**
www.sexualassaultsupport.ca/
- **Network of Sexual Assault/Domestic Violence Treatment Centres** www.sadvtreatmentcentres.net.
- **Victim Services Directory** www.justice.gc.ca/eng/pi/pcvi-cpcv/vsd-rsv/index.html

Domestic Violence and Abuse

- **Barbra Schlifer Legal Clinic**
 - Toronto: 416-323-9149 x278 (legal intake) TTY: 416-3231361
 - Free counselling, referral, legal and interpreter services to survivors of violence (Family, Criminal and Immigration law)
- **Family Violence Authorization Program (Legal Aid Ontario)**
 - Free 2-hour emergency meeting with a lawyer
 - Offered through some shelters and community legal clinics
 - Toll -free: 1-800-668-8258; TTY: 1-866-641-8867