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# Child Custody When Parents Break Up

**RIGHTS AND DUTIES  
OF PARENTS**



## Setting the Scene

**This pamphlet explains some of the rights and responsibilities of parents towards children during a breakup.**

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- changes to child custody
- preventing or limiting contact with a parent
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**This pamphlet is up to date to November 11, 2019**

It has general information only. If you need legal advice on a specific situation, consult a lawyer or notary.

## Both Parents Have Rights

During a breakup, the general rule is that both parents have equal rights regarding child custody.

So, one parent doesn't have more of a right to live with the children than the other parent.

This means that one parent cannot just leave with the children.



## Taking Children Without the Other Parent's Agreement

Taking children without the other parent's permission can be considered child abduction. If you fear your children have been abducted, you should contact the police.

However, if the police view this as a family matter, and not an abduction, they will not intervene. You will have to ask the family court to decide on custody arrangements. (Of course, if you view this as a family matter, which can be settled in family court, there is no need to involve the police).

The best thing can be to ask a judge for an urgent decision about custody on a temporary basis. This decision is called a "safeguard order." You can get this kind of decision quickly. It is valid for a set amount of time.

### Important!

If children are in danger, this can be a special case. In these situations, a parent can take steps to protect the children by taking them without the other parent's agreement. But this parent must then go to court as soon as possible to ask for custody and to prevent or limit contact with the other parent.

Since March 1, 2021, the *Divorce Act* no longer uses the terms "custody" or "access". The law now uses the term "parenting time" to describe a divorced parent's relationship with a child of the marriage.

## Leaving Children With the Other Parent

During a breakup, there might be reasons that one parent lets the other have custody.

### Here are examples:

- A parent leaves in a rush and leaves the children with the other parent.
- A parent takes custody without the agreement of the other and the parent without custody does nothing about it.
- A parent leaves the children with the other parent but plans to take them back later.

However, the more time passes, the more difficult it will be for the parent who left the children to get custody. If a judge has to make a decision on custody, the stability of the children is an important factor. So, the more time passes, the harder it is to change a parenting arrangement that has been in place.

If a parent tries to impose an arrangement during a breakup, the other parent can ask a judge to make a decision on an urgent basis.



## Visiting Rights

Usually, until a judge decides on custody, both parents have the right to see their children when they want to. However, they must exercise this right in the best interests of the children.

### These are examples of what is not in the children's best interests:

- The parents argue at school or the daycare about who will take the children home.
- One parent shows up at the other's house to take the children by force, ringing the doorbell over and over.
- The situation has deteriorated so much that the police must be called in.

To avoid problems, parents must exercise their rights without abusing them. Also, they must consider the right of the other parent to see the children.

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OF PARENTS,  
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