

Before you Sign

Custody and Access

Welcome to the Before You Sign podcast. This podcast was made to help you better know your legal rights in the province of Ontario. If you know your rights and responsibilities, you will be able to make choices that impact your life in Canada. It is important to know these podcasts are not legal advice for your situation, they give information about general legal topics that apply to your situation.

If you still have questions about this topic please consider going back to the service or agency who told you about these podcasts. If you have access to a computer, you can also go to stepstojustice.ca or settlement.org for more information. If you already know you need legal advice, support or representation please call Legal Aid Ontario at [1-800-668-8258](tel:1-800-668-8258) Monday to Friday from 8:00 a.m. to 5:00 p.m. (EST) for help in over 300 languages. This podcast is financially supported by The Law Foundation of Ontario, the YWCA St. Thomas-Elgin is solely responsible for the content.

Today we will be talking about child custody and access when partners have separated or divorced in Ontario.

If you separate from or divorce your spouse when you have children together you may have questions about the custody of your children and who they will live with and where. Custody means having the legal right to make important choices about how to care for and raise your children. For example, where they will go to school, what religious beliefs and practices they will follow, and decision about their health care. Custody is not about who your child lives with. You and your partner must decide who your child lives with after you separate or divorce. This is called deciding your child's residence. Deciding your child's residence is different from custody.

For example, if you have custody and are the only one who can make decisions about your children, they might still live equal amounts of time with you and your partner. Or, your child might live mainly with you, but you and your partner have joint custody and share making choices about the children's schooling, religious practices and their health care. Joint custody does not necessarily mean "equal time" with the children.

Where your children live most of the time is called their primary residence. Primary residence means the home where the children live most, or all, of the time. If you as a parent have sole custody, your home is usually the child's primary residence and the other parent usually has access.

Shared residence is when your children live equal amounts of time with each parent. One home may still be considered the primary residence with the other being the secondary residence.

If you and your partner agree on where your child lives, you can put this information in an agreement.

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If you can't agree, you can ask a family law professional, like a mediator, to help you work out an agreement. You can also go to court and ask a judge to decide.

The judge uses a legal test called the “best interests of the child” to decide where your child lives. Judges usually assume it is better for a child to have a relationship with each of their parents after separation or divorce.

The best interests of the child test in custody and access cases considers things like:

- 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 situation
- each parent's plan to care for and bring up the child
- in some cases, the child's views and wishes
- if there has been abuse against any family member or any child

In most situations, children benefit from spending time with both parents. It does not have to be equal time but it should be meaningful.

If there has been abuse or violence or other concerns, the court may order access to be supervised.

We hope you have found this podcast a good source of legal information regarding custody and access of children following a separation or divorce. If you have questions about separation or divorce, please take the time to listen to our podcast on this topic.