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A GUIDE TO THE LAW IN ALBERTA REGARDING

PARENTING TIME FOR CHILDREN UNDER THE *FAMILY LAW ACT*

**For Non-married Parents, Adult
Interdependent Partners and Married
Parents Not Seeking a Divorce**

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GENERAL

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WHO IS A PARENT?

A female person who gives birth to a child is presumed to be the biological mother of the child.

Although it is usually not a problem to identify the mother of the child, it may be more difficult to identify the father of the child.

A male person is presumed to be the biological father of a child if one of the following conditions is met:

- a. he was married to the mother of the child when the child was born;
- b. he was married to the mother of the child and the marriage ended less than 300 days before the birth of the child;
- c. he married the mother of the child after the birth of the child and has acknowledged that he is the father of the child;
- d. he cohabited with the mother of the child for 12 consecutive months during which time the child was born and he acknowledged that he is the father of the child;
- e. he cohabited with the mother of the child for at least 12 consecutive months and the cohabitation ended less than 300 days before the birth of the child.
- f. he is registered as the father of the child on the child's birth certificate;
- g. a Court has found him to be the father of the child for any purpose.

WHO IS A GUARDIAN?

Under the *Family Law Act*, the mother and the father are both presumed to be the guardians of the child if:

- a. they were married to each other when the child was born;
- b. they were married to each other and the marriage ended less than 300 days before the birth of the child;

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- c. they married each other after the birth of the child;
- d. they lived together for 12 consecutive months during which time the child was born; or
- e. they lived in a relationship of adult interdependence when the child was born or after the birth of the child.

If none of these apply, they are both guardians of the child from birth until the child begins to usually reside with one of the parents, who then becomes the sole guardian, or with both of the parents together or equally, who then both become guardians.

Guardians are responsible for making all significant decisions affecting the child and have a right to sufficient time with the child. Guardians have a duty to cooperate with each other in matters that affect the child. If guardians cannot agree, they can apply to Court for a Parenting Order that will spell out how they are to exercise their rights and responsibilities.

A mother or a father who is not a guardian can apply to the Court to be appointed as a guardian if certain conditions are met. You should speak to a lawyer about your specific situation before launching a guardianship application.

PARENTAL RESPONSIBILITIES

Parental responsibilities include, but are not limited to:

- a. Providing day-to-day care and control of the child (food, shelter and clothing).
- b. Supervising the child's daily activities.
- c. Meeting the required ordinary health, education and welfare needs of the child.

As long as there is no Court order to the contrary, parental rights and responsibilities are to be exercised jointly by the mother and father who are both guardians. It is assumed that the two parents

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will reach an agreement on major decisions affecting their child. Until there is a Parenting Order, neither parent has the right to deny the other parent the right to see the child.

PARENTING ORDERS

A Parenting Order will help separated parents share their responsibilities and define their parenting plan in the “best interests” of the child.

Parenting Orders replace custody and access orders for non-married partners, adult interdependent partners, and married parents who are not seeking divorce. A parent who is separating from his or her partner, and who takes the child when leaving the home, should begin an action for a Parenting Order as soon as possible.

In most cases, Parenting Orders encourage both parents to be involved with the child.

PARENTING TIME

The Parenting Order sets out how decisions about the child are to be made and how and when the child’s time is to be shared between the parents. This is called parenting time. Each parent is presumed to have equal rights to parenting time. This means that each parent has equal obligations and responsibilities for the care and upbringing of the child. This may be changed by written agreement between the parties or by a Parenting Order.

TYPES OF PARENTING TIME

The primary consideration in awarding parenting time is the “best interests” of the child. The Court may also impose conditions or

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restrictions on any Parenting Order that grants parenting time. An example of this would be where a Court imposes a condition that requires the parent to attend counselling or that visits must be supervised. It is also important to note that a Parenting Order may be reviewed by a Court and varied if a change in circumstances is shown.

Parenting time set out by a Parenting Order may be very general or very specific.

A very general Parenting Order may simply state that each parent has equal parenting time, meaning the child spends an equal amount of time with each parent and all decisions regarding the child are equally shared. This works best when both parents remain on good terms and can discuss matters concerning the child in a reasonable way.

Parenting Orders may also state that the child primarily resides with one parent and that parent is the one who makes the day-to-day decisions regarding the child. The other parent will have specified parenting time with the child. Both parents have an equal say in major decisions regarding the child, such as medical treatment, education, and religious decisions unless the court order states otherwise.

In the most extreme situations, one parent is granted exclusive guardianship and parenting powers and the other parent may no longer be informed about the child and may not have parenting time with the child. The child would reside with the parent who makes all of the decisions for the child. This type of situation is very rare.

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THE “BEST INTERESTS” OF THE CHILD

In awarding parenting time, the most important consideration to the Court is the “best interests” of the child.

The Court will want to ensure the greatest possible protection of the child’s physical, psychological and emotional safety. The Court may consider all of the child’s needs when making a Parenting Order, including, but not limited to:

- a. The child’s need for stability, taking into consideration the child’s age and stage of development.
- b. The history of care for the child.
- c. The child’s cultural, linguistic, religious and spiritual upbringing and heritage.
- d. The child’s views and preferences.
- e. Any plans proposed for the child’s care and upbringing.
- f. Any family violence.
- g. The nature of the relationship between the child and the person applying for the Parenting Order.
- h. The ability and willingness of the person applying for the Parenting Order to care for and meet the needs of the child and to communicate and co-operate on issues affecting the child.
- i. The views of the child’s current guardians.
- j. Any civil or criminal proceedings that are relevant to the safety or well being of the child.

OBTAINING A PARENTING ORDER

There are two ways of obtaining a Parenting Order:

- a. Through the Provincial Court (Family Division)
- b. Through the Court of Queen’s Bench

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Although both Courts use the same application forms and similar application procedures, parties cannot apply to both on the same matter.

There is no filing fee for most claims under the *Family Law Act*, regardless of the level of court you go to.

APPLYING FOR PARENTING ORDERS IN PROVINCIAL COURT

Parents making an application for a Parenting Order in Provincial Court do not need to be represented by a lawyer. This means that costs can be quite low. However, if parenting time issues are to be decided at a trial, it may be wise to obtain the services of a lawyer. If you cannot afford a lawyer, Legal Aid may be able to assist you.

At the first hearing in Provincial Court, the Judge can make any orders that are agreed to by the parties or schedule the case for a trial if there is no agreement. The Court can either make a final or an interim Parenting Order. A final Parenting Order means that the Judge’s decision on parenting time will be indefinite, while an interim Parenting Order means that the Judge’s decision on parenting time will last only until the next court hearing or final decision.

In exceptional circumstances, the Court may grant an *ex parte* interim Parenting Order. This is an order that does not require the other parent to be notified about the court date when it is granted. An *ex parte* interim order will remain in effect until the next court hearing. In order to obtain this sort of order, speak to a Family Court Counsellor. It is important to remember that, in all cases, the Judge will be basing his or her decision upon what is in the “best interests” of the children.

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To apply for a Parenting Order in Provincial Court without a lawyer, the applicant should telephone Family Justice Services at (780) 427-8343 to make an appointment with a Family Court Counsellor. These counsellors are attached to the Court and will be able to give free assistance with the Parenting Order application.

APPLYING FOR PARENTING ORDERS IN THE COURT OF QUEEN'S BENCH

Parents making an application for a Parenting Order in the Court of Queen's Bench are often represented by a lawyer. If you live in Alberta, you must attend the Parenting After Separation (PAS) seminar before bringing on such an application. In Edmonton, call (780) 413-9805 to register. This is a free seminar.

In Edmonton, parents are often referred to Family Mediation Services. A mediator is assigned to the case and it is his or her job is to sit down with the two parents and attempt to assist them to reach an agreement on parenting time. Call (780) 427-8329 for more information. This is a free service, as long as one of the parties earns \$40 000 per year or less.

It should be noted that parenting time disputes can be extremely expensive to litigate, and parents are encouraged to use alternative dispute resolution services, such as mediation, whenever possible.

RESPONDING TO A PARENTING ORDER APPLICATION

If your child's other parent applies for a Parenting Order in either Provincial Court or the Court of Queen's Bench, you will have the opportunity to file a Response. You will be the respondent.

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When completing a Response, the respondent must first decide whether or not they agree with the orders asked for by the applicant. If the respondent does agree, he or she can check the "I agree" box on the Response form, file the Response with the Court and then serve the Response on the applicant.

If the respondent does not agree with the orders asked for by the applicant, he or she should check the "I Disagree" box on the Response form, and then complete the Response and Reply forms. If the respondent is requesting any orders on the Response form (i.e. a child support order or a Parenting Order), they must complete a Statement for each order requested. The respondent must also give reasons why the position he or she presents on the Reply Form is in the "best interests" of the child.

Before filing the forms at the courthouse, the respondent must affirm that the Reply and the Statements (if applicable) are true. Lawyers, notary publics and certain courthouse staff are all authorized to affirm documents. There is no fee for these services at the courthouse. There are penalties for swearing a false statement.

The respondent should provide as much detail as possible on these forms because this is their chance to tell their side of the story. The Response and Reply forms will be the evidence that the judge will use to decide the matter in court unless there is a trial.

Once all the forms are complete (Response, Reply and Statements, if applicable), the respondent should file them at the same courthouse that the applicant filed his or her claim. After the forms have been filed, the respondent must serve them on the applicant.

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All of the forms mentioned above can be found on the Family Law Information Center's (FLIC) website (www.albertacourts.ab.ca/familylaw). Select "Booklets" and then "Forms and Instructions". Each form also has a corresponding document that provides detailed instructions on how to properly complete the forms.

Though the forms are available online, it is strongly recommended that you consult with a lawyer about your specific situation. FLIC can also answer some of your questions, and will be able to help you select the correct forms. Call FLIC at (780) 415-0404.

CASE FLOW CONFERENCES FOR PARTIES WITHOUT A LAWYER

Before unrepresented parties may appear in Provincial Court, they will be required to attend a case flow conference. At this conference, the litigants, an intake counsellor and a case coordinator will explore the parties' legal options, facilitate resolutions to their dispute and, where required, make referrals. Litigants are also given information on mediation and judicial dispute resolution in an effort to resolve the matter outside of court.

At the conference, the litigants should make a sincere attempt to gain consensus on as many issues as possible. The parties are sometimes able to reach an agreement at this stage, which will ultimately save them time and money.

If the matter proceeds to Court, the case flow coordinator or family court workers will ensure that the parties are ready to attend court and that they understand the court procedures. The family court workers also help prepare Court applications and attend Court and judicial dispute resolution hearings with the parties. This will save time for the Court and the parties by

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reducing the number of unnecessary adjournments that unrepresented litigants sometimes require.

VARYING A PARENTING ORDER

A Parenting Order is never permanent. A Court always has the authority to change the order later if there are any changes in the needs or circumstances of the child. The Court of Queen's Bench may change an order originally made by a Provincial Court Judge or a Court of Queen's Bench Justice. However, a Provincial Court Judge may only change an order originally made by a Provincial Court Judge.

In varying a Parenting Order, the Court considers whether there has been any material change in the condition, means, needs and other circumstances of the child since the making of the original order. For example, an order may be varied if the following circumstances exist:

- a. the child gets older and develops different interests and needs;
- b. there has been alcohol or drug abuse by a parent that has affected their parenting;
- c. one party has refused to obey the terms of the original Parenting Order.

This list is not exhaustive. Ultimately the Court will decide in the "best interests" of the child.

PROBLEMS WITH ORDERS

A parent who has reason to believe there is a serious risk to the child's safety and well-being can apply to the Court to have an existing order reviewed. If a parent is having problems seeing their child despite having a court order giving them parenting time, they can apply to the court to enforce their order. They should

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also contact a lawyer who would be better able to assist them in enforcing their rights.

APPEALS

Parents who are unhappy with the decisions made regarding the parenting time of the child may appeal. If the original order was made in Provincial Court, it may be appealed to the Court of Queen's Bench within 30 days of the order. If a Justice in the Court of Queen's Bench made the order, it may be appealed to the Court of Appeal within 30 days.

ENFORCING TIME WITH A CHILD

Once the Court hands down a Parenting Order, the order is legally binding and enforceable throughout Alberta. In Alberta, custody orders made in other provinces may be enforced in Alberta if a certified copy of the order is registered here. To enforce an extra-provincial custody order, parents will likely require a lawyer.

When enforcing time with a child, the court may order:

- a. the applicant be given appropriate time with the child, to make up for the time that has been lost or denied;
- b. the applicant be reimbursed for the necessary expenses incurred as a result of being denied time with the child;
- c. the respondent give security to be held until Parenting Order obligations are fulfilled
- d. payment of a penalty of up to \$100 per day to a maximum of \$5,000 for denying time
- e. the respondent serve time in prison for up to 90 days for denying time.

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ABDUCTION OR "CHILD SNATCHING"

A parent of a child who is under 14 years old may be charged with an offence if that person removes the child from the other parent without permission. If a person charged with abduction is found guilty, they may face imprisonment for up to 10 years. Therefore, a parent should not take their child from the home without consent of the other parent or a court order authorizing them to do so.

In the extreme circumstance of a parent fleeing with the child, the Parenting Order can include a police enforcement clause. This gives the police the authority to enforce the Parenting Order should you need to call and ask for their help. Once notified, the police will take reasonable steps to find the child and uphold the rights of parents to spend time with their child. If the child is outside Alberta but in Canada, the local police will contact the appropriate Law Enforcement Agency in the area where the child is located. If you want to ensure that you will be able to obtain assistance from the police, you should ask the Court to consider granting a police enforcement clause as part of the Parenting Order. If your child is taken outside of Canada, you may qualify to bring a request under international laws that prevent child abduction. You should contact a lawyer immediately in the event your spouse abducts your child.

CONTACT ORDERS

When a non-parent or non-guardian, such as a grandparent, wants to have time with the child they may apply to the Court for a Contact Order. However, it is always better to arrange contact with the child by reaching an agreement with the child's parents or guardians.

A person who wants a Contact Order must first ask the Court for leave (permission) to apply for such an order. One exception is

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for grandparents in situations where the parents are separated or one parent is dead. In this case, a grandparent who has been denied contact with the child can apply for a Contact Order without asking for leave.

A Contact Order may include visits, telephone calls, emails and letters.

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FREQUENTLY ASKED QUESTIONS

Where do I find more information?

Family Law Information Centres (780) 415-0404
www.albertacourts.ab.ca/familylaw/

Legal Services Center (780) 427-7575

What are my options if I do not want to go to court?

There are different services available to help you resolve a family conflict and come to an agreement without going to court. The most common way is through mediation programs run by the Courts, Family Court Counsellors, lawyers or Legal Aid.

Family Justice Services (780) 427-8343
Mediation Services (780) 427-8329

What is the Parenting After Separation (PAS) course?

The Parenting After Separation (PAS) course is a free 6-hour course that is mandatory for people who live in Alberta and are applying for a parenting, custody or access order in the Court of Queen's Bench. In Edmonton, call (780) 413-9805 to register.

Is my existing order for custody and access still valid?

The *Family Law Act* does not change any order made by a court prior to October 1, 2005, but these orders are enforced using the *Family Law Act*.

Where do I find a lawyer?

Lawyer Referral Service 1 (800) 661-1095
www.lawsocietyalberta.com

Legal Aid Society of Alberta (780) 427-7575
www.legalaid.ab.ca