



# Child Custody When Parents Break Up

**RIGHTS AND DUTIES OF PARENTS**



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INFORMATION EMPOWERS

# Setting the Scene

When parents break up, a decision has to be made about living arrangements for their children. These arrangements are called "custody" and "visiting rights."

Sometimes, the actions of parents during a breakup can affect their rights later on.

This article explains some of the rights and responsibilities of parents during a breakup.

**This pamphlet is up to date to March 6, 2015.**

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



Also at [educaloi.qc.ca](http://educaloi.qc.ca):

- Child Custody Decisions: Criteria Used and Types of Custody
- Changes to Child Custody
- Visiting Rights
- Preventing or Limiting Contact Between a Parent and a Child

## Both Parents Have Rights

During a breakup, the general rule is that both parents have the right to custody of the children because the parents are equal in the eyes of the law.

Therefore, 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 custody of the children without the other parent's permission can be considered abduction (kidnapping). If one parent abducts the children, the other parent can go to the police.

However, if the situation is more of a family issue than abduction, going to the police probably won't do much good and could be traumatic to the children. At this point in a breakup, the police usually don't get involved to move the children from one parent to the other.

The best thing can be to ask a judge for an urgent decision about who should have custody on a temporary basis. This kind of decision takes just a few days to get. The order the judge makes is called a "safeguard order." It is valid for 30 days, unless the parents agree to extend the time or a judge extends it.

### **Important!**

If children are in physical or psychological danger, this can be a special case. For example, death threats could 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. This parent can then go to court as to ask for an order for custody and to prevent the other parent from seeing the children or to limit visits. It is best to ask for this order as soon as possible.

# Leaving Children With the Other Parent

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

Here are some examples:

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

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. In other words, the more time passes, the harder it is to change a parenting arrangement that has been in place.

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



# Visiting Rights

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

Here are examples of things not in the best interests of children:

- 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 using force, knocking on the door and 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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