

CUSTODY

CUSTODY: WHAT IS IT?

A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child and must exercise these responsibilities in the child's best interests. Custody includes the ability to make decisions about a child and his/her upbringing and the right to exercise control over the child. A custodial parent can make decisions about education, medical care, religion, activities, where the child will live and so on. Custody is different than access or parenting time.

CUSTODY: WHO CAN APPLY?

Custody applications are not limited to biological parents; interested parties such as step-parents and grandparents may also apply for the custody of a child, but they are required to prove to the Court that they are "persons of sufficient interest" before the application will be considered.

CUSTODY: WHEN CAN YOU APPLY?

A family law action is started with a Petition and custody applications may be made at any time after the action is started. Any application made before a final order is an interim application. Typically, interim applications are decided by a judge on the basis of sworn written statements, called affidavits, which are prepared with the assistance of your lawyer. An interim order or agreement for custody is usually in place until an agreement is reached between the parties or a final Court judgment is made.

A final order for custody can be changed by a variation application. The Court will reconsider the situation only if the applicant can demonstrate that there has been a material change in circumstances of the child or either of the parties.

The Courts may also award temporary custody in emergency situations such as abduction or abandonment without notice to the other party.

CUSTODY (continued)

CUSTODY: HOW IS IT AWARDED?

The courts will either grant sole or joint custody. If sole custody is granted, one parent will be the sole decision-maker. If joint custody is granted, both parents are required to consent to major decisions about the child. A judge will make a decision about custody considering only the best interests of the child. In determining the best interests, the Courts may consider:

- the quality of the relationship between the child and the proposed custodian(s);
- the needs of the child;
- the ability/capacity of the person seeking custody to meet the needs of the child;
- and, the home environment.

The wishes of the child may be a consideration for the court depending on the age and maturity of the child; however, it is very rare for the judge to hear about the child's wishes directly from the child.

A determination of custody, be it sole or joint, does not affect the responsibility for payment of child support or the amount of access or parenting time. For example, it is possible for parents to have joint custody, but for one parent to only have access every other weekend.

[Back to
McKercher LLP
Family Law](#)

McKercher LLP enjoys a reputation for integrity, experience and innovation. Our lawyers, collectively and individually, strive to preserve and promote that reputation, committing themselves and their considerable talents to meeting the complex needs of local, provincial, national and international clients.



SASKATOON
374 Third Ave South
Saskatoon, SK S7K 1M5
(306) 653-2000 F (306) 653-2669

REGINA
800 - 1801 Hamilton Street
Regina, SK S4P 4B4
(306) 565-6500 F (306) 565-6565

mckercher.ca