

## **WHERE DO I STAND?**

A child's legal guide  
to separation  
and divorce.



## INTRODUCTION

This is a pamphlet for children whose parents separate or divorce. Separation or divorce is the result of problems between parents. It is not the children's fault. The children can't stop it from happening. But it does affect children a lot. You may have questions about the law of separation and divorce. This pamphlet's goal is to try and answer those questions.

This pamphlet is about law, and does not talk about your feelings about separation and divorce. There is a list at the back which suggests some of the books you might want to read about how most children feel when their parents separate or divorce.

There is a dictionary at the back for words you might not understand.

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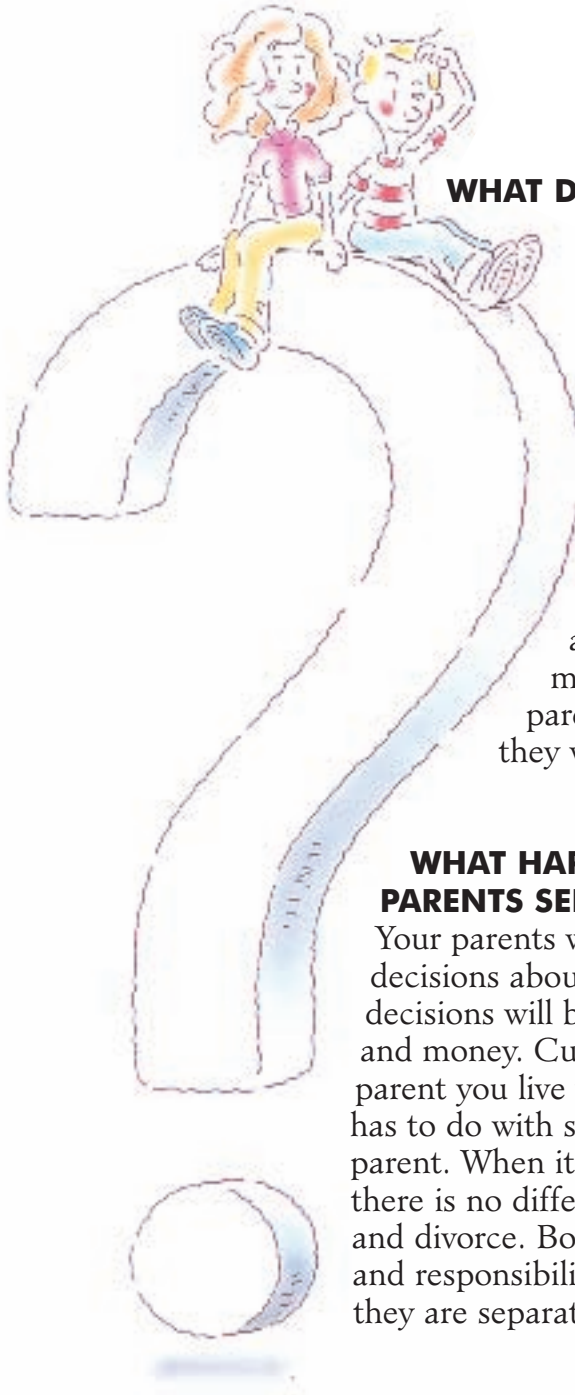
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### **WHAT DOES SEPARATION MEAN?**

Separation happens when your parents decide not to live together. Your parents might be separated without a divorce.

### **WHAT DOES DIVORCE MEAN?**

Divorce means your parents are not married anymore. It is the legal end of marriage, and allows your parents to marry someone else if they want to.

### **WHAT HAPPENS TO ME WHEN MY PARENTS SEPARATE OR DIVORCE?**

Your parents will have to make lots of decisions about taking care of you. The decisions will be about custody, access and money. Custody has to do with which parent you live with most of the time. Access has to do with spending time with your other parent. When it comes to taking care of you, there is no difference between separation and divorce. Both of your parents have rights and responsibilities to care for you, whether they are separated or divorced.

# W

## HAT IS A SEPARATION AGREEMENT?

Many parents sign a separation agreement, which states how they have agreed to solve the many questions that come up when parents separate. These might include questions about custody, access and money. Your parents can change the separation agreement at any time, if they both agree.



## WHEN CAN MY PARENTS GET A DIVORCE?

Parents usually live separately for a while before they ask the court for a divorce.

Once they ask the court for a divorce, it might take a few months or it might take longer than a year until they get it. How long this takes depends on how busy the courts and lawyers are and whether your parents have worked out an agreement.



## WHO DO I LIVE WITH WHEN MY PARENTS SEPARATE?

After separation, most parents will live in separate homes. In most families, the children will live with one parent and spend time with the other. In some families, the children will take turns living with each of their parents.



## **W**ILL I HAVE TO MOVE?

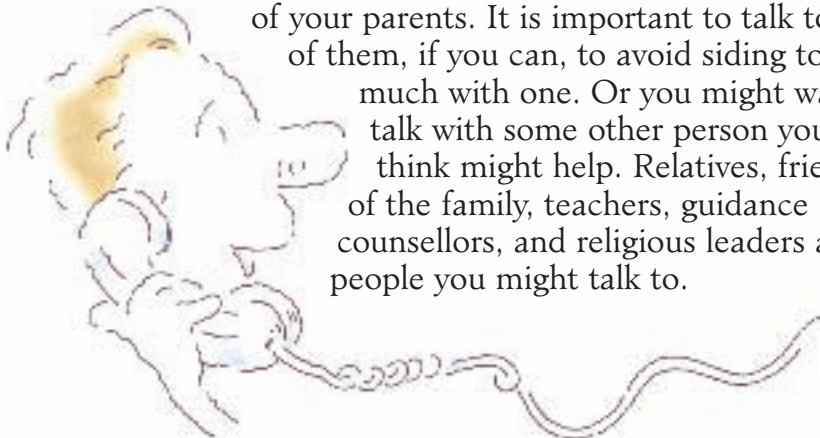
Your parents will probably try not to upset your life too much. But it is not always possible, after separation, to stay in the same home. Sometimes it's even necessary to move to another school district. If not moving is important to you, you might want to talk to your parents about it. But the decision is up to your parents.

## **DO I HAVE TO CHOOSE WHICH PARENT TO LIVE WITH?**

You are not expected to choose between your parents. Where you live is up to your parents. If they cannot agree, a judge will decide. Most parents try very hard to make plans they feel will be best for their children. They know it is hard for children to choose between their parents.

## **CAN I HELP DECIDE WHICH PARENT I LIVE WITH?**

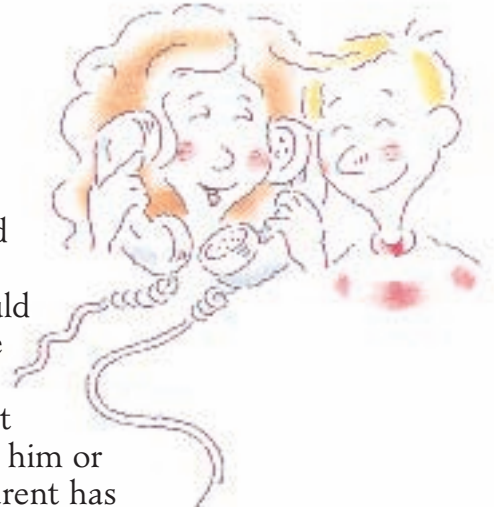
The decision is up to your parents. But if you feel strongly about which parent you want to live with most of the time, you might want to talk about this with both of your parents. It is important to talk to both of them, if you can, to avoid siding too much with one. Or you might want to talk with some other person you think might help. Relatives, friends of the family, teachers, guidance counsellors, and religious leaders are all people you might talk to.



## **HOW DO MY PARENTS DECIDE WHERE I LIVE?**

Your parents should be mainly concerned with what is best for you. It can be very difficult to decide which parent you should live with. For example, if they both share the work of bringing you up and both are good at it, each of your parents might feel it would be better for you to be with him or her. And sometimes, even though one parent has done most of the child raising, the other would like to get more involved.

When one parent has custody, it means you will live with that parent most of the time. This parent will make the important decisions about you.



## **WHAT IS JOINT CUSTODY?**

When parents have joint custody, they share the responsibility of making decisions about bringing you up. For example, both parents are involved in deciding what school you should go to, what activities you should take part in, and what religious education, if any, you should have.



# W

## HO DO I LIVE WITH IF MY PARENTS HAVE JOINT CUSTODY?

You might live with one parent and spend time with the other, even though your parents have joint custody. Another possibility is that your parents will take turns having you live with them. In this case, you would move back and forth between your parents' households. You might move as often as every week or as little as once a year. You might spend the school year with one parent, and the summers and vacations with the other.

It may not be possible for your parents to take turns having you live with them.

Each parent would need a large enough home, located near your school and other activities. Also, constant moving may be hard on the whole family and especially on you.

## WILL I BE SEPARATED FROM MY BROTHERS AND SISTERS?

Parents and judges usually prefer to keep brothers and sisters together. However, each family has its own special needs and once in a while it does make sense to separate brothers and sisters.





## **DO I STILL SEE THE PARENT I DON'T LIVE WITH?**

In almost all cases, the parent who doesn't live with you after separation has the right to spend time with you, and to be told about your health, your education and generally how you are doing. This is called access.

There are almost as many different timesharing arrangements as there are families. Some people have quite strict rules. For example, you might visit your parent every other weekend from Friday night to Sunday night, or every other Sunday from noon to 8 p.m., or for one month each summer. Other people have very flexible timesharing arrangements. For example, if your parent lives nearby, you might be able to spend time or spend the night whenever you want. The kind of arrangements you have should depend on what works best for you and your family.

If one of your parents lives out of town, you might only see him or her occasionally, when he or she comes to town. Or you might take a trip once in a while to visit your out-of-town parent. It may be possible for you to contact your parent who lives out of town by other ways such as telephone or email.



## **DO I HAVE ANY SAY ABOUT VISITING ARRANGEMENTS?**

In general, parents decide about timesharing arrangements. But you should feel free to tell your parents what kind of arrangements you would like. These arrangements should be as convenient as possible both for your parents and you.

## **CAN THE PARENT I LIVE WITH PREVENT MY VISITS WITH MY OTHER PARENT?**

Unless there is a good reason, you should be able to see both of your parents. However, in some situations, because of problems, a parent with custody might try to stop the children from seeing the other parent.

Unless yours is a very special case, you have the right to see both of your parents. If one of your parents is

preventing you from spending time with the other,

try talking with both of your parents. You and your parents might be able to work something out. Sometimes other people, such as a relative or friend of your parents, can help. Also, if it becomes necessary, your parent can get help from a lawyer.



### **WHAT IF MY VISITING PARENT DOESN'T SEE ME?**

There are no legal rules requiring the parent you do not live with to see you. It may be that talking to your parents about it will help.

### **WHAT IF I DON'T WANT TO SEE ONE OF MY PARENTS AT ALL?**

If you feel very strongly about not wanting to see one of your parents, try to talk to one of your parents or to both of your parents about this. Tell them what you want and see what can be done. If you cannot manage to talk with your parents about it, try discussing your concerns with another adult, such as a relative, a friend of your parents, a teacher, a religious leader or a counsellor.

### **WHAT IF I DON'T WANT TO SEE ONE OF MY PARENTS BY MYSELF?**

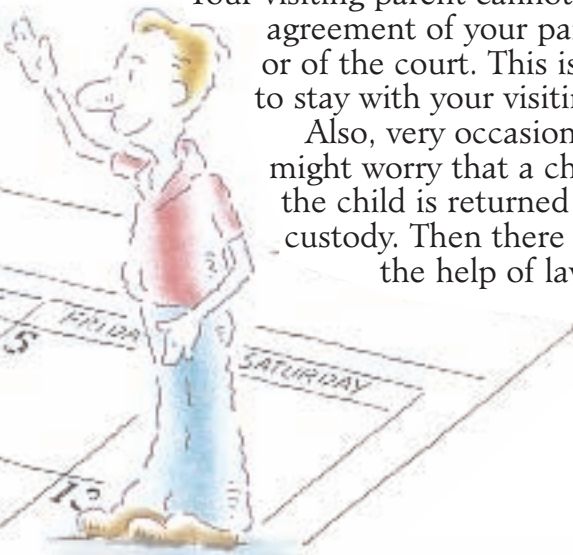
If you are uncomfortable being alone with a parent, you should talk to the other parent. You might be able to have supervised access. This means that someone else must be present when you see your parent. This could be a family member or a person whose job it is to supervise visits.

### **WHAT HAPPENS IF THE PARENT I VISIT KEEPS ME WITHOUT PERMISSION?**

Your visiting parent cannot keep you without the agreement of your parent who has custody or of the court. This is true even if you want to stay with your visiting parent.

Also, very occasionally, the visiting parent might worry that a child is in real danger if the child is returned to the parent with custody. Then there are proper ways, with the help of lawyers and the court,

for the visiting parent to keep the child in his or her care.





## **WHAT HAPPENS IF MY PARENTS DON'T AGREE ABOUT CUSTODY AND ACCESS?**

Your parents may want to see an expert specially trained to help with family problems, such as a clinical investigator, psychologist or a psychiatrist. This does not mean that there is anything wrong with you or your family. An expert who talks with both of your parents, instead of just to one of them, can be most helpful to you, because he or she is in a position to understand everyone's point of view.

The expert might want to talk with you, too, to get a sense of what you want and what would be best for you. You don't have to take sides, but what you say can be helpful.

Sometimes, when parents continue to disagree, a court case is started. This does not necessarily mean that there will be a trial. In fact, even when court cases are started, most parents eventually work out an agreement about custody and access, and don't have to go to trial. Your parents' lawyers may play an important role in helping to work out an agreement about custody and access.

Sometimes your parents may go and see someone called a mediator. This is someone who will

help your parents work out a plan that might involve how you share your time between your parents, which of your parents will be responsible for different things concerning your care and other financial issues that grownups need to work out.



Sometimes older children are involved in the mediation sessions. If you want to be involved, speak to your parents about this.

### **WHAT HAPPENS IF MY PARENTS GO TO COURT TO DECIDE ABOUT CUSTODY AND ACCESS?**

Sometimes the judge decides it would be helpful if you had your own lawyer or clinical investigator. The judge could ask the Office of the Children's Lawyer to have a lawyer or a clinical investigator speak with you. A Children's Lawyer is a person who protects the legal interests of children.

If your parents continue to disagree, there will be a trial. At the trial, a judge will hear evidence about your custody and access, and any other things about which your parents have not agreed. The judge will make a decision based on what is in your best interests.

### **HOW DOES A JUDGE DECIDE ABOUT CUSTODY AND ACCESS?**

The judge's main concern will be what is best for you. In figuring this out, the judge considers the following sorts of things:

1. The love, affection and emotional ties between you and your parents, your brothers and sisters, and other people involved in caring for you.
2. Your views and preferences.
3. Who you have been living with all along. Judges don't like to move children from one parent to another unless it would be best for the children to do that.
4. How stable your parents' homes are. A stable home is one in which there aren't too many changes that are hard on you.
5. Whether your parents are able and willing to care for you properly.
6. The plans your parents have for you. This includes things like what school they would send you to and where they would live.

The judge's only concern in reaching a custody or access decision is your welfare and best interests.





# D O I HAVE TO GO TO COURT?

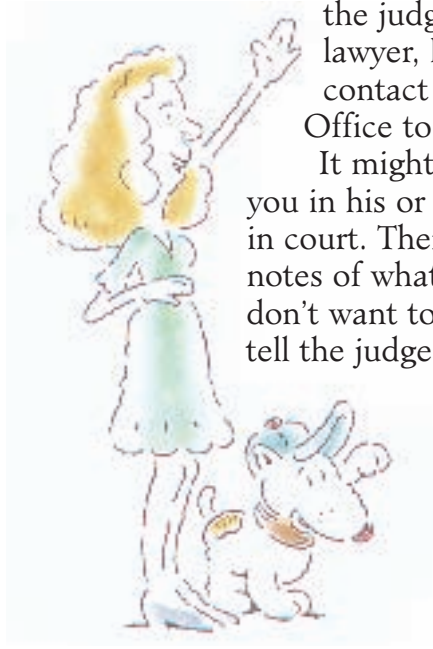


No, you do not have to go to court. It is not your responsibility. Also, it is very unusual that children are asked to testify in court about custody and access.

Testifying means answering questions which lawyers or the judge ask you in court.

The Children’s Lawyer might be able to help you, so that you won’t have to go to court. The Children’s Lawyer is a person who protects the legal interests of children.

If you do go to court and you don’t want to testify, tell the judge as soon as you are called to testify. As well, if someone asks you a question which you would rather not answer, you can tell the judge that too. There is a good chance that the judge will respect your wishes, although the decision about what you answer is up to the judge. Also, if you would like your own lawyer, let the judge know. He or she might contact someone from the Children’s Lawyer’s Office to help you.



It might happen that the judge will want to see you in his or her office, instead of having you testify in court. There will be someone in the office to take notes of what you say. If there are questions you don’t want to answer, tell the judge. You should also tell the judge if you want your own lawyer.

## **CAN A RELATIVE OR FRIEND ASK FOR CUSTODY OF ME?**

Yes, but a judge would give custody to your mother or father, unless there was a good reason not to. Also the judge would prefer to give custody to a relative rather than a friend, unless there was a good reason not to.

## **CAN MY VISITING ARRANGEMENTS BE CHANGED?**

Visiting arrangements can be changed if they are not working out. Small changes in visiting are very common, and might happen because you or one of your parents asks for them. For example, if an activity that is important to you conflicts with a visit, you might ask if your visit could happen at another time. Visiting should be as convenient for you and your parents as possible. But it is also important that you and your parents be able to depend on those visits, so it is not a good idea to keep changing things.

Major changes in visiting are also possible. For example, you or one of your parents might feel that you don't see enough of each other. Your parents might talk about this with each other and agree on new visiting plans. Occasionally a parent might have to go to court to get a better visiting arrangement. The judge's decision will depend on what he or she thinks is better for you.





## **CAN MY CUSTODY ARRANGEMENTS BE CHANGED?**

If your visiting parent wants custody, and the parent you live with doesn't agree to the change, your visiting parent can go to court.

The judge's decision will depend on what he or she thinks is best for you. In general, judges avoid moving children unnecessarily.



## **WHAT CAN I DO IF I WANT TO CHANGE MY CUSTODY OR VISITING ARRANGEMENTS?**

You will only be able to make such a change if at least one of your parents agrees. If you want a change, first try talking with both your parents. Tell them what you want and see what can be done. It would be important to discuss this with your parents and try to work out a plan with them.



## **IF ONE OF MY PARENTS REMARRIES OR LIVES WITH SOMEONE, DO I GET TO SEE THAT PARENT ALONE?**

There are no special legal rules about seeing parents alone. This is something that you should try to work out by talking with your parent.



## **CAN MY STEPPARENT OR MY PARENT'S NEW PARTNER DISCIPLINE ME?**

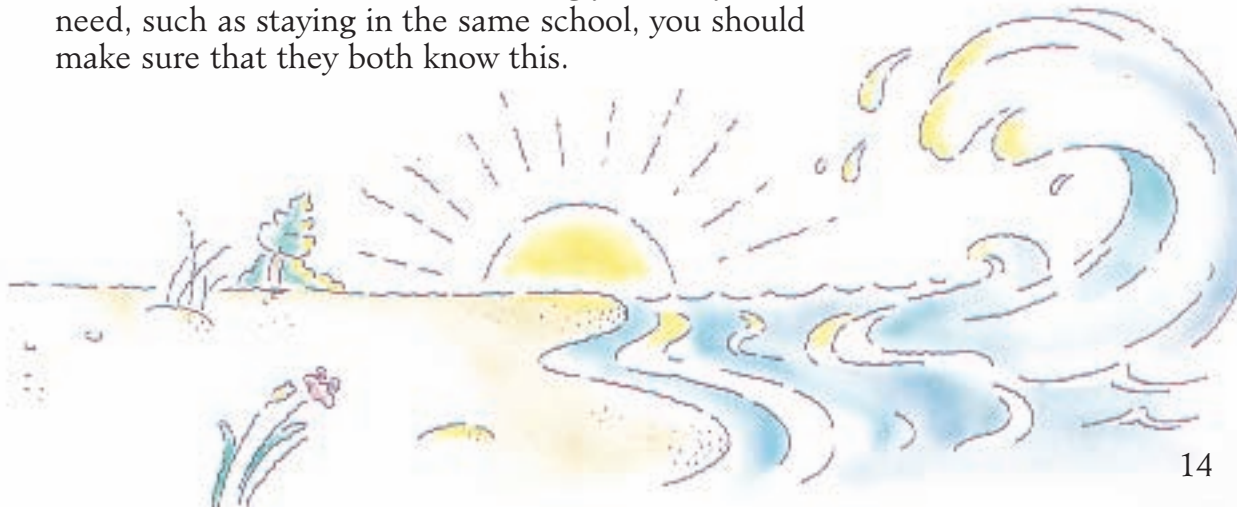
There are no special legal rules about the relationship between your parent's new partner and you. Whether your parent's new partner shares in raising you will be worked out by your parent, his or her new partner, and you.

## **WHAT THINGS DO MY PARENTS HAVE TO WORK OUT, BESIDES HOW TO CARE FOR ME?**

When parents separate they have lots of things to work out. Before, they lived together. Now, you might not be able to remain in the family home.

Likewise, your parents will have to decide how to divide up the things, like furniture, or the family car, which up to now they have shared.

They must also decide how much each of them will pay for your support. This is a question that only they can answer. But if there is something you really want or need, such as staying in the same school, you should make sure that they both know this.





## **H**OW DO MY PARENTS WORK OUT THESE MONEY MATTERS?

Your parents will try to come to an agreement about money questions. If they can't agree, they may go to court for a solution. Often your parents will work out money questions at the same time as custody and access.

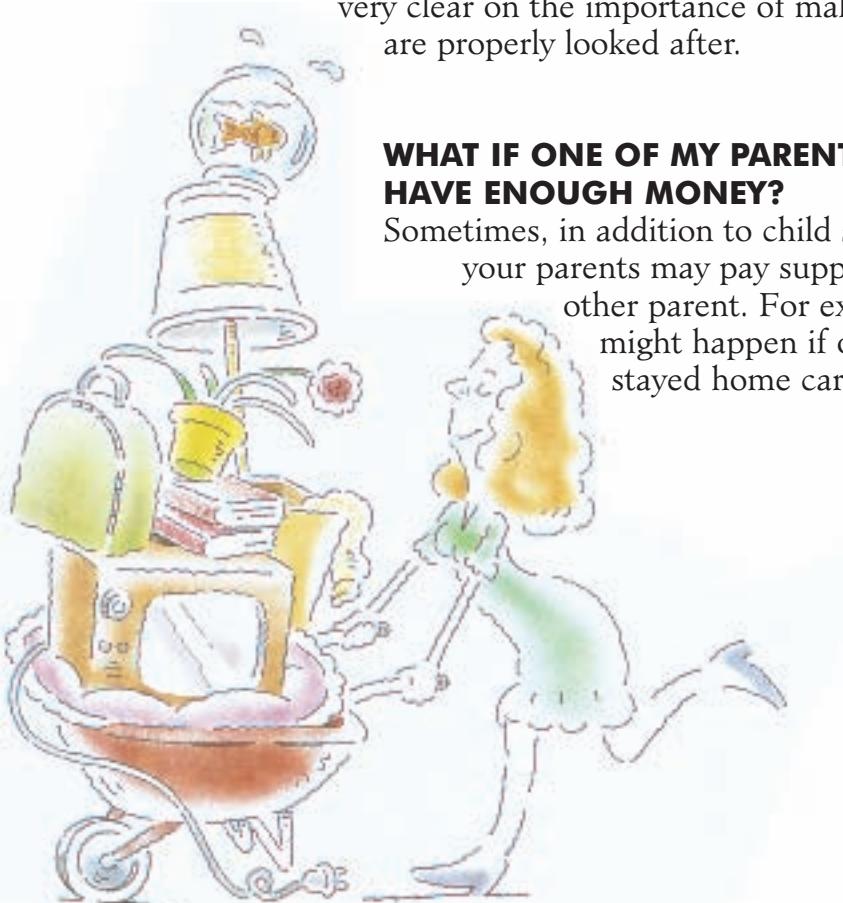
### **DO BOTH MY PARENTS HAVE TO SUPPORT ME?**

Yes. Each of your parents pays for your support.

It depends on how much money they have. In some families there is not enough money to go around after separation for you to have as much as before. Everyone might have to make some compromises, but the law is very clear on the importance of making sure you are properly looked after.

### **WHAT IF ONE OF MY PARENTS DOESN'T HAVE ENOUGH MONEY?**

Sometimes, in addition to child support, one of your parents may pay support for your other parent. For example, this might happen if one parent stayed home caring for you.



**DOES THE PARENT I DON'T LIVE WITH HAVE TO PAY MY SUPPORT IF HE OR SHE DOESN'T GET TO SEE ME?**

Yes. Your rights to support do not depend on your parent's visiting rights.

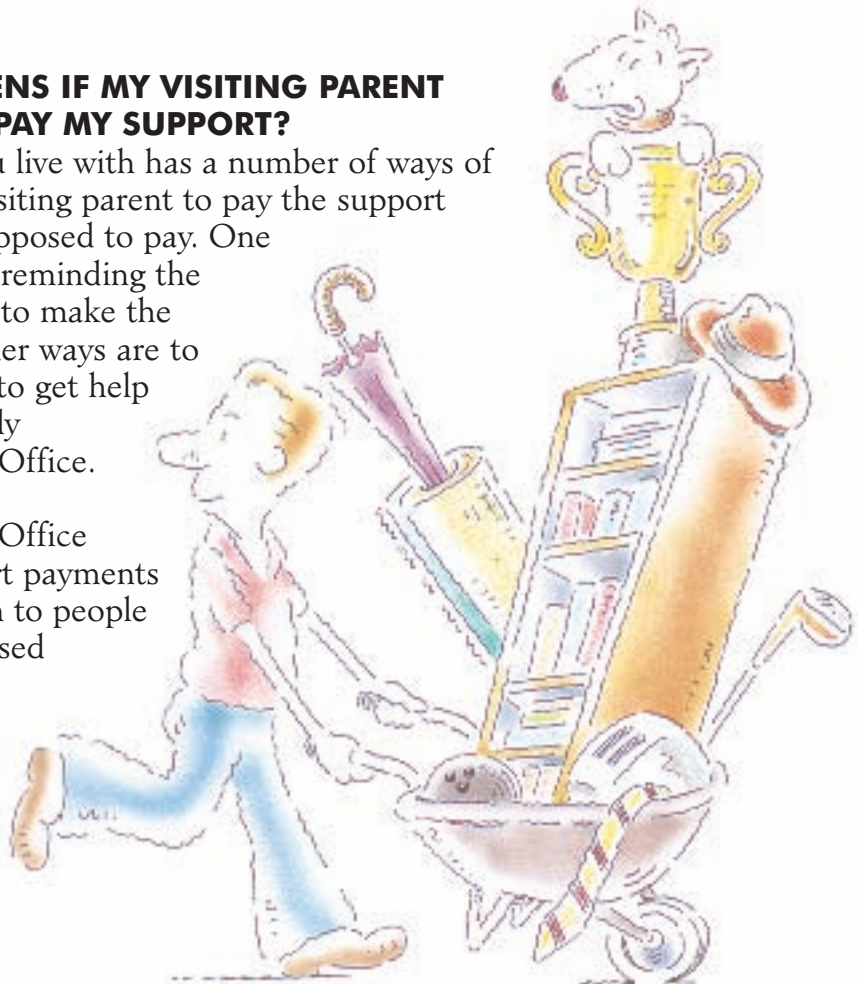
**IF MY VISITING PARENT HAS ANOTHER FAMILY, DOES HE OR SHE STILL HAVE TO PAY FOR MY SUPPORT?**

Yes. He or she is still your parent. But if he or she has two families to support, there may be less for each.

**WHAT HAPPENS IF MY VISITING PARENT REFUSES TO PAY MY SUPPORT?**

The parent you live with has a number of ways of getting your visiting parent to pay the support he or she is supposed to pay. One way is to keep reminding the visiting parent to make the payments. Other ways are to go to court or to get help from the Family Responsibility Office.

The Family Responsibility Office collects support payments and gives them to people who are supposed to get them.





### **CAN THE AMOUNT OF SUPPORT FOR ME BE CHANGED?**

Yes. The amount of support can be changed if your needs change quite a bit or if the amount of money earned by your parent who pays support changes quite a bit. In most cases your parents will take care of this for you.

### **WHAT IF MY PARENTS WANT TO INVOLVE ME IN SUPPORT MATTERS?**

Support is always a matter for your parents, not for you. It is usually better to avoid taking sides or getting involved, unless you have very strong feelings and need to be involved.

### **CAN I GET SUPPORT FROM MY PARENTS FOR MYSELF?**

While support can almost always be left up to parents, children have a right to seek their own support. There are very few cases where it might make sense to try to do this. For example, if you are 16 or older and living on your own, you might be able to get your own support.



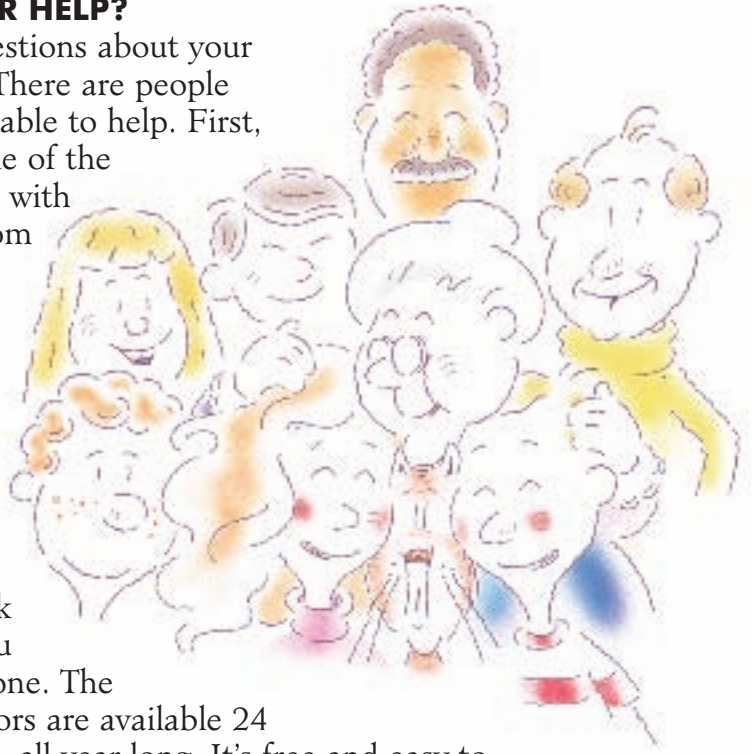
## WHERE CAN I TURN FOR HELP?

You might have lots of questions about your feelings or about the law. There are people around you who might be able to help. First, your parents will have some of the answers. If they don't, talk with people you know with whom you feel comfortable.

Relatives, friends of the family, teachers, guidance counsellors, your family doctor, and religious leaders are all people you might consider. You might also talk to your brothers or sisters or to your friends. If you want to talk with someone privately you can call the Kids Help Phone. The

Kids Help Phone counsellors are available 24 hours a day, 7 days a week, all year long. It's free and easy to call anywhere, anytime. 1-800-668-6868. If you don't want to use the phone, you can send your questions to a counsellor through the KIDS HELP PHONE website at: [www.kidshelp.sympatico.ca](http://www.kidshelp.sympatico.ca)

Sometimes the people you know can't give you the help you need. There are clinical investigators, psychologists and psychiatrists who spend their time talking with and helping children. There are also organizations, such as family service associations, which help people with family problems. You can get free information and answers to your questions about separation and divorce and other family law matters at the Family Law Information Centre at a courthouse close to where you live. If you want this kind of help, one of the adults you know might be able to find it.



## **DO I NEED A LAWYER?**

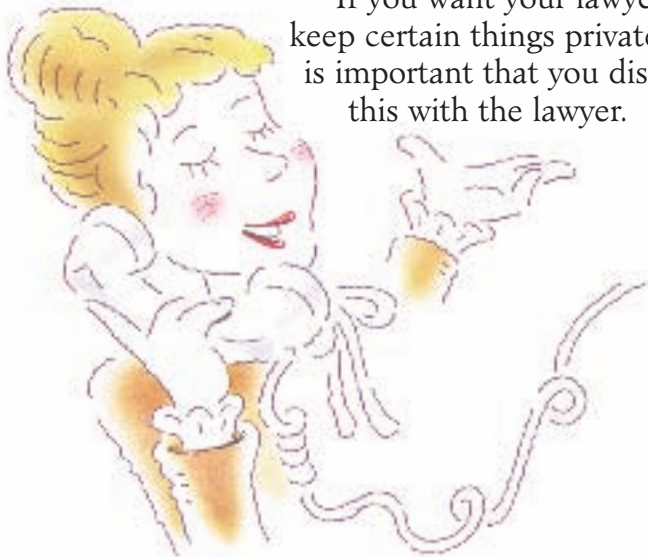
In most cases, children do not need their own lawyer in their parents' separation or divorce. Having your own lawyer can involve you in your parents' disagreements more than you want. Most custody, access and support problems should be worked out by parents.

But in a few cases lawyers can be helpful to children of parents involved in separation or divorce. A lawyer can give information and advice, and might be able to encourage parents to come to an agreement about custody or access. Also, a lawyer can present your views to the court.

## **HOW DO I GET A LAWYER IF I NEED ONE?**

If your parents are not able to agree on questions about you, they may go to court. If you feel it is important for you to have a lawyer, you should ask one of your parents to ask the court for a referral to the Children's Lawyer. The Children's Lawyer is a person who protects the legal interests of children. The Children's Lawyer doesn't get involved in every case, but might be able to help you and your family. You do not have to pay for a lawyer or a clinical investigator from the Office of the Children's Lawyer.

If you want your lawyer to keep certain things private, it is important that you discuss this with the lawyer.



## **CONCLUSION**

As you have seen, there are some things you can't and shouldn't control. But there are ways you can influence the decisions made about you, if you want to.

In deciding whether to get involved, do what you think is best for you. Everyone has his or her own special needs and what is best for you might not be what is best for someone else.





## **DICTIONARY**

**ACCESS** is contact between you and the parent you don't live with. It includes visits between you and this parent, and it includes this parent being told about your health, education and welfare.

**ASSESSOR** is a person who is an expert at talking with people about their problems, to recommend solutions. An assessor might talk with you and your parents, if your parents can't agree about custody and access.

**CHILDREN'S LAWYER** is a person who works for the government to protect the legal interests of children.

**CLINICAL INVESTIGATOR** is a person who helps people solve family problems.

**CUSTODY** usually refers to which parent you live with. It also refers to a parent's right to make important decisions for you.

**DIVORCE** is the legal end of the marriage. Once people are divorced, they are free to remarry.

**FAMILY RESPONSIBILITY OFFICE** is an office in the government that collects support payments from people who are supposed to pay support and gives them to people who are supposed to get support.

**MEDIATOR** is a person who is trained to help people talk through their problems and reach an agreement.

**RIGHTS** are what a person ought to have, like your parent's right to see you.



SEPARATION happens when parents decide not to live together. Once they stop living together they are separated.

CHILD SUPPORT is what parents pay to make sure your financial needs are met.

SPOUSAL SUPPORT is what one of your parents pays to the other, to help meet his or her financial needs.

## **BOOKS ABOUT SEPARATION AND DIVORCE**

Gardner, Richard,  
***The Boys' and Girls' Book About Divorce***, Bantam,  
1970 (over 10 years)

Pickhardt, C.E.,  
***The Case of the Scary Divorce***  
Brown, Laurence Krasny and Brown, Mark,  
***Dinosaurs Divorce***

Prokop, Michael S.,  
***Divorce Happens to the Nicest Kids***

Rogers, Fred,  
***Let's Talk About It: Divorce*** (preschool)

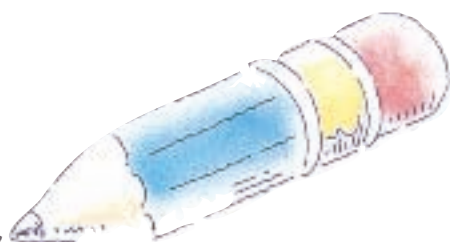
Jong, Erica,  
***Megan's Two Houses: A Story of Adjustment*** (6-9)

Field, Mary Blitzer and Shore, Hennie,  
***My Life Turned Upside Down, But I Turned It  
Rightside Up: A Self-Esteem Book about Dealing  
with Shared Custody*** (4-8)

Ford et al, Melanie,  
***My Parents are Divorced, Too: A Book for Kids by  
Kids***



notes



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