

**A WOMAN'S GUIDE  
to PARENTING ORDERS  
and SUPPORT of  
DEPENDENT CHILDREN**



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## PHONE NUMBERS

(1-800 numbers are toll-free)

Family Violence Information Line .....	310-1818
Child and Youth Advocate .....	1-800-661-3446
Child Support Services Lethbridge .....	380-2272
Child Abuse Hotline .....	1-800-387-5437
Child Care (Parent) Information Line .....	1-866-714-5437

### Children's Services Program Delivery Offices

Cardston .....	653-5101
Claresholm .....	625-8360
Crowsnest Pass/Blairmore .....	562-3285
Lethbridge .....	381-5555
Adoption/Post Adoption/Aboriginal Child Protection .....	381-5500
Foster Care .....	381-5316
Sifton Family & Youth Services .....	381-5411
TRAC Youth Outreach .....	381-5160
Taber .....	223-7921

### Children's Services Crisis Unit Toll Free

Dial 310-0000 then dial .....	(780) 422-2001
After hours toll free .....	1-800-638-0715

### Courts – Provincial

Lethbridge (320 - 4 Street South) .....	381-5223
Civil Mediation .....	388-3102
Cardston (576 Main Street) .....	653-5142
Fort Macleod (244 Chief Red Crow Blvd.) .....	553-5003
Taber (5126 49 Avenue) .....	223-7941

### Court of Queen's Bench (320 - 4 Street South)

Lethbridge .....	381-5196
Civil Mediation .....	388-3102
Regional Family Justice Services .....	381-5496 or 381-5536

## PARENTING ORDERS IN CASE OF SEPARATION OR DIVORCE

Parenting concerns during separation or divorce can be confusing and frightening to parents and children. This guide has been created in order to make some of the confusing details less confusing and to give you the information you need when dealing with parenting issues after a separation or divorce.

At the back of this guide there is a list of resources available in Lethbridge for you to access during the sensitive time of separation or divorce.

## RESOLVING FAMILY CONFLICT WITH PARENTING AND CONTACT ORDERS

For the most part the parent who has daily care, what is known as '*de facto* custody' of the child(ren), will retain guardianship and there may or may not be a written/verbal agreement that states this arrangement. ('*De facto* custody' means that a parent may have the responsibility for the care of the child(ren) without having a court order determining guardianship. For example, if you leave your ex-partner and do not take your child(ren) with you, then your ex-partner will have '*de facto* custody' of the child(ren) even though legal guardianship has not been granted by the court to either parent). If the case goes to court, the best interests of the child will be the main factors determining which parent gets guardianship.

## PARENTING ORDER

“Custody” and “access” used to be the legal terms used during the difficult time of resolving the living arrangements and visitation of a dependent child (one who relies completely on the parent for support). Today the new **Family Law Act** uses the term, “parenting orders” in place of “custody” and “access”. The new Act supports a positive approach toward resolution of family conflicts keeping the *best interests of the child(ren)* and the family as the main concern. The best interest of the child(ren) are things that contribute most to the health and well-being of the child(ren) and many courts agree that the best interest of any child is to have both parents in their lives if possible.

The Alberta **Family Law Act** determines “best interests of the child(ren)” to also include the views and preferences of the child along with the natural history and strength of their existing relationships with both parents. For this reason, most judges will not restrict the non-custodial parent from visiting the child(ren). There would have to be very powerful reasons for a judge to deny visitation to the non-custodial parent. Other factors regarding “best interests of the child” in the Alberta **Family Law Act** include “any history of family violence and any civil or criminal proceedings that may be relevant to the child’s safety or well being” (*Family Law Act, 2007*). The non-custodial parent has the right to have all the information about the child(ren) concerning their health, education and well-being.

A parenting order may be obtained from the court if parents are not able to agree on the responsibilities of raising the child(ren) after the separation/divorce. The parenting order describes when parents may spend time with the child(ren) which may be on a schedule, or the order can explain how parents are to share the duties and responsibilities toward their child(ren). A parenting order offers ways for parents to address future arguments considering both parties agree to the terms and any other conditions that are in the best interest of the child(ren) will be dealt with by a parenting order. There is no reference to “custody” or “access”. Very serious factors such as family violence

person to offer emergency care; the care may be provided in the child(ren)’s home or in the caregiver’s home for up to 10 days.

Whether or not it is possible for the child(ren) to be taken care of in their own home, the caseworker continues to work with the child(ren), the parent(s)/guardian, extended family members and other people who are important in the child(ren)’s life to develop a plan that acknowledges the immediate protection concerns and the arrangements for resolving them. Service plans are put in place to help parent(s)/guardians continue their normal parental duties as soon as possible. If there is no resolution to the situation, more lasting measures like private guardianship, permanent guardianship and/or adoption will be considered.

**NOTE:** A child’s cultural, racial, and linguistic heritage must be respected when making decisions for the well-being of the child, especially for Aboriginal children, who have a unique status (Gough, P., 2006, p. 3).

If a caseworker determines that a child(ren) is in need of protective services which are defined by the *Child, Youth and Family Enhancement Act* and they take all the necessary steps to make sure children are safe.

When alleged child abuse is reported to a caseworker, the worker must assess the needs of the child regarding necessary intervention; the worker must also form an opinion as to whether there is need for protective services according to the *Child, Youth and Family Enhancement Act*.

In **every instance, child abuse allegations must be reported** directly to an assigned caseworker and if someone other than that case-worker receives the report, that person hearing of the abuse should advise the one reporting (the alleged abuse) that they have a legal duty to report the allegation directly to the delegated caseworker. The person claiming that there is abuse must report to a **Child and Family Services** office (in Lethbridge, 381-5555) immediately and ask to speak to the assigned caseworker.

### **Assessing Risk and Protecting Child(ren)**

An investigation is carried out in order to determine whether the child(ren) is in need of protective services as defined by the *Child, Youth and Family Enhancement Act*. The caseworker will begin an investigation immediately if it is suspected that the child(ren) is in immediate danger otherwise it should begin within a three day period. If immediate action to protect the child(ren) is necessary, the worker must take all the steps necessary to protect the child.

The investigation ends after the caseworker has gathered enough information to be able to determine whether a child(ren) needs protective services. If it has been decided that a child has inadequate supervision the caseworker appoints a

will be considered in the parenting order and the court will become involved if necessary. Parenting orders will range from very minor to extremely serious court involvement and the orders may consider giving sole parenting rights to one parent. In this case the other parent will even lose the right to be told about decisions made in the day to day care of the child(ren).

## **DETERMINING PARENTING ORDERS**

Parenting orders are usually determined by which parent has responsibility of the child(ren) and maintains their day to day care. A verbal agreement may have been made to reflect this agreement. There may also be a written agreement stating that whoever has responsibility of the child(ren) will continue to have that responsibility. If the case goes to court, a parental order will determine the best interests of the child(ren).

## **CONTACT ORDER**

A contact order permits contact with other important people in the child(ren)'s life other than only the parents. People such as aunts, uncles, step parents, and grandparents may be important to the child(ren) and they may want to have contact with them. Applications for in-person visitation or other methods of contact such as email, telephone, or letters may be made to the court in the event the child(ren)'s guardian\* has denied contact with the child(ren).

\* Guardians are responsible for raising the child(ren), for providing the day to day care and supporting the well being of the child(ren). Not all guardians are parents and not all parents are guardians.

## VISITATION

The three types of visitation mentioned in this guide are referred to as *reasonable*, *conditional* and *supervised*. The following explains these types of visitation in more detail.

### Reasonable Visitation

Reasonable visitation is supported by an agreement between both parents to be flexible and to work out all the details of access on a daily basis. A court order can enforce this type of visitation, it can be arranged as part of the separation/divorce agreement, or it can be a separate agreement. This type of agreement is not recommended when abuse is involved, but works well when parents can agree with each other, can trust each other, and for the most part, get along with each other.

### Conditional Visitation

Conditional visitation is supported by an agreement that has been put in writing and clearly states the particular conditions of the visits. This includes time, holiday arrangements, place to be picked up and dropped off, transportation and supervision if required and must be in place prior to visitation.

### Supervised Visitation

Supervised visitation is usually through a court order due to domestic violence in the home and high risk of further threat of domestic violence to the custodial parent and the children. Some supervised visits may be conducted with family members or friends acting as supervisors however where there has been domestic violence, neutral supervised visitation is recommended.

In Lethbridge, the **Community Safe Visitation Program** at the **YWCA Lethbridge and District** location provides the safe,

**Emotional Abuse** – harm to a child’s mental or emotional functioning or development:

- child may be blamed in public and/or at home by adults
- is treated less affectionately than other siblings
- is identified with disliked relatives
- behaves passively or shyly but may have aggressive outbursts
- has a fear of failure and constantly apologizes
- cries for seemingly no reason
- very demanding of an adult’s attention

### Need for Protection

A child is in need of protection if one or more of the above mentioned circumstances are present. It is very important that a child protection agency like Southwest Alberta Child and Family Services Authority be contacted to report child abuse.

### Reporting Child Abuse

If anyone has reason to believe that a child has been abused or if there is a grave risk that a child will be abused by a guardian/parent, they have a legal obligation under the *Child, Youth and Family Enhancement Act* to promptly report the abuse or suspected abuse to a caseworker.

### Caseworkers

Caseworkers are staff members of *Alberta’s Ministry of Children’s Services* who have been granted authority by the Minister and Director of Child Welfare to carry out their duties.

(NOTE: This is included in this document strictly for your information – if intervention is required, parents and children would deal with a caseworker at the level of Child and Family Services).

## CHILD ABUSE

### Signs of Child Abuse

Child abuse may be identified by several factors including neglect, physical abuse, sexual abuse, or emotional abuse. Each factor can be recognized in the following ways:

**Neglect** – failure to provide a child with the necessities of life such as:

- lack of care and attention is demonstrated by infected sores, need for proper glasses, underweight, poor hygiene, or lack of clean clothes or appropriate clothes for outside temperatures
- behaves as if the parents are not interested, has obvious lack of energy, does not attend school regularly, is always hungry

**Physical Abuse** – a planned, sizeable, noticeable injury to a child such as:

- poorly explained or unexplained bruises or welts on the body
- different shades of bruises
- broken bones or sprains
- unexplained cuts or scrapes
- behaves very defensively about injuries and wears clothes that cover the injuries
- does not want to change clothes in front of peers
- reports injuries by parent/guardian

**Sexual Abuse** – inappropriate exposure to sexual contact

- has a sexually transmitted infection
- has pain when urinating
- cannot sit for long periods of time due to genital discomfort
- behaves aggressively in a sexual manner with peers or toys
- may suddenly begin to masturbate
- may display seductive behaviour with teachers, classmates or with other adults

neutral environment for supervised visits with non-custodial parents. Highly trained professionals perform safe, facilitated exchange of children and then these professionals remain in the safe visitation environment with the children during all visits. Not all access to this program is through a court order; if there has been and continues to be violence in the home, if your children want to visit with their non-custodial parent, or if there are some concerns about visitation discussed with Children's Services, you may qualify for this program. All referrals to the **Community Safe Visitation Program** at the **YWCA Lethbridge and District** must be made through the **Southwest Alberta Children and Family Services Authority**; to see if you meet eligibility criteria please call (403) 381-5555.

In some cases parents can be refused the privilege to visit with their child(ren) by court order. Certain safety issues surrounding domestic violence must be considered. If you fear for the safety of your child(ren) while they are visiting with their non-custodial parent, and you do not have a court order, you may get a restraining order; to do this you must be able to go to court with the evidence of danger to your child(ren). The **Community Safe Visitation Program** at the **YWCA Lethbridge and District** is highly conscious of the safety needs of the custodial parent and children, therefore staggered arrival times for the non-custodial parent and for the custodial parent with children have been implemented.

The **Community Safe Visitation Program** at the **YWCA Lethbridge** will not force children to visit with their non-custodial parent. Children may be encouraged to visit with their non-custodial parent, however do not confuse that with being forced to visit. Be aware of your child(ren)'s concerns about visits and keep an accurate record of their concerns. These recorded concerns will be important if you have to go to court or involve the child protection agency.

## Enforcing Visitation With the Child(ren)

Provisions in the new *Family Law Act* make sure that court enforcement of the parenting/contact orders are carried out; if the non-custodial parent is denied time with the child(ren) the means of enforcing the parenting/contact order are as follows:

- providing a proper balance of time for the non-custodial parent to visit with the child(ren)
- paying back the non-custodial parent financially for the required expenses incurred as a result of being denied the visit with the child(ren)
- paying a penalty of up to \$100.00 per day up to a maximum of \$5000.00 for not allowing the non-custodial parent to spend time with the child(ren)
- serving time in prison for up to 90 days for denying visitation time and for refusing to pay the penalty

*If given an enforcement order, police officers can take reasonable steps to find the child(ren) and uphold the rights of the parents to visit with their child(ren).*

## **AGREEMENTS**

### Separation Agreement

A separation agreement is made between you and your ex-partner and is used to resolve parenting issues. It is possible to create a separation agreement without going to court but it is wise to talk to a lawyer before you sign it. It should be signed and dated (witnessed) in front of a neutral adult or a Notary Public/lawyer. A separation agreement is easier than divorce on the child(ren) as well as the parents because they do not have to go to court; separation agreements are also less expensive than divorce. If the terms of the separation agreement are not followed, however, the contract may be enforced by applying to the court.

## Finding A Lawyer

Finding a lawyer can be a big task especially if you have never had to do it before. When looking for a lawyer in Lethbridge it would be a good idea to start by asking **Lethbridge Legal Guidance** who they would suggest you call. Another source of information could come from talking to people you know and trust that have used the services of a family lawyer. If you happen to be staying in a women's shelter, staff there are prepared to assist you in finding a family lawyer.

**NOTE:** *It is **not** a good idea to use the same lawyer* as your ex-partner because you need a lawyer who will advocate for you and who has your best interest at heart; your wants and needs are not the same as those of your ex-partner.

## **IF A CHILD PROTECTION AGENCY BECOMES INVOLVED**

### Child Protection

In Alberta, the *Child Protection Act* protects children from harm resulting from abuse and neglect. The **Southwest Alberta Child & Family Services Authority** in Lethbridge (381-5555) supports families and makes sure they have a nurturing environment in which to raise their children. Professional staff provides services and programs to keep children and youth safe; these services include child intervention services (family enhancement and protection), child care licensing and subsidy, protection against family violence and bullying along with the prevention of child sexual exploitation. Stabilizing placement is part of the mandate of **Southwest Alberta Child & Family Services Authority**, along with breaking the cycles of family violence, abuse and poverty that prevent some children from becoming strong, healthy individuals.

## Applying for Child Support

It is usual for the custodial parent to apply for child support at the same time they apply for the parenting order. If for some reason the application was not made for child support at an earlier time, the custodial parent may go back to court and apply for child support.

## Lawyers, Legal Aid and the Law

**Family Law lawyers** are specialized to deal with cases of separation/divorce and parenting orders. Sometimes it is wise to retain a lawyer to help you through the fine details but you can do a lot of the work yourself by contacting Lethbridge Legal Guidance at (403) 380-6338. **Lethbridge Legal Guidance** is a non-profit society that is funded by the Alberta Law Foundation. They offer free legal advice and information to Albertans who are simply not able to afford the right to use to the justice system.

**Lethbridge Legal Guidance** is a group of volunteer lawyers who donate their professional time to give legal advice and to their clients. The society will refer clients to appropriate agencies or persons if they are not able to provide direct services. An intake worker at Lethbridge Legal Guidance will be able to determine whether or not you are eligible for their services and if you qualify, then an appointment for services will be made for you to attend an evening 'clinic'. The office hours are Monday to Friday 8:30 am to 4:30 pm and evening clinics are held every Tues. and Wed. from 5 p.m. to 7 p.m.

**NOTE: this society does not represent clients in court** but they may be able to assist you in areas of separation/divorce and parenting orders so you are familiar with procedures if you need to go to court yourself. If you have to go to court yourself: act respectful before the judge, do not panic, stay positive and rely on the information provided to you by Lethbridge Legal Guidance. You will need to be aware of the help and support that is available prior to going into court by yourself.

Agreements may be written or verbal. The following explains each type in more detail so you can decide which one best suits your needs:

## Written Agreement

A written agreement concerning a parental order proves that an agreement between you and your ex-partner has been made. No one has to try and remember what was agreed upon because it has been written down. During the time when the written agreement is discussed, each parent may find out about issues that were forgotten or not resolved at an earlier time. The written agreement should be as detailed as possible, particularly if you and your former partner frequently tend to misunderstand each other.

## Verbal Agreement

A verbal or spoken agreement cannot be enforced by police. For example, if your child is visiting the non-custodial parent and that parent does not bring your child home after the visit, the police are not able to help you if you have a verbal agreement. You should also be aware that a verbal agreement does not provide any proof of custody or access if your case goes to court. A verbal agreement is not considered a safe option particularly for victims of abuse but a verbal agreement may work well if you and your ex-partner get along and maintain a trusting relationship.

## THE RIGHTS OF PARENTS AND CHILDREN

### Who Has Rights to the Child(ren)?

During the marriage each parent has equal rights to guardianship of the child by sharing equal duties and day to day care in raising them; however, once separation/divorce occurs, these duties and daily responsibilities may be changed by a written agreement drawn up between the parents or by a court order.

The parent who does not keep charge of the children still has many important legal rights including the right to ask questions and to receive information regarding the health and well-being of the child(ren). Unless a court order says differently, this right is granted under Section 16(5) of the Divorce Act of Alberta. The non-custodial parent has the right to apply for a parenting order, the right to agree or disagree with changes in the child(ren)'s given names or surname, and the right to share equally in the child(ren)'s estate should the child(ren) die. The non-custodial parent also has the right to contest the adoption of the child(ren), and has the right to receive notice of an adoption hearing should this situation occur.

### Mediation

Mediation involves getting help from a third person rather than going to court to settle any differences you and your ex-partner may have; it is not legally binding and the police or courts will not enforce it. Mediation is not a recommended process if you and the non-custodial parent do not work well together and is not considered safe or effective for victims of abuse.

Mediation is not as threatening as going to court, it is done in a private setting, and the agreement can be very flexible – tailored to your needs and those of the child(ren). Another advantage is that mediation is not as expensive as going to court and it is quicker and easier than going to court.

You might not want to pick mediation as a resolution to settle differences with your ex-partner if there has been or continues to be a threat of domestic violence. It is also not recommended if you and your ex-partner have difficulties in agreeing on matters pertaining to the child(ren) after separation/divorce. If you feel pressured into going the route of mediation rather than court, do not attempt to use mediation.

Professional mediators and services for mediation are available. Sometimes churches have authorized persons who are able to provide mediation services or you could speak to people you know and trust who you know has been through the process of mediation.

## CHILD SUPPORT

By law, parents must provide support for their child(ren) whether there has been a separation/divorce or not. Parents are responsible for financial support of the child(ren) up to the age of 18; if a child is attending a full-time education program the age of support may be up to age 22. A step parent may be the one to pay child support if that individual has assumed the role of parent in the child(ren)'s life and treats the child(ren) as their own. If the child(ren) marries or leaves home and becomes independent support ceases.

Child support is something the parents can agree upon or they may apply to the Provincial Court of Alberta or to the Court of Queen's Bench for child support only if the issue of child support has not been taken into consideration during a divorce under Canada's *Divorce Act*. In the case of spousal support, parent may apply to either the Provincial Court of Alberta or to the Court of Queen's Bench.

It is important for you to know, that if you get monthly income support from the Alberta government, your benefits will be reduced by the amount of child support you receive. You must let your financial benefits worker know of any child support payments you get.