

C. Custody

The laws of Canadian provinces and territories generally provide for both parents to have equal legal custody of a child, as long as there is no custody order and the child is living with them. This is the law in many other countries as well. If you are considering separation or divorce, if you are already separated or divorced, or if you were never legally married to the other parent, you should discuss custodial arrangements with your lawyer. Only your lawyer can provide you with the necessary advice for your specific circumstances.

A well-written custody order is important in dealing with parental child abductions, especially if your spouse is a landed immigrant or is a Canadian citizen with ties to, or citizenship of, another country. Even if your Canadian custody order may not be officially recognized in the country to which your child could be abducted, it will serve as a formal statement of your custodial rights in subsequent discussions and proceedings. Your lawyer can advise you on what is appropriate for your situation. The custody order might include some or all of the following:

- ❖ sole or joint custody;
- ❖ access rights;
- ❖ court-ordered supervised access;
- ❖ prohibition on travel without the permission of both parents or the court and surrender of all travel documentation for a child by the non-custodial parent;
- ❖ deposit of passport with the court;
- ❖ if travel is permitted to a country that is a party to the Hague Convention, a statement whereby both parents agree that the terms of the Convention would apply in the event of an abduction or wrongful detention;
- ❖ if one of the parents does not have Canadian citizenship, or has dual citizenship, provisions for a bond to be posted in the event of your child travelling to another country, which would be forfeited to you in case of abduction or wrongful retention.

You should obtain several certified copies of the custody order. A copy should be given to your child's school or to other persons who may be acting in loco parentis. Further, the school should be advised as to who has authority to collect or take charge of your child.

D. Canadian Passports

Canadian government regulations permit the issuance of a passport to a child under 16 years of age if the applicant is the parent, the custodial parent or the legal guardian. The regulations also permit the inclusion of a child's name in the passport of either the parent or the custodial parent. If parents are divorced or separated, a child will not be issued a passport or be included in either parent's passport unless the application is supported by evidence that the issue of the passport is not contrary to the terms of a custody order or a separation agreement.

If you fear the abduction of your child, you may notify any passport office in Canada or abroad (the nearest Canadian diplomatic or consular mission) to have your child's name placed on an alert list. You will then be notified if a request for passport services is made for your child. Before your child's name is included on this list, you will be asked to provide the names and birthdates of both parents and your child, as well as copies of any child custody-related documents.