



## Custody by Jodi L. Wyman

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Judges in Family Court spend much of their time trying to decide just what is in a child's best interests. Once parents have separated, they must decide upon arrangements for the children. This is often a very difficult to do and many cases end up in Court.

Having the parents work out their own parenting plan, either alone or with the help of a mediator or lawyers, is the best scenario. The couple retain control of the situation, can deal with the smaller minor details and the children understand their parents are still working together. Leaving the decision-making up to a Judge is not ideal as he or she will be a complete stranger, and will never meet the child. Judges are left with only the evidence before them to decide what arrangements are in the child's best interests.

Joint custody, as opposed to sole custody, means that both parents are able to participate in major decisions, such as those relating to school, medical treatment, religion or a change of name.

If the child lives with one parent most of the time, they are said to have primary care and control or custody, with the other parent having secondary periods of care and control or access. Custody and access arrangements can be as specific or as flexible as the relationship between the parents will allow. Generally, Judges want the child to spend as much time as possible with access parent. This access is seen as the child's right to have a relationship with both their parents.

In some cases, the parents are able to work out a shared parenting relationship, where the child spends approximately equal time at each home. Although in theory this is an ideal situation, both spouses need to reside close to each other if the child is in school and they need to have a good relationship to deal with disagreements.

A child's wishes are not considered by the court in determining custody arrangements. Not only should he or she be kept out of the conflict, but also they are not

wise decision-makers at such a young age. Their wishes can however be considered by the court if they are mature enough, and usually over the age of twelve. Generally, the child meets with an independent lawyer, acting as a "friend of the court", who then presents the child's wishes to the Judge. The Judge however still has the final say.

The Federal government is currently in the consultation process for Bill C-22, which would amend the Divorce Act. The primary changes to the legislation would involve abandoning the words "custody" and "access" and replace them with the concepts of "parental time" and "parental responsibility". There would be an improved definition of a child's "best interests" to help guide Judges. These changes are meant to lessen the conflict between parents, and that is always in the best interests of children.