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Step Parent's Right to Access and Custody

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Being a step parent is a role an increasingly large number of Canadians find themselves in. The traditional view of step parents has been shown to be a myth; step parents can often develop strong loving bonds with the children of their spouse. While many individuals assume that there is no way for a step parent to claim access, or custody there is no preference for biological parents in the *Divorce Act*. Contacting a Family Law lawyer is important for an individual to be completely informed both about claims they want to make, and the claims their spouse could make upon the breakdown of a marriage.

Who can Claim Access and Custody

The *Divorce Act* has jurisdiction over custody and access in the context of divorce. It discusses custody in Section 16:

16. (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

The *Divorce Act* does not focus on the biological parents, but rather just hinges on whether or not a child is the “child of the marriage.” The *Divorce Act* provides a definition of ‘child of the marriage’ in Section 1:

“child of the marriage” means a child of two spouses or former spouses who, at the material time,

(a) is under the age of majority and who has not withdrawn from their charge, or

(b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;

The definition of a child of the marriage includes any step children a person may have, if they have been standing in the place of a parent. A step parent, as a spouse, is perfectly capable of making a claim for custody or access.



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How a Step Parent's claim to Custody and Access is evaluated

The *Divorce Act* stipulates the factors which should guide a court when evaluating a custody claim in Section 15 (8):

(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

The court will also consider the past conduct of an individual, but only if it goes to their ability to act as a parent, and they will place an emphasis that the court believes having maximum contact with all of their parents is in the best interest of a child. It is important to note that there is no requirement in the *Divorce Act* that only a biological parent is capable of applying to the court for a custody or access order.

Ultimately, a step parent is perfectly capable of making a claim for custody or access. They will have to undertake this claim in the same way a biological parent would. They would have to draft a parenting plan. The court would evaluate any order for custody or access based on the best interest of the child. If it is in the best interest of the child that a step parent has access or custody, perhaps due to the fact that the step parent has acted as a parent to the child since they were an infant, a court will do so.

Conclusion

A step parent is perfectly capable of making a claim for custody or access. The court will evaluate these claims in the same manner they would for a biological parent. The court will consider only what is in the best interest of the child. They will strive to craft an order which will ensure the best possible outcome for the child. A family law lawyer is crucial whenever an individual is going through a divorce; they can educate individuals about claims they may not have realized they could make. Or, alternatively, could warn them about claims their ex-spouse could make which they never considered.