



## Step Parent's Right to Access and Custody

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Step-parents are now a common feature in many families in Ontario. Despite their ubiquity, individuals are often unaware of the legal responsibilities which flow from this kind of relationship. Individuals often believe that, when a marriage breaks down, they have no obligation to support their step-children. This confusion demonstrates why contacting a Family Law Lawyer. A lawyer is able to inform their clients of potential claims that can be made against them, in addition to ensuring that their legal rights are protected.

### A Child of the Marriage

Child support claims in a divorce are determined according to the *Divorce Act*. The act states in Section 15.1, that a court can order an individual to pay child support for any “children of the marriage.”<sup>1</sup> The act also provides a definition for who precisely is a child of the marriage. That definition is:

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(a) is under the age of majority and who has not withdrawn from their charge, or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

Child of the marriage

(2) For the purposes of the definition “child of the marriage” in subsection (1), a child of two spouses or former spouses includes

(a) any child for whom they both stand in the place of parents; and

(b) any child of whom one is the parent and for whom the other stands in the place of a parent.<sup>2</sup>

<sup>1</sup> *Divorce Act*, RSC 1985, c 3 (2nd Supp)

<sup>2</sup> *Ibid*, s. 1



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Therefore, individuals have the responsibility to provide support for any of the ‘children of the marriage. In the case of step parents, the court will look closely at whether or not a spouse stands in the place of a parent

### **Standing in the Place of a Parent**

The *Divorce Act* does not carry a definition for what consists of standing the place of a parent. The courts, however, have provided a definition through several cases. In *Chartier v. Chartier*, the Supreme Court of Canada stated that standing in the place of parent is when the parent has demonstrated a settled intention to act as a parent. This is gauged not after the breakdown of the marriage, but rather, when the family last functioned as an intact unit. In the case of *P (G.N) v. G (L.A)* the court ruled that an individual had to pay child support, despite the fact that he had been deceived into believing that the children were his, and were the biological children of another person. The court found that he had demonstrated a settled intention to parent. In most cases, step parents will attempt to stand in the place of the parent, and would therefore be required by the court to provide child support.

### **Child Support Amount**

The amount determined for child support in a divorce is determined by the *Federal Child Support Guidelines*. The guidelines are based on a percentage of the payor’s income. The court under Section 5 of the *Federal Child Support Guidelines* allows the court to vary the normal amount under the guidelines, having regard to the guideline and the legal duty of any other parent to support the child.<sup>3</sup> This is, however, not automatic and a court may decide to make a child support order in the full table amount.

### **Conclusion**

Many individuals in Ontario are under the mistaken belief that they will not have any legal obligations towards their step children upon the breakdown of a marriage. This is simply not the case in Ontario, and individuals should recognize the consequences of their decisions and relationships. A Family Law lawyer can help inform individuals about the sorts of legal obligations they may be taking on.

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<sup>3</sup> *Federal Child Support Guidelines*, SOR/97-175