

Children's Rights During a Divorce

Caught Between Parents: an Agonizing Choice

Fact Situation

Every day in Canada and other countries, young people are dealing with the divorce of their parents. This is the story of a 15-year-old Quebecer in this situation. Her name is Caitlin Okpik.

Caitlin is stressed. On top of homework, exams and hockey tournaments, she is worried about something else: her parents are divorcing after years of arguing. Divorce is often painful, and in Caitlin's case, complicated.

Caitlin lives in Gatineau. Her father is Inuk, and Caitlin identifies a lot with Inuit culture. But her mother is not Inuk. She is moving soon to Rimouski to live with her new boyfriend and she absolutely wants Caitlin to move and live with her. She has already registered Caitlin in an excellent private school with good sports teams. This school could also help Caitlin achieve her dream of becoming an airline pilot. It's all tempting, but Rimouski is far from Gatineau!

Caitlin is not certain she's ready to leave Gatineau. It's the first time in a long time her hockey team has a good chance of winning the provincial tournament. Also, she can't imagine living without

her friends. She spends almost more time with them than with her parents! On top of this, she's been with her boyfriend for more than a year and definitely doesn't want to leave him behind.

Caitlin's father doesn't want her to move to Rimouski. Caitlin doesn't really know why. She is not very close to her father and they have been avoiding the issue for weeks. Also, her father was always busy with his work and never really there for Caitlin. Maybe it's because Caitlin won't have any contact with her Inuit roots and culture if she leaves with her mother. Only Caitlin's father can pass this heritage on to Caitlin. Also, visiting her father's relatives in northern Quebec will be more difficult from Rimouski than from Gatineau. And Caitlin is not ready to give up the weekend camping, fishing and hunting excursions with her father and his extended family!

Caitlin faces an agonizing dilemma: should she go to Rimouski or stay in Gatineau? She will really miss her mother, but prefers to stay with her father.

Caitlin wants to have her say about the issue. She is going to court soon to tell the judge why she wants to stay. The judge will make the final decision.

Question

You are the judge. You heard Caitlin say that she wants to stay with her father. You also heard both parents explain their positions. What is your decision? Should Caitlin leave with her mother, or stay with her father?

Support your answer using laws on the subject that apply in Quebec and draw inspiration from the principles of the *Convention on the Rights of the Child* (the “Convention”).



Points to Consider

Consider these points when answering the question:

- Should the wishes of children and teenagers always be respected?
- Do you think Caitlin’s wishes should be respected?
- Would your answer be the same if Caitlin were seven years old?
- Should Caitlin’s Inuit heritage influence the judge’s decision?
- What factors are the most important when making a custody decision in Caitlin’s case?

Happy writing!

Legal Information to Help You Answer the Question

1. What is child custody?

We talk about “custody” when a judge decides which parent a child will live with. The parent with custody is the one who lives with the child. This parent makes daily decisions and looks after the child most of the time.

But a parent is still a parent, even if he or she doesn’t live full-time with a child. Both parents have a duty to take care of their children and must educate, supervise, house and feed them, and ensure their health and safety. This collection of rights and duties is called “parental authority”. The parent without custody still has an important role and must always be consulted on important decisions affecting a child.

What is an important decision? Here are some examples:

- choice of school
- choice of religious practices
- consent to medical care

No matter who has custody, both parents can consult report cards, meet teachers, have information about the child's medical care, etc.

2. How might a judge decide Caitlin's case?

Custody can be granted to one parent (known as "sole custody") or both parents (known as "joint custody").

- In joint custody, each parent has custody between 146 and 219 days during the year. For example, Caitlin's parents would have joint custody if Caitlin spent 150 days a year with her mother and 215 days with her father.
- In all other cases, we talk about "sole custody". Caitlin's father would have "sole custody" and her mother would have "access rights" if Caitlin spent 229 days with her father and 136 days a year with her mother.

Even when one parent has sole custody, the other parent has the right to see the child. The law says that a child must have as much contact with both parents as is in the child's best interests. A judge will try to find an arrangement that respects the child's interests.

For example, in Caitlin's case, if the father is granted sole custody, the mother could have these access rights: seeing Caitlin on the weekends, during school holidays and during the summer, visiting her, going on outings together or calling her.

Sometimes judges cannot grant joint custody. This could be the case when the mother and father live too far away from each other.

The Convention says...

The Convention says a child should have regular contact with both parents as much as possible, even if the parents don't live in the same city or country. There are some exceptions to this, such as when one parent is aggressive or negligent toward the child.

Read Article 9 of the Convention.

3. How does a judge decide which parent will have custody?

Children need their fathers as much as their mothers. Custody can therefore be awarded to either parent. The most important factor when deciding on custody is the child's best interests.

The child's best interests are evaluated in light of the circumstances and what is best for the child's personal development. "Best interests" does not mean what the child wants most or what a parent wants most.

This might seem vague, since a child's interests vary from one child to another. In child custody cases, judges consider these criteria:

- child's age
- child's needs
- ability of each parent to meet the child's needs
- relationship between the child and each parent
- relationship between the child and family members
- stability of the child's environment
- child's physical and mental health
- physical and mental health of the parent requesting custody
- time each parent has to look after the child
- parents' lifestyles, if they directly affect the child



- the situation of the child’s brothers and sisters (the goal is to keep all the children together)
- each parent’s desire that the child maintain a relationship with the other parent
- child’s wishes

For example, imagine that a 15-year-old child wants to live with his mother. Despite his wishes, his father could be given sole custody if the mother has a lifestyle that prevents her from taking care of her son and the father is more available to respond to his child’s needs.

On the other hand, if a child has learning disabilities and the father works during the daytime, custody might be given to the mother during the week if she is more available to accompany the child to appointments with specialists.

The Convention says...

The Convention says that, when a decision is made about a child, the child’s best interests always take priority.

Read Article 3 of the Convention.

4. Do judges let children decide who to live with?

Children old enough to express themselves have a right to take part in decisions about custody. The judge must listen to and consider a child’s wishes. However, the final decision must always be in the child’s best interests: if a child wants something that is not in his or her best interests, the judge does not have to follow the child’s wishes.

For example, a child might want to live with her father because he is less strict than her mother and lets her do whatever she wants. Is this in the child's best interests? Not necessarily. For example, if a parent doesn't supervise homework, the child might have problems at school and this is not in the child's best interests.

There is no specific age at which a child is old enough to give an opinion. It depends on each child. Clearly, a two-year-old child can't decide who to live with: it will be up to the adults or a judge to decide. But a judge will consider the wishes of a child about eight years of age and older. The wishes of a child 12 years old and older will be seriously considered and, depending on the circumstances, might even be the deciding factor. At 15, Caitlin is old enough to give input into the decision.



The Convention says...

The Convention is clear: a child can express his or her wishes and this opinion must be considered. This is one of the Convention's important principles. It is called the child's right of participation. The goal is to make sure children and teenagers participate and express their opinions as much as possible when important decisions are taken, as in Caitlin's case.

Read Article 12 of the Convention.

5. Will Caitlin's Inuit heritage be a factor in the judge's decision?

Cultural heritage is not the most important factor in custody matters. But a judge could consider it when analyzing what is in Caitlin's best interests.

For example, each fall, Caitlin goes on a caribou hunting trip with her father and uncles. Caitlin is very proud of reconnecting with her roots and traditions during an activity that has been part of her culture for so long.

Taking this aspect of Caitlin's life into account, the judge could try to make sure Caitlin is with her father when the trips take place.

The Convention says...

The Convention says that children belonging to an ethnic, religious or linguistic minority and Aboriginal children have the right to enjoy their cultures, practice their religions and use their own languages with members of the same group.

The countries agreed that all youth from ethnic minority groups should have the chance to practice their traditions and respect their values with members of their communities.

Read Article 30 of the Convention.

Other Resources

[A Child's Preferences About Custody \(Éducaloi\)](#)

[Child Custody Decisions: Criteria Used and Types of Custody \(Éducaloi\)](#)