



Just Facts

November 2017

Research and Statistics Division

Child Custody and Access

This fact sheet is mostly based on data collected from the Survey of Family Courts (SFC)¹, as well as publicly available data from Statistics Canada, including the General Social Survey (GSS) cycle 25 (2011)² and the Civil Court Survey between 2005/2006 and 2010/2011.³

Children in cases of parental separation or divorce

Between 1991 and 2011, approximately 5 million Canadians separated or divorced. Of these, 38% had a child together at the time of their separation or divorce.

Written arrangements on children's primary residence and access

Going to court is often considered a last resort for resolving custody and access issues.⁴ In most cases, parents come to an agreement on arrangements for their children. According to the GSS (2011), parents who have a child together at the time of their separation or divorce often have written agreements setting out children's primary residence (59%) and time spent with children (45%).

Custody and access orders⁵

In some cases, a judge makes an order for custody and access arrangements. Based on all the data found in the SFC, 50% of the orders were made on consent and 12% were decided by judges in contested cases.

¹ The SFC provides detailed information on a subset of divorce orders in Canada. These data include predominantly parents who were married and later divorced. Data include basic demographic information, details on both child and spousal support, income, access arrangements, legal custody (decision making) and physical custody of children. Due to limited coverage, the SFC data cannot be generalized to the overall population of divorcing parents. Little information is available about the arrangements for separating parents who do not divorce, and those who were never married. As a voluntary survey, the SFC data is limited to a few courts across the country.

² Sinha, M. (February 2014). *Parenting and Child Support After Separation or Divorce, Analytical paper*. Spotlight on Canadians: Results from the General Social Survey, Statistics Canada.

³ Allen, Mary. (April 2014). *Family law cases in the civil courts, 2012/2013*. Canadian Centre for Justice Statistics, Statistics Canada.

⁴ Sinha (2014).

⁵ Orders made on consent may result when parties have negotiated a position and are in agreement. The orders may have been uncontested, or contested originally. Contested orders involve one or more issues on which the parties are not in agreement. Uncontested orders are where all issues are unopposed (i.e. no reply is submitted).





JustFacts

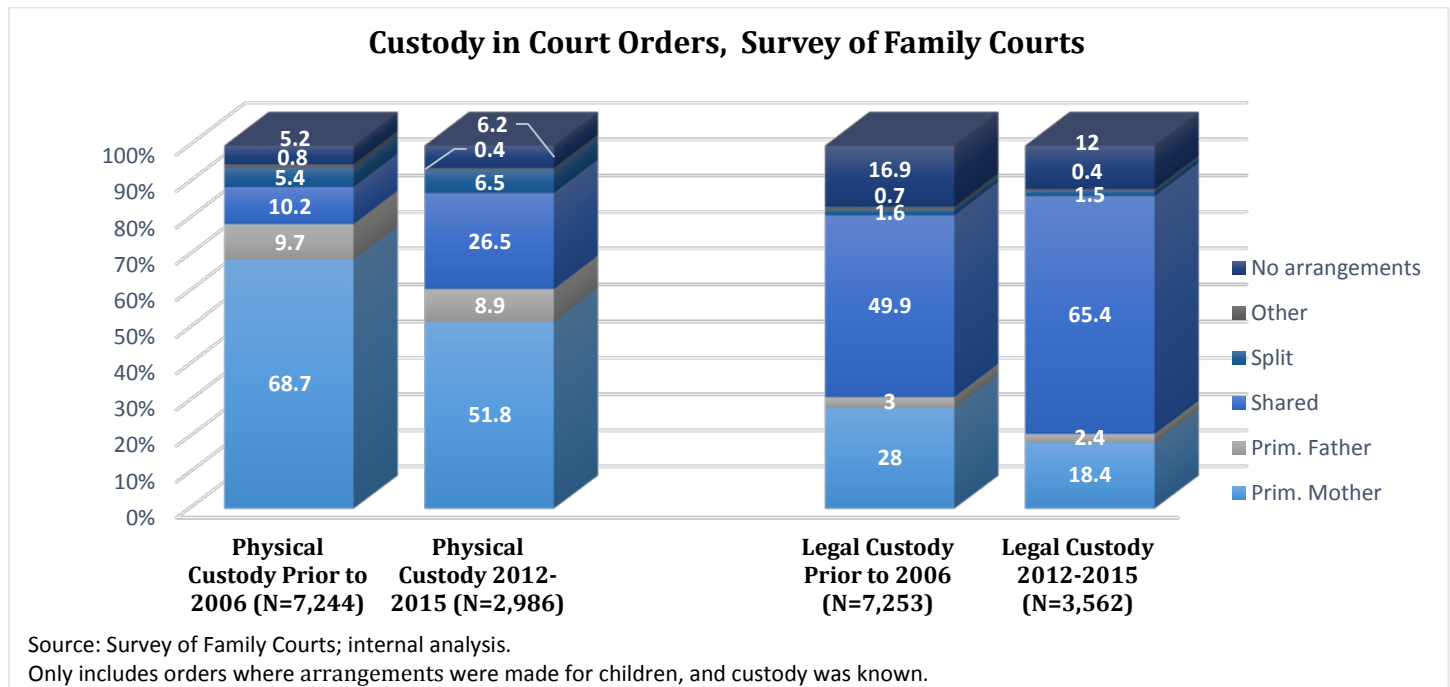
The remaining 38% were made on an uncontested basis, which means that one parent made the application, and the other parent neither contested nor consented.

Legal representation

According to SFC data, mothers had legal representation in 68% of orders ($n = 18,535$); fathers had legal representation in 59% of orders ($n = 15,828$).⁶

Custody orders⁷

The data below represent cases where physical or legal custody is clearly stated in the order. Legal custody refers to decision-making responsibility for a child. Physical custody refers to the care of the child, often including their primary residence.



Physical custody by order type over time

There has been a consistent reduction in the proportion of consent orders with children living primarily with their mothers (65% prior to 2006 to 55% in 2014-2015) and an increase in the proportion of shared

⁶ Note that in some cases, it was not known whether a parent had legal representation. These unknowns were removed from calculations. In 766 cases, it was not known whether a mother had legal representation. In 1,219 cases, it was not known whether a father had legal representation.

⁷ "No arrangements" may arise when orders are silent on that specific issue. This could arise when custody provisions are included in a separation agreement or other order.



custody⁸ cases (12% prior to 2006 to 28% in 2014-2015). These trends are also present in contested orders. There is a slight reduction in the proportion of contested orders where children live primarily with their mothers (62% prior to 2006 to 59% in 2014-2015) and an increase in the proportion of cases where courts ordered shared custody cases (8% prior to 2006 to 23% in 2014-2015).

Physical custody - consent orders							
	Prior to 2006 ⁹ (N=4,132)	2006-2007 (N=3,641)	2008-2009 (N=1,550)	2010-2011 (N=1,821)	2012-2013 (N=1,621)	2014-2015 (N=411)	All Cases (N=13,716)
Mother	65%	64%	58%	55%	53%	55%	61%
Father	10%	9%	9%	10%	8%	7%	9%
Shared	12%	16%	17%	21%	29%	28%	18%
Split ¹⁰	6%	5%	4%	5%	6%	7%	6%
No Arrgmts.	6%	5%	10%	7%	4%	3%	6%
Other	1%	1%	2%	1%	0%	0%	1%

Physical custody - contested orders							
	Prior to 2006 ¹¹ (N=735)	2006-2007 (N=321)	2008-2009 (N=220)	2010-2011 (N=404)	2012-2013 (N=333)	2014-2015 (N=150)	All Cases (N=2,163)
Mother	62%	61%	55%	57%	57%	59%	59%
Father	10%	14%	9%	9%	8%	7%	10%
Shared	8%	7%	12%	14%	15%	23%	11%
Split	5%	6%	5%	5%	7%	7%	6%
No Arrgmts.	14%	11%	19%	15%	12%	3%	13%
Other	1%	1%	0%	0%	1%	1%	1%

⁸ For a more detailed definition please see page 16 of the Federal Child Support Guidelines <http://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/guide/sbs-eng.pdf>.

⁹ All survey data prior to 2006 was amalgamated.

¹⁰ In split custody, there are multiple children in a family and each parent has at least one child living with them.

¹¹ All survey data prior to 2006 was amalgamated.



JustFacts

According to the SFC data, in 2014-2015 sole custody was the result in 62% of consent cases, with shared custody being the result in 28%. In contested cases, these figures were 66% sole custody and 23% shared custody.¹² The GSS (2014) reports that oftentimes the child lived primarily with their mother (70%), with 15% living primarily with their father. The GSS also reported only 9% of children living equally in both parents' homes¹³. The GSS uses a narrower definition than that used by the SFC. Under the Child Support Guidelines regime, shared custody is considered to occur when the child lives at least 40% with each parent.^{14, 15} In a recent Canadian study¹⁶ using the Child Support Guidelines definition, shared custody was found to be used in about one fifth of parenting orders.

Legal custody¹⁷ by order type over time

The patterns for legal custody are similar to those for physical custody. From 2006 to 2015, there has been an increase in joint legal custody and a decrease in sole legal custody to mothers. The proportion of consent orders where mothers had sole legal custody decreased from 18% prior to 2006 to 12% in 2014-2015. The proportion of consent orders for joint legal custody increased from 61% prior to 2006 to 66% in 2014-2015. Again, these patterns were also present in contested orders. The proportion of contested cases where courts ordered sole legal custody to mothers decreased from 20% prior to 2006 to 17% in 2014-2015. The proportion of contested cases where courts ordered joint legal custody increased from 35% prior to 2006 to 53% in 2014-2015.

Legal custody – consent orders ¹⁸							
	Prior to 2006 ¹⁹ (N=4,136)	2006-2007 (N=3,640)	2008-2009 (N=1,550)	2010-2011 (N=1,821)	2012-2013 (N=1,631)	2014-2015 (N=484)	All Cases (N=13,262)
Mother	18%	18%	17%	14%	13%	12%	17%
Father	2%	2%	2%	3%	2%	1%	2%
Joint	61%	66%	65%	69%	77%	66%	66%

¹² The Survey of Family Courts data cannot be generalized to the overall population of divorcing parents.

¹³ Sinha, (2014).

¹⁴ The Survey of Family Courts reports data from court orders that stipulate arrangements for custody and access. This can differ from other sources of information, such as the GSS, which reports responses by parents, which may not reflect court order information.

¹⁵ Of note, the Census of Population (2017) reports that in 2016, close to 2 in 10 children aged 0 to 14 were living in a lone-parent family: 81% were living with their mother and 19% were living with their father. The Census provides a statistical portrait of Canada and Canadians on one specific day.

Statistics Canada. 2017. *Portrait of children's family life in Canada in 2016*. Results from the Census of Population 2016, Statistics Canada Catalogue no. 98-200-X.

¹⁶ Bala, Nicholas et al. (2017). Shared Parenting in Canada: Increasing use but continued controversy. *Family Court Review*, Vol. 55, No. 4, 513-530.

¹⁷ Decision-making responsibility is distinct from living arrangements and time spent caring for children. For example, parents may not share equal time with their child, but could be equally involved in any major child-related decisions on health, religion/spirituality or education.

¹⁸ The following tables may have N discrepancies due to orders being "silent" on a certain matter or because of data entry errors.

¹⁹ All survey data prior to 2006 were amalgamated.



Split	1%	1%	1%	1%	2%	2%	1%
No Arrgmts.	18%	12%	13%	11%	7%	19%	13%
Other	1%	1%	2%	2%	0%	0%	1%

Legal custody - contested orders							
	Prior to 2006 ²⁰ (N=737)	2006-2007 (N=321)	2008-2009 (N=220)	2010-2011 (N=404)	2012-2013 (N=342)	2014-2015 (N=191)	All Cases (N=2,215)
Mother	20%	21%	21%	17%	18%	17%	19%
Father	2%	3%	2%	3%	3%	2%	3%
Joint	35%	44%	39%	51%	59%	53%	45%
Split	1%	2%	0%	1%	2%	1%	1%
No Arrgmts	41%	30%	36%	27%	17%	26%	31%
Other	1%	1%	2%	1%	1%	1%	1%

Access arrangements

In 93% of cases where only one parent had physical custody, the order set out access for the other parent. Courts ordered various types of access, as follows:

Types of Access	%
Reasonable	67%
Schedule/Specified	18%
Supervised visits	3%
Information/No visiting	0%
No information/No visits	2%
At discretion of the child	5%
As agreed by parties	22%
Other details provided	16%

Source: SFC data, N=18,998 cases with sole physical custody; categories are not mutually exclusive.

²⁰ Ibid.