



MY CHILD WANTS TO LIVE WITH ME: CAN HE CHOOSE?

You and the father or mother of your child are separated and you cannot agree on how much time he will spend with each of you.

The courts issue many judgments dealing with this issue, and each decision must be made in the interests of the child and while respecting his rights.

On this subject, the *Civil Code of Québec* states the following:

“Every decision concerning a child shall be taken in light of the child’s interests and the respect of his rights.

Consideration is given, in addition to the moral, intellectual, emotional and material needs of the child, to the child’s age, health, personality and family environment, and to the other aspects of his situation.”¹

Respecting the child’s rights also involves listening to what the child has to say.

“The court shall, in every application brought before it affecting the interest of a child, give the child an opportunity to be heard if his age and power of discernment permit it.”²

Therefore, a judge can, at the request of the parties’ lawyer or lawyers, or even on his own initiative, order the appointment of a lawyer to represent a child if he considers that doing so is necessary in order to safeguard the child’s rights and interests.³

The lawyer appointed to represent the child will meet with the child in order to find out his choice regarding custody, what he really wants and what is motivating his choice. He will report to the parties’ lawyers (or to the parties themselves if they are not represented by lawyers) and to the judge hearing the case.

The court may give consideration to the wishes of a child between the ages of 8 and 11, and the wishes of a child who is 12 years old and older will often be decisive. It is important to remember that the court is never bound by the child’s wishes when ruling on custody, although those wishes will be relevant in determining the child’s interests, particularly as the child approaches the age of majority.

The child’s interests constitute the cornerstone of decisions regarding him. If the child has the opportunity to express his wishes to an independent lawyer, this can help settle disputes in many cases as well as avoid having the child testify in court.

Moreover, a judge may decide to hear the child in his office or in another location in order to avoid the stress of having the child testify in a courtroom. In certain cases, the judge may even hear the child without the parties or their lawyers present.⁴

If you have any questions, do not hesitate to contact one of our lawyers at the legal aid office nearest you.

¹ [Art. 33 of the *Civil Code of Québec*](#)

² [Art. 34 of the *Civil Code of Québec*](#)

³ [Art. 90 of the *Code of Civil Procedure*](#)

⁴ [Art. 291 of the *Code of Civil Procedure*](#)

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.