



Can my children decide where to live?

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It is a common misconception in [parenting disputes](#) that once children reach a certain age, they can decide which parent they want to live with and how much time they want to spend with the other parent. This is not the case.

There is no fixed age for a child's views to be considered. Every child is different, and the weight to be attached to their views will depend on:

- the child's maturity;
- their level of understanding of the overall situation;
- whether their view is well-informed; and
- whether the child has reached that view on their own.

When a child expresses a strong view about where they would like to live, their view is one of many factors to be taken into account in determining parenting arrangements following separation. It is not the determining factor.

How does the Court decide who the child should live with?

When a Court is determining parenting arrangements, the most important consideration is whether the arrangements are in the best interests of that child.

In determining the child's best interests, the Court must consider six matters. Any views expressed by the child is one of those matters to be taken into account.

Other factors include:

- what arrangements would promote the safety of the child and each person who has care of the child;
- the developmental, psychological, emotional and cultural needs of the child;
- the capacity of each parent (or person who is proposed to have parental responsibility for the child) to provide for those needs;
- the benefit to the child of being able to have a relationship with the child's parents and other people who are significant to the child, where it is safe to do so;
- anything else that is relevant to the particular circumstances of the child.

Other relevant circumstances may include any weight that should be placed on the child's views, taking into account the child's age and level of maturity.

Once a child reaches a certain level of maturity, which is often linked with the age of that child, they will ultimately determine where they want to live. It is unlikely that the Court would force a teenager expressing mature and well-informed views to spend time with a parent they do not wish to spend time with.

What is a Family Report, and how does it help?

A [Family Report](#) is a document written by a Court appointed expert or an expert engaged by the parties privately. The report writer, usually a trained counsellor or psychologist, will conduct interviews and observational sessions with the child, the parents and any other people who are living in the same household as the child (if relevant).

The report writer will observe the child with each parent and, depending on the age of the child, may interview the child alone. Throughout this process, they will ask questions intended to assess the child's maturity and understanding and to ascertain the child's views. The child may be encouraged to share their thoughts and feelings in relation to the breakdown of the relationship and how they envisage their family life moving forward.

The Family Report will then be prepared and provided to the Court. The report will set out the recommendations about future parenting arrangements, and often a great deal of weight is placed on these recommendations.

Independent Children's Lawyer

In situations where a child is expressing a view as to which parent they wish to live with, the Court may appoint an [Independent Children's Lawyer](#) ("ICL") to represent and promote the child's best interests. The ICL will usually meet with the child to ascertain that child's views (they are now required to meet with all children over five years of age).

Whilst the ICL is required to consider the child's views, they will ultimately make their own assessment of the child's wishes, taking into account that child's particular circumstances and information gathered from other sources such as teachers, counsellors and child welfare authorities.

How we can help

At Emera Family Law, our aim is to [keep your matter out of the Court system](#).

If your child is expressing views as to which parent they want to live with or how much time they want to spend with the other parent, it is important to begin by considering why your child is expressing these views. They could be missing particular home comforts or routines or the time period that they are spending with the other parent is too long. These are issues that can be addressed and resolved out of the court system.

If you are struggling to overcome these issues, get in touch with one of our family lawyers for a free initial discussion. One of our lawyers will take the time to listen to your concerns and answer any questions you may have.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.