

DLÍ AN TEAGHLAIGH SA CHOMHTHÉASC SCOILE

COMHDHÁIL OIDEACHAIS

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DLÍ AN TEAGHLAIGH

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- ◉ Guardianship
- ◉ Custody/Access
- ◉ EXTENDED FAMILY
- ◉ LEGISLATION
- ◉ Case studies

BUNREACT NA HÉIREANN

- ◉ Article (41) An Teaghlach
- ◉ “The State recognises the Family as the natural primary and fundamental unit group of Society ,and as a moral institution possessing inalienable and imprescriptible rights.....”

BUNREACT NA HÉIREANN

- ◉ Article 42 Oideachas
- ◉ “The State acknowledges that the primary educator of the child is the Family.....”

2006 2011

Divorced - 59,500 / 87,700

Separated - 107,000 / 116,000

Lone Parents - 190,000 / 215,000

Cohabiting Unit - 121,800 / 143,561

Same Sex Couples - 2090 / 4042

GUARDIANSHIP

Were the parents married at birth?

- Yes - Father & Mother - joint guardianship
- No - Natural Mother - Guardian

GUARDIANSHIP OF INFANTS ACT 1964

IF PARENTS SUBSEQUENTLY MARRY

Joint guardians on
marrying

UNMARRIED FATHER CAN BECOME JOINT GUARDIAN

Section 12 - Status of Children
Act 1987
(Court decides if welfare of children
at issue)

IF BOTH PARENTS COHABIT & DO NOT WISH TO MARRY

Section 4 of Children's Act 1997 father granted joint guardianship if mother makes a statutory declaration agreeing to the application which is signed by a PC/Commissioner for Oaths

MARRIED PARENTS WHO DIVORCE STILL JOINT GUARDIANS

New spouse - never
becomes joint guardian

“TESTAMENTARY GUARDIANSHIP”

Means any parent who is also the guardian of a child may be or will appoint any person to take their place as guardian in the case of the death of a parent.

DEFINITION OF GUARDIANSHIP

- ◉ Describes **rights/ responsibilities**
- ◉ Duty to maintain and properly care for a child make decisions about a child's religious and secular **education**, health requirements and general welfare.
- ◉ Custody of a child is one of the rights

DEFINITION OF CUSTODY

“Custody essentially means **physical care and control.**”

Married parents residing together are the joint guardians and custodians

Custody vests with the parent with whom the child resides. The parent deprived of custody still remains a guardian and is entitled to be involved in making decisions about upbringing, welfare and development of the child.”

ACCESS

where a parent who is a guardian does not obtain custody, he or she may apply for access to the child. Access is a **right and duty of visitation**, allowing the person with access to visit and communicate with a child on a temporary basis.

WHEN DO YOU CONSULT THE NON CUSTODIAL PARENT?

“Boyfriends / Girlfriends playing
a quasi parenting role”

THE ROLE OF NON CUSTODIAL FATHERS/ (GUARDIANS) IN THEIR CHILDREN'S EDUCATION

School ought to adopt a policy of communication with both guardians in cases of separation or divorce

Reports should be sent to both guardians.

- ◉ The phenomenon of joint custody in the context of separation agreements should be noted.
- ◉ What happens when the non custodial parents turning up at school wishing to take the child with them?

THE ROLE OF NON CUSTODIAL FATHERS IN THEIR CHILDREN'S EDUCATION

- ◉ If the father of a child in an unmarried situation has guardianship rights he has the same rights as a married father.
- ◉ If the father has no guardianship he has no such rights. However this position is improved somewhat if he has been awarded custody.
- ◉ The payment of maintenance can be linked to custody

CIVIL PARTNERSHIP ACT 2010

Qualifying Cohabitant
2yrs/5yrs

Registration for couples
Tax, Social Welfare, Succession

THE G CASE

High Court - Mr Justice Mc
Kechnie

October 2007

The difference between married /
unmarried fathers remain save in
respect of an unmarried one whose
care for his offspring was
indistinguishable from the activities
of a married father

No such thing as a “defacto family”
in Irish law

Lesbian couple who had baby with
sperm of male friend failed to
block father’s right of access to
child

SEPARATED PARENT CHALLENGES SCHOOL POLICY ON P/T MEETINGS

A

v

A Primary School

Equality Tribunal 2009

SEPERATED FATHER V A PRIMARY SCHOOL (EQUALITY TRIBUNAL) 2010

SEPERATED FATHER IN DISCRIMINATION
ACTION AGAINST PRIMARY SCHOOL ON BIAS
OF HIS GENDER AND MARATIAL STATUS

Separated non custodial with joint
guardianship and access rights
(Some days from 3pm)

A.B. V C.D. (HIGH COURT) 2013

- ◉ 6th class pupil transferring to a secondary school
- ◉ Parents separated
- ◉ Dispute over which post primary school the pupil should attend
- ◉ Father/non fee paying
- ◉ Mother/fee paying
- ◉ Appeal from Circuit Court decision

CHILDREN AND FAMILY RELATIONSHIPS BILL 2013

- ◉ NATURAL FATHERS **AUTOMATIC GUARDIANS** IF THEY COHABITS WITH MOTHER 1 YEAR BEFORE BIRTH
- ◉ **FOLLOWING CAN APPLY FOR GUARDIANSHIP**
- ◉ (A) CIVIL PARTNERS, STEP PARENTS, (**2 YEARS**)
(B) COHABITING WITH THE CHILD'S MOTHER (**3 YEARS**)
(C) THOSE ACTING IN LOCO PARENTIS (**FOR 1 YEAR**) IE GRANDPARENTS

CHILDREN AND FAMILY RELATIONSHIPS BILL 2013

- HUSBANDS CAN BECOME JOINT GUARDIANS
WITH BIOLOGICAL MOTHER IF IN CHILDS BEST
INTEREST **ADOPTIONS UNNECESSARY**