

What is Legal Custody?

Permanency is defined as an enduring family relationship that is safe and meant to last a lifetime; offers the legal rights and social status of full family membership; the child or youth has a sense of belonging and affiliation to a family/extended family with significant community connections and provides for physical, emotional, social, cognitive and spiritual well-being.

Permanency options for a child or youth may include: reuniting with family, kinship service, customary care, legal custody and adoption.

Legal Custody is based on the child's best interest and willingness on the part of the caregiver.

A child's foster family can initiate the discussion and/or the worker collaborates with the foster family's resource worker and explores the possibility of Legal Custody.

A decision to proceed with Legal Custody would emerge through the usual case planning process (Plans of Care, OnLAC) and Society planning mechanisms (Permanency Planning Conferences and Family Centered Conferences) involving as fully as possible all of the people currently involved in the child's life.

Legal Custody as an Option

Legal Custody under Sec 65.2(1) of the CFSA may be an option in circumstances such as the following:

1. A Crown Ward is legally free for adoption and is experiencing a significant and committed relationship with a foster

parent and his/her removal from the foster home for the purpose of adoption would cause a significant adverse and lasting effect on the child.

2. A foster parent has provided continuous long-term care to a Crown Ward and has expressed a desire to parent the child in a Legal Custody arrangement.
3. If the clinical review of the case leads the Society to believe that a custody order would be in the child's best interest and promote their sense of belonging, further discussion and planning with the foster parent to determine the needs of the child and family, and any supports required will be entered into.

Legal Custody Disposition

A Legal Custody disposition is a Court Order whereby a person, to whom the custody is given, acquires the rights and responsibilities of a parent with respect to a child and his/her best interests.

Section 63.1 of the CFSA Reads:

Where a child is made a crown Ward, the Society shall make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:

1. Adoption,
2. A Custody Order under subsection 65.2(1),
3. In the case of a child who is an Indian or native person, a plan for Customary Care as defined in Part x.2006, C5, s.21.

Permanency Agreements

1. A person who has obtained legal custody of a child under Section 65.2 of the CFSA may be eligible for a targeted subsidy from MCYS if the specific criteria is met and /or a permanency agreement if needed and supported by the individual Society.
2. A permanency agreement may be entered into when the provision of support has been identified as a key factor in achieving the goal of permanency.
3. Financial support may include a monthly allowance and /or coverage for special expenses, for example medical, educational and psychological services for the child.
4. The financial supports can be episodic or ongoing based on the child's needs and the caregiver's ability to meet those needs. Targeted subsidies and permanency agreements are reviewed annually.

What do I/We need to think about when considering Legal Custody?

1. I/we are committed to this child for the rest of my/our life and I/we know the child feels a sense of belonging in my/our family.
2. The child's progress and development during their time in my/our home has been positive and fulfilling.

3. The current level of involvement of the Society and external supports we require is minimal.
4. I /our relationship, willingness and ability to maintain contact with the child's family of origin continues when it is in the child's best interests.

Common Questions and Answers

- Q. Should I be seeking independent legal advice?**
- A.** Yes. It is strongly recommended that foster families access independent legal advice prior to proceeding with Legal Custody. Some Societies will reimburse foster families for legal consultation.
- Q. What happens with the child's access?**
- A.** As the legal guardian, you would assume the responsibility of coordinating and monitoring your child's access to members of his/her biological family. If they have a sibling in the Society's care c residing elsewhere, contact would be coordinated by the Children's Services Worker and/or caregiver.
- Q. What does ongoing support from the Society look like?**
- A.** Your resource file would close (unless you are continuing to foster) and a legal custody file would open. Apart from processing the annual targeted subsidies or permanency agreements, there is no paperwork or required meetings. The file remains open for you to initiate contact related to support and services.
- Q. Once Legal Custody is granted, if we take in a boarder or begin to operate a home daycare, does the Society need to be advised?**

- A.** No, however any income generated by a boarder or by providing daycare would need to be reflected on the application or annual review of a targeted subsidy or permanency agreement.

Q. What if the birth family challenges our custody in the future?

- A.** Custody can be challenged by the birth parent and/or relatives in the future and the caregiver should seek legal advice if this occurs. If such a change in custody would cause a concern for the child's best interests, the caregiver should contact the Society.

Q. What happens when the youth turns 18 years old?

- A.** Subsidy payments terminate when a youth reaches the age of 18. Youth who are subject to legal custody orders and who are former Crown Wards are eligible for Continued Care and Support for Youth (CCSY) following their 18th birthday until the age of 21. Targeted subsidies can be provided until the youth is age 21 where eligible.

Q. Will my income affect a youth's ability to secure funding for post-secondary education?

- A.** There are post-secondary financial supports available for former Crown Wards that can be confirmed by contacting individual Societies. As part of an Ontario Student Assistant Program (OSAP) application, the student would identify themselves as a former Crown Ward and this would allow accessibility to various financial supports without considering the caregiver's income.

If you are considering legal custody of a child in your care, contact the child or youth's worker for more information.

Guide for Foster Parents Considering Legal Custody of a Child or Youth with Crown Wardship Status



Ontario Association of
Children's Aid Societies
The voice of child welfare in Ontario