

QUICKLAW

ANSWERS YOUR QUESTIONS

UNWED FATHER

What does a "child born out of wedlock" mean?

A child born out of wedlock is a child whose natural parents were not married to each other at the time of the child's conception or at any time after the birth of the child.

Do I have to pay maintenance to support my child?

Yes, you have a duty to maintain your child and the child has a right to receive maintenance from you but there are no other rights and duties between the two of you. The fact that you must maintain your child does not mean you have an automatic right to see your child.

May I see my child any time I wish?

- No, a mother has full parental power over her child born out of wedlock.
- You do not have any parental rights.
- You can apply to the High Court for certain rights, like the right to see your child.

Do I have a right to decide on issues regarding my child?

An example would be what type of school the child attends.

- No, the mother has full parental power over the child and decides on all the child's day-to-day

activities as well as all the important decisions in the child's life, except if the High Court makes a different ruling after an application to court.

How do I obtain rights to my child?

- We suggest that you seek the help of an attorney.
- The attorney will assist you to make an application to the High Court.
- The High Court may grant you the following rights:-
 - Access and/or
 - Custody and/or
 - Guardianship
- Whether or not the Court will grant any of the abovementioned rights to you will depend on the best interests of the child.

How are the best interests of a child determined?

It is generally accepted that a child has a right to know and form a bond with both his/her parents, but whether this would be in the best interests of a child is really a question of fact and each case will be judged according to its own facts.

What will the court take into account in determining the best interests of the child?

The Court will take the following into consideration:-

- The relationship between you and the mother.
- Whether either of you have a history of violence or abuse towards each other or your child.
- The relationship between you and the child.
- The relationship between the mother and the child.
- The effect that separating the child from you or from the mother or any other person is likely to have on the child.
- The degree of commitment that you have shown

towards the child.

- Whether you have paid any maintenance toward the child.
- Whether the child was born of a customary marriage or a religious union.
- Your reasons for applying for the order.
- The attitude of the child to the granting of the application.
- Any other factor that the court considers relevant.

How can I ensure that I have a say in my child's life?

By being awarded certain rights, you are protected against the following:-

- The mother will not be able to have the child adopted without your consent.
- The consent of both parents will be required for obtaining a passport or for the marriage of the child while he/she is still a minor.
- If you are granted co-guardianship the mother may not take the child out of the country without your consent.
- If the mother dies you will automatically become the sole guardian and custodian of the child, unless the court orders otherwise.

How do I apply for rights to my child?

- A formal application must be made to the High Court.
- The High Court will make an order once all aspects have been considered.
- The mother of the child has a right to oppose the application.
- You will need an attorney to assist you with this application.

KEY:

1. WEDLOCK - means marriage
2. ACCESS - parents' rights to see their children
3. CUSTODY - the duty of taking care of someone