

The Child's Right to Love



**Information for grandparents,
relatives, and others close to the
child**

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This booklet explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need a lawyer.

The Alberta version of this booklet is a partnership publication of the Alberta Civil Liberties Research Centre and the Canadian Grandparents Rights Association, Alberta Office.

Copies of this booklet are available from the Canadian Grandparents Rights Association, Alberta Office. It is also available for viewing and downloading in large type from the ACLRC's web site: www.aclrc.com

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INTRODUCTION

Who this booklet is for

This booklet is for people who want to maintain a relationship with a child. The law says that a child is any person under the age of 18. The child may be your grandchild, niece or nephew, or the child of a friend or former partner.

You are most likely to need this information when the child's parents end their relationship.

Your relationship with the child does not end because the child's parents separate or divorce. In many cases, your relationship with the child will continue as before. However, if problems come up, this booklet will help you decide how to deal with them.

This booklet describes what the law says about the child's right to maintain a relationship with you, and to enjoy your love and affection. It also describes how you can make legal arrangements to ensure that these rights are protected.

Here are some typical examples of situations where this booklet may help:

- My son's marriage is ending. His wife will have custody of the children. I want to make sure that I can go on seeing my grandchildren.
- Four years ago, my daughter's marriage broke up. The children's father has remarried and has custody of the children. His new wife says she does not want me visiting the children because, she says, I "upset them."
- My nephew's wife has sole custody of their son. She will not let me see him because my nephew just moved to British Columbia with his new girlfriend and has stopped paying child support.
- I have been a Big Sister for eight years and my Little Sister is the most important person in my life. She is an adolescent and in

daily conflict with her mother. Her mother is now saying that I cannot see my Little Sister because I have “taken sides” against the mother.

- My son died, leaving my daughter-in-law with two children. She has major substance abuse problems and does not care for the children in the way they need. I want them to come and live with me.

Children need all the love and support they can get

Where it is in the child’s best interests, it is important for children to maintain their relationships with grandparents, relatives, and other people with whom they have a close relationship. Maintaining or re-establishing your relationship can be vital to the children’s social, emotional, and intellectual development. Children need all the love and support they can get to grow up with a strong sense of their own self worth.

How this booklet is organized

This booklet is divided into four parts.

- Chapter 1 explains what the law says.
- Chapter 2 explains who can help with legal problems and what they can do.
- Chapter 3 explains what happens when a child is in need of protection.
- Chapter 4 explains who can help you in your community.

CHAPTER ONE

THE LEGAL DECISIONS

The child's best interests are always the most important thing

The law says that all of the decisions made about the child must be in the child's best interests.

The best interests of the child include:

- the ability of each parent to care for the child;
- the love, affection, and similar ties that exist between the child and each parent, and between the child and others who are important in the child's life
- the health and emotional well-being of the child (including how stable the child's home situation is);
- education and training for the child; and
- the wishes of the child, especially if the child is over 12 years of age.

The federal Divorce Act says that anyone is allowed to apply for custody and access (please see **What the legal terms mean**). If you are not the child's parents, you first apply to the court for permission to make the access or custody application.

Under the Provincial Court Act, people who can apply for custody and access include parents, grandparents and other relatives of the child, and other people who have a close relationship with the child. A child and/or someone on the child's behalf can also start an application for an order under the grandparents' access provisions.

The provincial Child Welfare Act says what happens when a child is being abused or neglected and is in need of protection. The Act

Allows for agreements about access and custody that can include grandparents and other relatives of the child, as well as other people who have a close relationship with the child.

Note: if the child lives in a different province, it is wise to consult with a lawyer to find out how to proceed.

What the legal terms mean

Here are the main legal terms you need to know:

Access: The right of the child to spend time with the people who are the most important to the child. Access is not just for the parent who does not have custody. The child has a right to see parents and grandparents and relatives and anyone else with whom the child has a close relationship.

In some cases, access may be “supervised.” Supervised access means that a friend or family member is present during visits with the child.

Custody: The person who has the responsibility to care for the child on a day-to-day basis has custody of the child. When parents live together with the child, they share custody and each parent is the child’s legal guardian. If you are applying for custody of the child, you also have to work out what guardianship arrangements will be in the child’s best interests.

Adoption: Adoption is a legal process by which an adult becomes the child’s legal parent. For example, the parent’s new spouse may adopt the child. In Alberta, all adoptions granted after January 1, 2000 are considered open, unless a veto is filed. This means that adopted persons, adoptive parents, birth parents, birth siblings, descendents or other interested persons can apply to the government for certain information about the adopted child.

CHAPTER TWO

PROTECTION DECISIONS

If a child is in need of protection

There are special rules if a child is being abused or neglected and is in need of protection. These rules are found in the Child Welfare Act.

If you think the child (or any child) is being abused or neglected, you have a legal duty to tell the Ministry for Children's Services. Phone the Ministry office (in the blue pages of the phone book). Ask to speak to a child welfare worker. Or call the Helpline for Children, toll-free: 1-800-387-5437. The social worker will listen to your concerns and ask you some questions.

The Ministry for Children's Services becomes involved, make sure the Ministry knows you wish to be part of planning for the child's well being. You may have a role to play at this stage in supporting the safety and well being of the child. The Ministry will work with the parents, with you, and with others who are close to the child to develop a "plan of care." The plan of care describes what is going to happen to protect and support the child.

If the social worker believes the child is safe but the family is having problems, the social worker may arrange for services, counselling, or parenting programs. If the child needs protection but is not in immediate danger, the social worker will take whatever measures are least disruptive to the child.

In some situations, the social worker may ask a judge for a court order that allows the Ministry to supervise the child's care.

If the social worker believes the child is in immediate danger and there is no other way to keep the child safe, the Ministry may remove the child from the home. You can make an application for custody or access at the same time as the Ministry applies to the court for removal of the child from the home.

The Ministry says that when they remove a child from the home, their first choice is to place the child with a member of the immediate family, such as the other parent or an older sister or brother. Their second choice is to place the child with a member of the child's extended family, such as grandparents, aunts or uncles, etc. Let the Ministry know if you available this purpose.

The law recognizes that an aboriginal child's cultural identity is very important. The Ministry may consult with a particular First Nations Band about the placement of an aboriginal child.

If the child has been taken into protective care

"Taken into care" means that the Ministry has removed the child from the home for the child's safety.

When this happens, make the Ministry of Children's Services aware of your relationship with the child. Your goal is to be "a party" to the decisions. This means you have a role to play in the decisions affecting the child.

You may be granted access or custody as part of a custody agreement with Children's Services if that is in the child's best interest and is consistent with the plan of care for the child. "Service plan" or "plan of care" is the term the Ministry uses for the arrangements that are made about the child. If the child is 12 or over, the child's wishes are considered when the Ministry develops the plan of care.

If you want the child to live with you

If you want the child to live with you, the Ministry will consider various factors such as:

- Your ability to care for the child and ensure their safety and well being
- Whether you can take the child right away and look after him or her for the required length of time

- The age and needs of the child, and how the child feels about living with you
- How the parents feel about you caring for the child
- Whether there are others who are interested in caring for the child
- The plan of care for the child

There are a number of arrangements that can be made, from temporary custody under Ministry supervision, to being a foster parent, and to applying for longer-term custody. You should get some legal advice (see chapter 4).

If the child lives with you, the Ministry can contribute child support. You need to make an agreement with the Ministry about this. The Ministry may also ask the child's parents to contribute to support for the child, if they can afford it.

CHAPTER THREE

THE CHILD'S BEST INTERESTS

Take a positive, preventative approach

It is always in the child's best interest to feel that the people who love the child also respect each other. Conflict over the child's affections can cause the child to feel responsible for those bad feelings.

Here are some basic tips about taking a positive, preventative approach:

1. Build a good relationship with the child's parents

When your relationship is good with the child's parents, build upon it. Focus on the positives.

If there are problems:

- Do not criticize either parent in front of the child, or to the child.
- Do not attempt to play the child off against a parent.
- Never use the child as a "messenger" to the parent.

Even if you know you have done nothing to contribute to the problem, it is usually a productive strategy to take a "soft approach." For example, if the child's parent is saying that you cannot see the child, write a letter. Stress that you want to work things out together, and that you believe a solution can be found. Keep a photocopy of the letter as part of your records.

2. Keep a written record

Keep a written record of when you see the child, and what the child does with you. Keep a written record of your telephone calls from the child and from the parent or parents. Include the dates of the calls. This record may help you later, when decisions are being made about what is in the child's best interests.

3. Do a self-assessment

Do an assessment of your own ability to care for the child. Look at the information under the heading, “If you want the child to live with you,” on page 9. Plan how you could show you are able to meet these requirements.

4. Join a support group

There are member groups of the Grandparents Rights Association, listed in Chapter 4, which can provide you with support in your efforts to maintain your relationship with the child. These groups provide an opportunity for you to share your feelings with people who have had similar frustrating experiences. People in the group will also have experience in solving the problems. They will know who can provide legal help in your community.

Strategies when the parents’ relationship breaks down

1. Brush up your negotiation skills

Good negotiation skills can help you resolve differences with the child’s parent and avoid conflicts that are painful to the child as well as to you.

A support group can help you develop negotiation skills to use when you are dealing with the child’s parent or parents. Here are some tips that may be useful:

- When you meet with the child’s parent to discuss differences, be clear in your own mind about what you want to discuss. If you feel frustrated, vent with your support group, NOT with the parent. Avoid blaming, judging and shaming.
- Choose a neutral place and a time when you can talk without interruption. A quiet restaurant, the home of mutual friends, or even a park on a fine day may be good meeting places.
- Speak clearly about what it is you want to negotiate. Ask the other person for their point of view. Stay focused on the topic. Try not to bring up past problems.

- Listen carefully to what the other person has to say. Do your best to understand the other person's point of view.
- Present your solutions as suggestions rather than demands.
- If you reach an agreement, make sure you both understand what you have agreed to. Specify who will do what, when, and where. For example, if the issue is about when you will spend time with the children, you need to have a plan about how the transfer will take place, and what time the children will go and return.
- At the end of the meeting, give positive feedback such as, "I'm glad we were able to work it out together."

2. See if you can agree with the child's parent or parents

If you and the child's parents can talk openly and agree about plans for the child and there are no safety issues involved, you can develop a plan together. For example, the parents may have joint custody and you may have access. Legally, you don't have to have a separation agreement or a court order. But it's a good idea to write down what you agree to, in case there are problems later.

You can make a written agreement. A written agreement describes the arrangement between you and the child's parent or parents about access or about custody and guardianship. All of these decisions must be in the child's best interests.

Make sure both you and the child's parent or parents sign the agreement. It is a good idea to see a lawyer before you sign an agreement. This is to make sure that you have protected your rights. You should see a different lawyer from the one the parent has.

It is a good idea to file the agreement with the court. If there are problems later, you can show a judge what you and the child's parent(s) agreed to. Judges take these agreements very seriously.

See #3 on this page for who can explain how to file an agreement in court, and how to make that agreement into a consent order.

3. Find out who can help

Your local support group

Your local member group of the Grandparents Rights Association can guide you through the initial process of trying to get legal access. Your local group is an excellent source of information about whom to contact for the legal help you need. See page 18 for the phone number. If there is no Grandparents Rights Association contact in your community, phone the national office, toll-free at 1-866-585-8242.

Legal help in your community

If you need help to reach an agreement about access and/or custody, you can get help from a Family Court Services, from mediation services, from a mediator in private practice, or from a lawyer who has experience in family law.

Family Court Services assist people making an application to the Provincial Court for Custody, Access, Private Guardianship and Access Enforcement Orders. When legal action is necessary, Family Court Services helps people navigate their way through the provincial court system, provides information and will make referrals to the community where necessary.

Government Mediation Services will assist in situations where the parties have a child under the age of 18 and the gross income of one of the parties is under \$40,000. This is a free voluntary service. This service helps the parties to resolve parenting issues such as residence, decision making, sharing of time, child and spousal support, and some matrimonial property issues.

Family mediators in private practice can provide services similar to those provided by government mediation.

Lawyers who have special training in family law can —

- give you legal advice about all the issues
- provide mediation or conciliation
- help you prepare a written agreement
- give you information and refer you to other services that may help
- represent you in court, if need be

You may be able to get a lawyer who is paid for by legal aid. See Chapter 4.

If the child is living in another province or territory, you will have to seek legal advice before looking to mediation or other services.

4. Find out what services are available

A government mediator (in some cases), a mediator in private practice, or a family law lawyer may offer mediation or conciliation.

Mediation

A family mediator sits down with you and the child's parent or parents and helps you discuss all the issues. Everyone needs to feel comfortable for mediation to work.

Mediators

- can help you communicate with the parent or parents
- can help you solve the problem rather than having a judge impose a decision in court
- cost less than court action
- may help you reach a decision far more quickly than you would if you went to court

Conciliation

Conciliation is like mediation only you do not have to be in the same room as the other person. The conciliator talks to you, then talks to the parent or parents separately. You negotiate through the conciliator.

When you are using a family mediator or conciliator, it is important to find someone you feel comfortable with. The decisions you are making are vital and you need to feel you are being heard and that your input is being taken very

seriously. You have a right to ask about the family mediator's qualifications and experience. What is

their experience in dealing with access or custody applications by persons other than parents?

You can use a family mediator/conciliator and also see a lawyer. People often use mediation or conciliation while they are proceeding with their court case. If you resolve the issues by using mediation or conciliation, you can settle the matter by a consent order and you do not have to go to court.

GOING TO COURT

If you and the child's parent or parents cannot agree, you may need to go to court and ask a judge to make a court order to deal with decisions about access or custody.

If you are applying for access, your evidence will likely focus on the fact that your relationship with the child helps maintain family ties and/or provides stability in the child's life. If you are applying for custody, your evidence will focus on the fact that it is in the child's best interests to live with you.

While it is possible to represent yourself in court, it is much better to have a lawyer represent you. If you qualify for legal aid you may be able to get a lawyer paid for by Legal Aid. See page 19 for how to contact legal aid.

If you don't know a lawyer, you can call Lawyer Referral. They will give you the names of three lawyers who practise family law. You can call the lawyer for an appointment. See page 20 for how to contact Lawyer Referral.

Which level of court do I go to?

Which level of court you go to may depend on where the child's parent has started a court action to deal with the legal issues about separation or divorce. You may need to go to Provincial Court or

Court of Queen's Bench. If you are starting the court application yourself, you can go to Family Court, which is part of Provincial Court.

For information about how to make an application for custody or access in Provincial Family Court, contact your support group for information and relevant materials. You can also contact Family Mediation Services (see page 21). There are provincial court rules that you have to follow.

How do I change an agreement or court order?

What if your situation changes after you have an agreement or a court order?

If you have an agreement, you and the child's parent or parents (and/or the Ministry, if the child is in care) can agree to change it. You can file your new agreement with the court.

If you need to change a court order (or if the child's parent refuses to change an agreement) you have to go to court. You need to explain to the judge why you want to change the order.

If you got the order in Court of Queen's Bench, you have to go back to Court of Queen's Bench to change it. If you got it in Provincial Court, you can go to either Provincial Court or Court of Queen's Bench (in some cases).

Enforcing agreements and orders

What can you do if you have an agreement or an order and the

parent, for example, will not let you see the child?

You may be able to resolve this problem by contacting Mediation Services or a lawyer. If the Mediation Services or lawyer is unable to assist you to reach a solution, you have to go to court. You may be able to get legal aid to do this. See the next section for how to contact Legal Aid.

CHAPTER 4

WHERE TO GET SUPPORT AND INFORMATION

Canadian Grandparents Rights Association

The Association's main function is to serve as a point of contact for people who require assistance in gaining access to grandchildren in case of family separation. However, relatives and others are also welcome. We can also provide limited support services around custody applications.

Contact:

National Office

#207 – 14980 – 104th Avenue

Surrey B.C. V3R 1M9

Phone: (604) 585-8242

Toll-free phone: 1-866-585-8242

Fax: (604) 585-8241

E-mail: cgra222@vcn.bc.ca

Alberta Office

Canadian Grandparents' Rights Association

2416 Ulrich Road N.W.

Calgary, AB T2N 4G5

Phone: (403) 284-3887

Fax: (403) 289-1524

Our contacts change from time to time. For updated information, phone our national office, toll-free, at 1-866-585-8242.

WHERE TO GET LEGAL HELP

LEGAL AID

***Look in the white pages of your phone book under
“Legal Aid Society of Alberta”***

If you have little money, legal aid may pay for a lawyer.

You must meet their financial eligibility rules and have certain kinds of legal problems, like serious family problems, to get a legal aid lawyer to represent you in court.

Family Law Office

In Calgary and Edmonton, Legal Aid has a new pilot project to help people who qualify for legal aid and who have a family problem. People needing assistance must first apply to the Legal Aid Society of Alberta. In addition to legal help, the Family Law Office may be able to help with other concerns related to family law problems, such as financial assistance, shelter and housing, counselling, parenting and life skills.

Friendship Centres or Aboriginal Resource Centres

Look for Aboriginal Resource Centres or Native Friendship Centres in the white pages of your phone book.

Lawyer Referral Service

Calgary: (403) 228-1722

Outside of Calgary: 1-800-661-1095

If you don't know a lawyer, try calling the Lawyer Referral Service. They will give you the name of three family law lawyers you can call for one half-hour appointment.

Ask for lawyers who specialize in family law. Lawyer Referral gives you three lawyers' names and you can make an appointment.

The lawyers can give you some idea of what is involved in solving your problem, and you can decide if you want to hire one lawyer. Ask the lawyer what he or she will charge, and how they want you to pay.

Dial-A-Law

Calgary: (403) 234-9022

Outside Calgary: 1-800-332-1091 (toll free)

Operator Hours: 8:30 a.m. – 4:30 p.m., Monday to Friday

Dial-A-Law is a service provided by Calgary Legal Guidance. It is a library of tapes that give you information about the law in Alberta. You can listen to these tapes about family law by calling the above numbers.

Calgary Legal Guidance

Calgary (403) 234-9066

Provides legal advice to people who cannot afford a lawyer, yet do not qualify for legal aid. Advice provided in the following areas: Separation, Divorce, Common Law, Maintenance, Custody and Access and other legal problems.

Family Law Information Centre

Look in the blue pages of your phone book under "Government of Alberta - Court Services - Family Law Information Centre"

The Family Law Information Centres of the Court of Queen’s Bench of Alberta are a service provided by Alberta Justice and Justice Canada to help you learn about the Child Support Guidelines and to help those who are making court applications without the assistance of a lawyer.

Family Court Services and Family Mediation Services

Look in the blue pages of your phone book under “Government of Alberta — Mediation Services”.

There are Family Court Services offices located across the province, connected to the Family Courts. These offices offer a range of services related to maintenance, custody and access. The Family Court Services provides assistance and information about Family Court applications involving maintenance, custody and access, including filling out documents and applying for variations in order. The Family Mediation Program provides mediation in custody, access and mediation matters.

Family Court Services and Family Mediation Services may provide handouts that indicate where to go to get affidavits sworn, what to do in court, when to appear in court, how long court sessions run, where to stand in the court room and proper court etiquette.

Alberta Civil Liberties Research Centre

The Alberta Civil Liberties Research Centre is a non-profit, non-government organization dedicated to education, research and publishing in civil liberties and human rights law for Albertans.

For more information, contact:

Alberta Civil Liberties Research Centre

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Calgary, AB T2N 1N4
Phone: (403) 220-2505
Fax: (403) 284-0945
Web site: www.aclrc.com

Please note that we cannot give you legal advice. We provide general public legal education only. To find legal help, see above.

Canadian Grandparents Rights Association, Alberta Office

The Canadian Grandparents Rights Association is a non-profit society that promotes ties and family stability where the family has been disrupted. Our special focus is on promoting ties between grandparents and grandchildren.

National Office
#207 – 14980 – 104th Avenue

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2416 Ulrich Road N.W.

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Alberta Civil Liberties Research Centre

Logos

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