

Family Law Act Grandchild/Grandparent Access

The Family Law Act at first glance appears to affect only a very small segment of the general population. It is important that we are not distracted by initial perceptions and that we more deeply examine a law that directly and indirectly affects nearly every person in the Province of Alberta. Every individual in the province is a grandchild. Many will one day become parents, and after that, grandparents. That being the case, the Family Law Act could impact every person in Alberta.

The trend in Canada and Alberta suggest an increased need and use of grandparent support. Specific statistics in this area from Statistics Canada which indicate this are:

Statistics for Grandchildren living with Grandparents with No Parents Present

Census Years	Region	Number of Grandchildren living with grandparents with no parents present	Census Years	Region	Number of Grandchildren living with grandparents with no parents present
1991	Alberta	5,345	1991	Canada	49,035
1996	Alberta	6,070	1996	Canada	53,105
2001	Alberta	7,000	2001	Canada	56,790

Currently, the Family Law Act puts the onus on grandparents to bring an application before the courts in order to be granted the right of access to grandchildren in single parent families. The rights of grandchildren having access to their grandparents are even more restricted in "intact families" where the grandparent is required to obtain the leave of the court, on notice to the guardians, prior to perhaps being granted the possibility of bringing application for an access order before the courts. Such an onus on grandparents runs in contradiction to years of research describing the benefits to children, parents and grandparents when the grandchild/grandparent relationship is nurtured and protected.

This paper will outline the benefits of the grandchild/grandparent relationship to children, parents and grandparents, as well as society in general. These benefits will be followed by suggested changes to the Family Law Act, that are consistent with commonwealth research and values as well as the Constitution Act 1982, Part 1, Canadian Charter of Rights and Freedoms. (Guarantee of Rights and Freedoms).

Benefits to Children of Access to Grandparents

1. Grandparents provide a stabilizing force in times of family crises. This suggests less reliance on public resources such as Social Services, Children's Hospital and community counselling centers.
2. Research indicates that grandparents contribute to child development by ...; socializing with grandchildren; giving financial and emotional support; passing history, values and traditions to grandchildren. Relations with grandparents add qualitative and quantitative dimensions to the pool of adult role models available to children.

3. Children's relationships with their own grandparents affect their relationships with their own grandchildren two generations later!
4. In terms of developmental issues, researchers have found that the unconditional love that grandparents bestow upon grandchildren, aids in their self-esteem and efficacy. During adolescence, grandchildren find it beneficial to tap the wisdom and ancestry of grandparents to assist in ego development. This positive psychosocial role that grandparents play suggests that the family unit as a whole may rely less on public social resources to aid with developmental tasks.
5. From a long-term developmental perspective, continuity in relationships is helpful. In our current society, with high divorce rates, economic hardship and drug/alcohol abuse, grandparents may present as long term stabilizing forces in the young person's life. Again, this suggests less reliance on public resources to assist with fulfilling emotional needs.

Benefits to Parents When their Children Have Access to Grandparents

1. Grandparents as negotiators between parent and child, helping one to understand the other. In the long term, this suggests that the nuclear family system will rely less on public resources such as community counselling centers and social services and rely more on the extended family system.
2. Parental acceptance of children was higher and children tended to be more self-reliant in homes where mothers received child care aid from fathers and grandparents.
3. Where mothers had the help of other adults (possibly grandparents), children coped better and scored higher on cognitive tests than those children whose mothers did not have adult support.
4. ...supportive relationships that develop across generations ...can provide a resource for individuals and families to cope successfully with the stresses of contemporary life, by providing a cushion of support which helps absorb family pressures, diffuse social stresses and provide needed aid and assistance.
5. Researchers have discussed grandparents in terms of being a "stress buffer" ... "arbitrator"...(a) emotional and material assistance... (b) role models... behaviors of grandparents which fit into these categories.

All of the benefits to parents lead to the suggestion that the involvement of grandparents in the lives of children will result in less stress and reliance upon public resources.

Benefits to Grandparents Having Access to their Grandchildren

1. ...grandparents who participate and identify with the role of grandparent, develop an increased sense of well being and morale, in the face of otherwise demoralizing personal, social and material losses. This suggests that these grandparents are less likely to fall mentally, physically and emotionally ill and therefore are not a burden on the public health system.
2. A popular view of grandparents has been as historians; teaching values, ethnic heritage and family traditions through the "telling of stories" ...as "Kinkeepers" who maintain ties between generationally linked subsystems.
3. as...ones who have time in order to maximize resources available in rearing children. This suggests when grandparents are involved, it minimizes parents reliance on government and community resources.
4. ...the grandparent/grandchild relationship can function as a family resource for the entire family system.
5. ...conclusions gleaned from research... suggest that vital and significant relationships exist between grandchildren and grandparents. When a close grandparent/grandchild relationship has been formed in the child's early years an attachment quality is developed and nurtured throughout the life of each.

The next part of this paper will outline some of the problems with the Family Law Act (Grandchild/Grandparent access). This paper will conclude with suggestions for revisions of the Family Law Act.

DIVISION 3 CONTACT ORDERS

CONTACT ORDER

SECTION 35 (1) *The court may, on application by any person other than a guardian, make an order providing for contact between a child and the applicant.*

SECTION 35 (2) *Subject to subsection (3), a person other than*
(a) parent of a child, or
(b) a person standing in place of a parent may not make an application under this section without the leave of the court, on notice to the guardians.

SECTION 35 (3) *A grandparent of a child does not require the leave of the court to make an application under this section if*

(a) the guardians are the parent of the child and

(i) the guardians are living separate and apart, or

(ii) one of the guardians has died,

and,

(b) the grandparent's contact with the child has been interrupted by

(i) the separation of the guardians, or

(ii) the death of the guardian.

CONCERN: There is not an assumption of the child having the right to have a relationship with the grandparent(s). An application must be made in order for the child to obtain contact with the applicant (grandparent).

Whether or not a child has one parent or both parents, that child has a right to the socio, emotional and psychological support found in their family - mentorship, history, wisdom. Their family is comprised of a larger structure.

SECTION 35 (4) *In determining whether to grant leave under subsection (2), the court shall consider*

(a) the significance of the relationship, if any, between the child and the applicant, and

(b) the necessity of making an order to facilitate contact between the child and the applicant.

CONCERN: There is not an assumption of the child having the right to have a relationship with the grandparent(s). An application must be made in order for the child to obtain contact with the applicant (grandparent).

This section does not inherently support the child developing a relationship with the grandparent(s). Instead, this section places obstacles in the way of such a relationship from developing. Research suggests that children benefit emotionally, physically, relationally, and socially, from a relationship with grandparents.

SECTION 35 (5) *Before the court makes a contact order, the court shall satisfy itself that*

- (a) contact between the child and applicant is in the best interests of the child*
- (b) the child's physical, psychological or emotional health may be jeopardized if contact between the child and the applicant is denied, and*
- (c) the guardian's denial of contact between the child and the applicant is unreasonable.*

CONCERN: The assumption is that the child does not have the right to the grandparent relationship, unless it can be proven that such a relationship is beneficial to the child. This can be likened to being guilty, until proven innocent. In order to be consistent with commonwealth research and values, it is necessary that the Family Law Act state specifically that the child's right to a relationship with the grandparent(s) should be assumed. Should a parent or guardian have concerns about such a relationship, he/she should be required to bring an application to the courts in that regard. In such a case, the parent or guardian would be the applicant in the proceedings.

SECTION 35 (6) *The court may, in a contact order, provide for contact between the child and applicant in the form of visits or in the form of oral or written communication or any other method of communication, and may provide for any related matter that the court considers appropriate.*

CONCERN: Should read as follows:

The court may, in a contact order, limit the contact between the child and the grandparent in the form of visits, or in the form of oral or written communication or any other method of communication if the applicant* satisfies the court that contact without limitations is detrimental to the child's physical, psychological, or emotional health.

*Applicant being parent or guardian.

It is important to note that the Canadian Charter of Rights and Freedoms indicates that everyone has the fundamental right to 'freedom of association'. Surely, the right to freedom of association protects the child's freedom to association with grandparents.

It is understood that bills and laws are designed to reflect the values and beliefs of the citizens. The Alberta Family Law Reform Stakeholder Consultation Report, 2002, clearly indicates that grandchildren should have the right to have a relationship with their grandparents (p.18).

Many participants felt it was important to the well-being of children to have an opportunity to know their grandparents and other family members... In keeping with this report, when parents or guardians deny access to grandchildren, they should be required to provide valid reasons for denying access.

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