

Obtaining Access to Grandchildren

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When a child's parents separate or divorce, a question that occasionally arises is whether or not the child's grandparents are entitled to continue relationships with their grandchild. In some situations, disagreements occur about the amount or type of access a grandparent should have and, occasionally, whether access should even occur at all.

"Access" not only includes visits with the child but can also include such things as the ability to communicate with the child, the ability to attend and receive information about the child's events (soccer games, concerts), the ability to send or receive photos of the child, and the ability to send gifts to the child.

There is both provincial and federal legislation which allow individuals (other than a parent) to apply for access to a child. For example, in Manitoba, The Child and Family Services Act (the "Act") contains provisions whereby, upon application, the court may order that a grandparent, step-parent or other member of the child's family exercise custody over a child or have access to the child. A non-family member can also apply for access in exceptional circumstances.

In making an order for access, the court will look at what is in the best interest of the child. This is based on a set of factors listed in the Act and any relevant information provided. In addition, the court will consider the mental, emotional and physical needs of the child, any pre-existing relationship between the child and the applicant (the grandparents) and whether the child can benefit from a positive, nurturing relationship with a grandparent. In some circumstances, the court will order an assessment to assist with determining what is in the child's best interest. Free assessment services are available, such as the Grandparent Advisor service, or the parties can choose to use a private assessor to prepare a report for the court. Obtaining an assessment may also help the parties to reach an agreement without the need to continue with court proceedings, which can often be costly and lengthy processes.

Grandparents who are applying for access through the courts are generally required to complete the For the Sake of the Children program. This is a free program that provides information about the legal and emotional aspects of separation and the needs of children whose parents are separating.

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