

# Grandparents' Rights

in Alberta

*This booklet is for grandparents who want to know about their rights and options with respect to their grandchildren. For grandparents who are currently being, or are worried that they will be, denied access to their grandchildren, this booklet explains what is involved in obtaining access with your grandchildren through a “contact order”. For grandparents who are concerned about the safety and well-being of their grandchildren, this booklet outlines the various options that would enable those grandparents to care for those grandchildren. This booklet also provides link to grandparents’ organizations that can help with all aspects of these issues.*

*The information in this booklet is for general use only, not legal advice. It is not a do-it-yourself guide. For that, you need a more detailed self-help publication or legal advice. See the last few pages of this booklet for information on where to get this help.*

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You should not rely on this booklet for legal advice. It provides general information on Alberta law only.



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# 1. As a grandparent, do I have rights?

## Top 5 questions about grandparents' rights in general

### 1.1

**I am a grandparent and I love my grandchildren very dearly, but I am being refused permission to see and spend time with them. Is there anything I can do?**

At times there are valid grounds for prohibiting grandparents from seeing their grandchildren. Generally, though, access is denied because of a family dispute or because separation, divorce, or remarriage has driven a wedge between the generations.

Alberta's Family Law Act outlines possible options for grandparents when guardians (typically parents) and grandparents cannot agree on provisions for contact. This legislation allows grandparents to apply to the court for a contact order in such cases.

In certain circumstances you can also apply to have care (known as "Kinship Care") or "guardianship" of your grandchildren (see Sections 4 and 5 of this booklet).

*Alberta's Family Law Act outlines possible options for grandparents when guardians (typically parents) and grandparents cannot agree on provisions for contact.*

### 1.2

**Do I have a "right" to see, or take care of, my grandchild(ren)?**

No.

Nothing in the Alberta Family Law Act specifically gives or protects grandparents' rights of access to their grandchildren. The law does not assume that children have a right to a relationship with the grandparents. Nor does it assume that a grandparent has a "right" to a relationship with a grandchild.

The Family Law Act puts the onus on grandparents to bring a court application in order to be granted contact. In some circumstances, however, grandparents have to undergo one less court process than other people seeking contact.

When deciding whether or not to grant contact, the court looks at:

- whether it will be good for the child to have a relationship with the person;
- whether the child knows the person already; and
- the child's overall best interests.

The person requesting contact must show the judge that the child will benefit from time spent with that person

### 1.3

**Do I have to take the parents to court in order to see or take care of my grandchild(ren)?**

Maybe.

Contact can be a difficult issue, but people can and do agree on contact arrangements among themselves, without a court battle. This is often the best way to make these kinds of decisions. Jointly reaching a schedule that everyone can commit to and follow is arguably the best solution for everyone. It is certainly better for the child to see cooperation and compromise among the parties. Whatever arrangements are made should be put into a written form that the parties sign, have witnessed and enter into court (a "consent order").

If you need help getting an agreement, you can contact a lawyer or a mediator. Services such as the Alberta Courts' Family Mediation Services or private mediators or lawyers, may be able to help in this regard. The assistance of a mediator can be invaluable in helping to create the best possible situation for you and your grandchild(ren). For more information on how to do that, please see the "Where do I get more help?" section at the end of this booklet.

When the parties cannot agree, you may have to ask a judge to make a court order. However, going to court is often a last resort. Working with a mediator or lawyer is preferable since this approach is more likely to keep conflict to a minimum and support long-term relationships between all parties involved. Also, keep in mind that what the judge orders in court may not be what you would prefer.

## 1.4

### **How can I avoid going to court?**

If you are concerned that you might lose access to your grandchildren, get to work immediately. There are many steps you can take without setting foot in a courtroom.

- If you have a good relationship with your child and his or her spouse, continue to build on that. Give advice only if it's asked for, and don't get embroiled in arguments.
- If there is a separation or divorce, don't take sides, and don't criticize the parents, especially in front of the children.
- If you suspect things are going wrong, contact one of the many support groups available in Canada. See the list in the Resources Section of this booklet (community).
- If you become estranged from the parents of your grandchildren, keep a record of telephone calls, visits, and what was said and done. Note if there are problems such as parents' abuse of drugs or alcohol. Number the pages and write on one side only. This document will be extremely important in the event of a court case or mediation. As well, it might save you time and money.

- Try to rebuild your relationship(s) with the estranged parent(s), even if you feel you weren't in the wrong.
- If attempts at rebuilding do not work, consider hiring a lawyer. If you cannot afford a lawyer, inquire about Legal Aid. As a first step, consider hiring a neutral, trained psychologist or child care worker who is willing to hear all sides.

If attempts at mediation fail, you have a choice to make. You can enter into a court battle or wait until the children get older and can decide for themselves. If you decide to wait, continue to do things for your grandchildren. For example: send cards and gifts, call on birthdays and holidays, and/or set up a trust fund.

## 1.5

### **I think my grandchild is being neglected, and maybe even abused, what can I do?**

If you have reason to believe that one or more of your grandchildren are being neglected and/or abused, contact the Alberta Child Abuse Hotline, 1-800-387-KIDS (5437). You may also wish to consider seeking the care of your grandchildren, as described in Sections 4 and 5 of this booklet.

*If you have reason to believe that one or more of your grandchildren are being neglected and /or abused, contact the Alberta Child abuse Hotline, 1-800-387-KIDS (5437).*

## 2. I want contact with my grandchildren (Part 1)

Top 10 questions about contact with grandchildren when there has been a separation, divorce, death, and/or remarriage

### 2.1

**My son and daughter-in-law have separated and are divorcing. My son barely sees the children and my daughter-in-law hardly ever lets us see them anymore either. What can we as grandparents do?**

If at all possible, try to rebuild the relationship without resorting to legal processes (see question 1.4). But if necessary, one or more grandparents can bring a court application for access rights to their grandchildren (called a “contact order”).

Under the Family Law Act, you can apply for a contact order if:

- the parents are the guardians of the child(ren);
- the guardians are living separate and apart or one of the guardians has died; and
- the grandparents contact with the child(ren) has been interrupted by this separation or death.

In the above situations, you do not need “leave” of the court to make an application for a contact order.

Naturally, the amount of time that can be given to grandparents will also depend on the kinds of Orders already in place. For example: if the father has only every second weekend with the children, it may affect what, if any weekends, the grandparents can get.

Note: The situation is different when your grandchild still lives in an intact nuclear family unit, that is, where the parents still live together. Please see Section 3 of this booklet.

*The amount of time that can be given to grandparents will also depend on the kinds of Orders already in place.*

### 2.2

**My daughter died a few years ago, and now my son-in-law is getting remarried and he and his new wife rarely ever lets us see the children. What can we as grandparents do?**

If at all possible, try to rebuild the relationship without resorting to legal processes. But if necessary, one or more grandparents can bring a court application for access rights to their grandchildren (called a “contact order”). See Question 1:4.

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- the parents are the guardians of the child(ren);
- the guardians are living separate and apart or one of the guardians has died; and
- the grandparents contact with the child(ren) has been interrupted by this separation or death.

In the above situations, you do not need leave of the court to make an application for a contact order.

Note: The situation is different when your grandchild still lives in an intact nuclear family unit, that is, where the parents still live together. Please see Section 3 of this booklet.

## 2.3

### **I have never met my grandchildren. My daughter and her ex-husband have never let me see them, even when they were still together. Can I still apply for a contact order?**

As mentioned in questions 2.1 and 2.2, the conditions for applying for a contact order under the Family Law Act are that:

- the parents are the guardians of the children,
- the guardians are living separate and apart or one of the guardians has died, and
- the grandparent's contact with the children has been interrupted by the separation or death.

This situation is slightly more challenging, as there was no contact that was "interrupted." However, if it can be shown that contact would be in the best interests of the child, one or more grandparent may still be able to obtain a contact order.

Note: this is different from a situation in which your grandchild still lives in an intact nuclear family unit (i.e.: where the parents still live together). For this kind of situation, please Section 3 of this booklet.

## 2.4

### **Do I need a lawyer to make this application for a contact order?**

Not necessarily. You can try to represent yourself. For a list of resources to help in this regard, please see the "Where can I get more help" Section at the back of this booklet.

While it is possible to represent yourself, it is often much better to have a lawyer represent you. If you don't know a lawyer, call the Alberta Lawyer Referral Service at 1-800-661-1095. If you qualify, you may be able to get a lawyer paid for by Legal Aid. For details, see the Resources Section of this booklet.

## 2.5

### **If I do have to go to court to obtain a contact order to see my grandchildren, what do I need to prove?**

To be granted a contact order, a grandparent must show that:

- contact between the child and the grandparent is in the best interests of the child;
- the child's physical, psychological or emotional health may be jeopardized if contact between the child and the grandparent is denied; and
- the guardian's denial of contact between the child and the grandparent is unreasonable.

There is no assumption is that children have a right to a relationship with their grandparent – the judge must be satisfied that such a relationship is in the "best interests" of the child.

The examination of a child's "best interests" includes factors such as:

- the history of care of the child;
- the child's views and preferences;
- the benefit to the child in developing a relationship with the applicant;
- the nature and strength of existing relationships;
- any history of family violence; and
- any civil or criminal proceedings that may be relevant to the child's safety or well being.

*To be granted a contact order, a grandparent must show that contact between the child and the grandparents is in the best interests of the child.*

## 2.6

### **What kind of provisions can a court put in a contact order?**

A contact order can provide for contact between the child and the applicant in the form of visits, oral or written communication, or any other method of communication.

The court may also add related provisions as deemed appropriate. An example of such of a provision would be permission for the child to travel out-of-country with the grandparents to visit extended family (if that were appropriate in the circumstances).

## 2.7

### **How long will the contact order be in place?**

A contact order may be for a definite or indefinite period or until a specified event occurs. In addition, the court may impose terms, conditions and restrictions in connection with the order, as deemed appropriate.

*A contact order can provide for contact between the child and the applicant in the form of visits, oral or written communication, or any other method of communication.*

## 2.8

### **Once I have a contact order, must my grandchild's guardian allow me access to my grandchild?**

Yes. A contact order is like any other court order. It should be obeyed.

## 2.9

### **What can I do if my grandchild's guardian still does not allow me access to my grandchild?**

For the sake of the long-term relationship, if at all possible, you may wish to consider addressing the situation without making use of law enforcement and without a court battle. However, if this is not possible you can apply to the court for help in enforcing your contact order. This is known as an "enforcement order." Once you have such an order, the police can help you enforce the order to obtain the contact with your grandchildren.

If you have a lawyer, seek his or her advice as soon as possible.

## 2.10

### **Can I later change the contact order if I need to?**

Yes, you can apply to the court to vary, suspend, or terminate a contact order, or any part of it. The application must be made either by the person who applied for the order in the first place or a guardian of the child.

The court will not change the arrangement without careful consideration. Before the court varies a contact order, it must be satisfied that there has been a change in the needs or circumstances of the child. In making a variation order, the court shall consider only the best interests of the child.

## 3. I want contact with my grandchildren (Part 2)

### Top 5 questions about accessing grandchildren in “intact” families (where there has been no separation, divorce, death, and/or remarriage)

#### 3.1

**A few months ago, I had a falling out with my son. Now he and his wife no longer let me see my grandchildren, even though I saw them at least once a week before our fight. Is there anything I can do?**

In intact families, the rights of grandchildren to have access to their grandparents are even more restricted. On the whole, the courts are of the opinion that the parents are in the best position to make decisions regarding their own children. Therefore, unless there is a concern about the parenting abilities of the parents, or it can be proven that the children are suffering greatly without contact with the grandparents, it is more difficult for grandparents to obtain a contact order.

When a family is intact, grandparents seeking contact must make two separate applications to the court: they first obtain the “leave” of the court to make application for a contact order, and then they must apply for the contact order.

#### 3.2

**If I want to apply for leave to bring an application for a contact order, what must I show?**

In determining whether to grant leave, the court must consider:

- the significance of the relationship, if any, between the child and the grandparent, and
- the necessity of making an order to facilitate contact between the child and the grandparent (i.e., is there any other way for contact to occur?).

*In intact families, the rights of grandchildren to have access to their grandparents are even more restricted.*

#### 3.3

**What happens after I get leave? Must I also apply for a contact order?**

Yes, you must apply for a contact order. In order to be granted a contact order, a grandparent must show that:

- contact between the child and the grandparent is in the best interests of the child;
- the child’s physical, psychological or emotional health may be jeopardized if contact between the child and the grandparent is denied; and
- the guardian’s denial of contact between the child and the grandparent is unreasonable.

There is no assumption that children have a right to a relationship with their grandparents. The judge must be satisfied that such a relationship is beneficial to the child.

#### 3.4

**Once I have a contact order, must my grandchild’s guardian allow me access to my grandchild, and what should I do if my grandchild’s guardian still does not allow me access to my grandchild?**

Yes. A contact order is like any other court order. It should be obeyed.

For the sake of the long-term relationship, if at all possible, you may wish to consider addressing the situation without making use of law enforcement and without a court battle. However, if this is not possible you can apply to the court for help in enforcing your contact order. This is known as an “enforcement order.” Once you have such an order, the police can help you enforce the order to obtain the contact with your grandchildren.

If you have a lawyer, seek his or her advice as soon as possible.

## 3.5

### **Can I change the contact order later, if I need to?**

Yes, you can apply to the court to vary, suspend, or terminate a contact order, or any part of it. The application must be made either by the person who applied for the order in the first place or a guardian of the child.

The court will not change the arrangement without careful consideration. Before the court varies a contact order, it must be satisfied that there has been a change in the needs or circumstances of the child. In making a variation order, the court shall consider only the best interests of the child.

## **4. I want to care for my grandchildren (Part 1)**

### **Top 10 questions about grandparents as a type of foster parent (part of "Kinship Care")**

## 4.1

### **My grandchildren's parents have a lot of problems, such as alcohol and drugs, and I do not think that they can properly take care of my grandchildren. Can I take care of them?**

Perhaps. There are two ways in which to do this, however, each one has requirements and each one comes with different rights and responsibilities for you.

The methods are:

- you can apply for "Kinship Care" (this is done through child and family services); or
- you can apply for "guardianship" of your grandchildren (generally, this is if the children have already been in your care for a minimum of six months, however, this residency requirement can be waived in certain circumstances). With this option, either:
  - guardianship of your grandchild would be taken away from the parent(s), or
  - the parent(s) would keep guardianship and the government would be added as a guardian, depending on the circumstances.

## 4.2

### **What kinds of things should I consider before deciding whether I can/should take care of my grandchildren?**

While grandparent caregivers may find it rewarding to be involved in rearing their grandchildren, they may also experience challenges, including social isolation, financial problems, or health issues.

You have done this job before, so you know that it is a big undertaking. You may wish to consider and plan ahead for these potential difficulties.

Some things to think about:

- adapting to the caregiver role could necessitate changes in employment, living arrangements, and social networks, as well as other lifestyle adjustments;
- since your adult children are having problems that have led to this situation, you might have to contend with people who are skeptical about your parenting abilities, or you may even have your own self-doubts; and
- some parents may be relieved to have grandparents take on the caregiving responsibilities, but many will not. If your application is contested by your adult children, any existing conflict between the generations is likely to increase.

## 4.3

### What is Kinship Care?

A program of the Alberta government, Kinship Care provides for children who have already come into the care of Child and Family Services to be placed with extended family members, such as a grandparent, or someone with whom they have a significant relationship. Kinship caregivers receive financial help, training and support similar to that received by foster parents. Kinship homes provide care for a specific child and do not accept other children as foster children.

Kinship Care is different from Foster Care.

In Foster Care, children are placed in temporary homes with people they may not have had a previous relationship with. Children may stay in a foster home for a few days or many years. Foster parents also receive financial compensation, training and support for the care they provide foster children (although the amounts may differ).

For more information about Kinship Care see:

[www.child.alberta.ca/home/595.cfm](http://www.child.alberta.ca/home/595.cfm)

## 4.4

### What is the role of a Kinship Caregiver?

The role of a Kinship Caregiver is to take on the everyday responsibilities of a parent. These responsibilities include:

- providing food and lodging;
- attending medical appointments and following through with treatment and medication recommendations; and
- school involvement.

Kinship Caregivers are asked to participate in planning meetings (with Child and Family Services) about ongoing arrangements to care for the child or children. Kinship Caregivers are encouraged to support appropriate contact between the children in their care and the family of origin, and to keep that family informed of the child's activities.

*While grandparent caregivers may find it rewarding to be involved in rearing their grandchildren, they may also experience challenges, including social isolation, financial problems, or health issues.*

## 4.5

### Who is eligible to become a Kinship Caregiver?

A Kinship Caregiver is a family member or someone who has a significant relationship with the child or children to be cared for. Kinship Caregivers are not the biological parents or any person who has taken "private guardianship" of the child.

A Kinship Caregiver must be an adult (at least 18 years old) and a resident of Alberta. Any adult, regardless of marital status, can be eligible. The maximum age is determined by the best interests of the children.

A Kinship Caregiver must also meet the following criteria:

- if cohabiting, in a stable relationship for at least 12 months prior to applying;
- physically and mentally capable of meeting the children's needs, with no major illness or trauma in the past 12 months; and
- financially stable and living within their means (Caregivers can rent or own their home, and can be retired or employed outside the home).

## 4.6

### How do I apply to become a Kinship Caregiver?

Before placing a child with a Kinship Care provider, Alberta Children and Youth Services conducts a criminal record check, and a Child and Youth Intervention Module (CYIM) check. Then a Safety Environment Checklist is completed.

If you pass these initial screening tests, your grandchild may be placed with you on the condition that you complete a full application process with the assistance of a caseworker.

The entire application process consists of three steps.

#### 1. Kinship Care Application

This application includes three personal references, a medical reference, a criminal record check, and a child welfare check.

#### 2. Caregiver Orientation

Applicants must attend eight 3-hour training sessions that cover topics such as child development, special needs of children in care, and supports available to Kinship Care providers.

#### 3. Approved Home Assessment Report

An assessment is done to determine whether you can provide a safe and suitable home for children. The assessment addresses topics such as family history, parenting skills, and home safety.

*Kinship Care provides for children who have already come into the care of Child and Family Services to be placed with extended family members, such as a grandparent.*

## 4.7

### What is considered to be a safe and stable environment for a child?

A safe and stable environment is one wherein children:

- are protected from any form of violence in the home;
- have adequate and seasonally-appropriate clothing;
- are encouraged and helped to participate in recreational activities;
- are kept safe from alcohol, firearms, and toxic products. Alcohol and cleaning products should be kept out of children's reach. A locked box is required for medications. Firearms must be have trigger locks and be stored separately from ammunition;
- are not left unsupervised if they are under age 12; and
- have only regular caregivers (e.g.: babysitters) who have undergone a complete a Security Clearance Check and Child and Family Services Intervention Check (your Kinship Care worker can provide forms).

## 4.8

### What kind of financial support is available for a Kinship Caregiver?

Kinship Caregivers are financially compensated for the children in their care. This compensation includes:

- initial financial assistance in setting up your home to care for the child;
- a daily basic maintenance allowance, based on the age of the child, which covers all of the day-to-day costs of raising a child such as food, clothing, shelter, personal care items, general household costs and a spending allowance;
- an allowance of \$2.60 per child, per day, for incidental costs associated with babysitting;
- medical coverage paid for through the child's Personal Health Care Number (PHN) or Treatment Services Card; and
- reimbursement for other child-related costs that you may have to pay up front.

## 4.9

### What happens if caring for my grandchild(ren) becomes too overwhelming for me?

There is help available. From the perspective of Child and Family Services, it is best for the child to:

- stay with a family member if possible;
- remain in a stable and caring home; and
- not be moved too often.

A needs assessment conducted before your grandchild comes to live with you helps to ensure that – within reason and the policies of the department – the needs of both the child and the grandparents are met and addressed. However, circumstances can change. You may find that you need to go back to work part-time and therefore require some child care, or that your grandchild needs behavioural or medical therapy.

Child and Family Services will discuss such new needs as they come up, and will determine how much of these new needs they can fund. Your caseworker will offer guidance and support to ensure that the needs of the child and the caregivers are met.

If the needs are too great, Child and Family Services can find a new home for your grandchild. If this occurs, you can usually continue to have access to your grandchild. Child and Family Services examines each case to determine individual circumstances.

*Kinship Caregivers are financially compensated for the children in their care.*

## 4.10

### How is being a Kinship Caregiver for my grandchildren different from being their guardian?

Although Kinship Care permits children to live with their grandparents, the children remain wards of the province (in other words, the government has custody). Technically, this means that all decisions pertaining to the child are subject to approval by the government. In addition, the grandparents cannot travel out-of-country without a letter of consent from the government.

Since it is not practical for the caseworker to make all decisions related to a child, Child and Family Services delegates some decision-making powers to the Kinship Caregiver. In a “Delegation of Powers” document, the province lists all areas of care that you are entitled to make decisions about. You will likely have authority over daily decisions such as enrolling the child in sports or other activities and taking the child to annual medical appointments.

Major decisions are not delegated, and technically all decisions are still subject to approval by Child and Family Services. The Kinship Caregiver must notify the caseworker of any significant or serious occurrence in the child’s life such as an injury requiring medical attention or difficulties at school. In addition, Child and Family Services may still consult with the child’s parents when making certain major decisions.

If the Kinship Caregiver consistently does not follow the provisions of the Delegation of Powers document, Child and Family Services must examine the case. If the breaches are severe, the child may be taken away.

In addition, Kinship Care provides certain pre-set financial benefits that guardianship does not, and vice versa. For example: foster parents with certain types of training and experience receive an additional “skill” fee. Kinship Caregivers, on the other hand, do not have an additional “skill” fee. However, with guardianship, grandparents may be eligible for some other types of financial assistance, such as support payments or other child benefits (such as reasonable day care costs).

## 5. I want to care for my grandchildren (Part 2)

### Top 10 questions about obtaining private *guardianship* of your grandchildren

#### 5.1

##### What is private guardianship?

The guardian of a child is the adult who is legally responsible for taking care of the child. The guardian is usually the parent. Many children have two guardians, and some have even more.

Sometimes parents run into difficulty in caring for their children alone, and another adult would like to become a guardian of the child – either by supporting or replacing the parent. A person who wants to become a guardian must apply to the court for a “private guardianship order”.

The private guardian of a child makes a permanent commitment to raise the child and agrees to assume all the responsibilities of a parent. A private guardianship order also legitimizes the person’s relationship to the child and gives him or her the rights of a parent.

Generally, in order to apply for guardianship, you must have had your grandchildren in your care for at least 6 months. However, if appropriate for the circumstances, the court can waive this residency requirement.

#### 5.2

##### What are the rights and responsibilities of a guardian of a child?

The guardian of a child has two major legal rights:

- to care for the child or have contact with the child; and
- to get information and be consulted so that you can carry out your powers and responsibilities regarding the child.

The guardian of a child can have some or all of the following powers:

- making day-to-day decisions affecting the child;
- deciding where and with whom the child will live;
- making decisions about where the child goes to school and about the child’s culture and religion; and
- making decisions about the child’s health treatments.

The guardian of a child has the responsibilities of:

- supporting the child using your own money;
- ensuring the child has all the necessities of life including medical care, food, clothing, and housing;
- helping the child grow – physically, psychologically, and emotionally; and
- guiding the child towards becoming an independent adult.

*The private guardian of a child makes a permanent commitment to raise the child and agrees to assume all the responsibilities of a parent.*

## 5.3

### Who is eligible to apply for private guardianship?

To apply for private guardianship:

1. either you or the child must live in Alberta, and
2. you must have cared for the child for more than six months.

The judge may waive these requirements if it is in the child's best interests to do so.

The court does not grant a guardianship order automatically, even if the applicant passes the above two tests. The judge must consider other things, especially the child's best interests. If it is not in the child's best interests to have the non-parent as a guardian, the judge will not grant the guardianship order.

The judge will also consider whether:

- you're able and willing to assume the responsibility of a guardian;
- the child has consented (if the child is 12 or older); and
- the child will benefit from your appointment as private guardian.

## 5.4

### How do I apply for private guardianship?

If you wish to become a private guardian of a child for whom you have been caring, you must complete a series of forms required by the Alberta courts. These forms, which are all included in the Private Guardianship Self-Help kit, are available at courthouses across Alberta and online at [www.albertacourts.ca/go/CourtServices/FamilyJusticeServices/FamilyLawAct/FamilyLawKits/tabid/140/Default.aspx](http://www.albertacourts.ca/go/CourtServices/FamilyJusticeServices/FamilyLawAct/FamilyLawKits/tabid/140/Default.aspx)

The applicant is required to complete all forms in blue ink and file them in their original form. If you complete the files online, ensure that your signature is in blue ink to remove any doubt as to whether they are originals, not copies.

For more information about making a guardianship application, go to: [www.child.alberta.ca/home/677.cfm](http://www.child.alberta.ca/home/677.cfm)

## 5.5

### Do I need help to apply for private guardianship? If so, where do I get this help?

You are not required to have help with your application for private guardianship, nor are you required to use a lawyer. Consider, though, that the process can affect family dynamics for a very long time and that it is certainly better for the child to see cooperation and compromise instead of ill will and disputes. Mediators and lawyers are skilled in helping families with these extremely difficult issues.

As a result, a fight in court should be a last resort in such disputes – it is far better to try to come to an agreement (and then have this agreement become a consent court order). This is often more easily done with the help of mediators or lawyers.

If you are having difficulty reaching an agreement, consider taking advantage of the Alberta Courts' Family Justice Services and/or the services of private mediators and lawyers. These resources can help you create the best possible situation for you and your grandchild.

If you and the child's guardians cannot agree (for example, when someone is opposing your application), you may need to go to court and ask a judge to make a court order awarding guardianship. Counsellors from Family Justice Services can help you with this, as well as Law Line (if you qualify), the Family Law Information Centre, Family Court Counsellor Services, and Legal Aid (if you qualify).

For more information, see the Resources section of this booklet.

## 5.6

### Must I use a lawyer?

No, you do not have to use a lawyer. However, it is recommended that you do so, as these matters can be quite complicated and can have a lasting effect on the relationships between the generations.

## 5.7

### Can my grandchild pick, or have a say in who, his/her guardian will be?

Not really. Only a court can determine who the guardian is.

However, there are two situations in which children can apply to court to have particular adults made their legal guardians. This can occur when the child either:

- has no guardian at all; or
- none of the child's guardians wants or is able "to exercise the powers, responsibilities and entitlements of guardianship in respect of the child."

In addition, when the child reaches age twelve, the court will often ask for his/her opinion, and the child most often has to consent to having a particular adult be his/her guardian before the guardianship order is made.

*When the child reaches age twelve, the court will often ask for his/her opinion,. And the child most often has to consent to having a particular adult be his/her guardian before the guardianship order is made.*

## 5.8

### If we cannot agree and my guardianship application does this go to court, what will be considered?

In every case, the test is the "best interests of the child."

As long as the parent is a capable caregiver, the judge is unlikely to change custody. Judges often prefer to leave a child with the person who already has residency, unless the situation is harmful to the child.

Many things can affect the judge's decision. For example, it is important for the judge to know who has cared for the child in the past and what kind of attachment the child has formed with that caregiver. The judge will want to know what kind of plans the proposed guardian has for the child. A judge may ask for a home study in order to gather more information before making a decision.

The people involved in a guardianship dispute can decide to come to an agreement at any point in the process, either with or without the help of third parties. If they do reach an agreement, the home study is not completed and the terms of their agreement are sent to the judge. If they cannot agree, the judge will hear the case in court, including the results of the home study, and make a decision based on the best interests of the child.

Children most often have a say in the issue of guardianship. The older and more mature the child, the greater the weight his or her wishes will have.

## 5.9

### What kind of financial support is available for private guardians?

Unlike with the Kinship Care program, there is no set program for financial aid to guardians. However, once a person is a guardian, he or she may qualify for all governmental child benefits. For example:

- the Alberta Child Health Benefit. This is a premium-free health benefit plan that provides basic dental, optical, emergency ambulance services, essential diabetic supplies and prescription drug coverage for children living in families with low incomes <http://employment.alberta.ca/FCH/2076.html>; and
- other governmental child benefits (the same as a residential parent would be entitled to) – [www.cra-arc.gc.ca/E/pub/tg/t4114/README.html](http://www.cra-arc.gc.ca/E/pub/tg/t4114/README.html)

## 5.10

### What happens if being a guardian becomes too overwhelming for me?

As the legal guardian, you have legal responsibility for the child. Therefore, you are responsible for obtaining support as required, for example, babysitters and psychological counselling.

Unlike the Kinship Care program, private guardianship does not have specific resources for guardians who need help. You may wish to contact the various Alberta and Canada-wide grandparents' support groups listed in the Resources section of this booklet (community).

Ultimately, if you cannot handle being the guardian, you will have to make alternative arrangements for the child.

*The people involved in a guardianship dispute can decide to come to an agreement at any point in the process, either with or without the help of third parties.*

## 6. What do the words mean?

### Glossary

<b>child</b>	a person who is under the age of 18 years
<b>contact</b>	access to a child
<b>consent order</b>	an order of the court that is decided upon consent between the parties and then submitted to a judge for review and signature (as opposed to the parties presenting different sides to the judge and the judge making the final decisions)
<b>contact order</b>	an order of the court made under section 35 of the Alberta Family Law Act in response to an application by a grandparent or other party requesting contact with to a child. Such an order permits contact between the child and persons other than the guardian, for example, grandparents or other people who are important to the child. If a guardian denies contact with a child, people such as the grandparents can apply for in-person visitation or other contact (for example, by telephone or e-mail).
<b>court</b>	the Alberta Court of Queen's Bench or the Alberta Provincial Court, as the case may be
<b>father</b>	the biological father of a child, or, in the case of an adopted child, a male person who adopts the child
<b>grandparent</b>	the parent of a child's father or mother
<b>guardian</b>	an adult who has legal responsibility to care for and financially support a child, and the authority to make all of the decisions with respect to that child. Unless otherwise ordered by a court, the father and mother of a child are joint guardians of a child.
<b>intact family</b>	a nuclear family in which the parents have not separated or divorced, and neither parent has died
<b>leave of the court</b>	permission from the court to proceed with an application to the court. This is a separate process/question that must be addressed before the applicant can ask the court for what s/he wants
<b>mother</b>	the person who gives birth to a child, or, in the case of an adopted child, a female person who adopts the child
<b>parent</b>	the father or mother of a child

## 7. Where can I get more help?

### Legal

#### Acts

For a copy of the Family Law Act and its regulations, contact the Queen's Printer Bookstore.

780.427.4952 in Edmonton

403.297.6251 in Calgary

For toll free access in Alberta dial 310.0000

Website: [www.qp.alberta.ca](http://www.qp.alberta.ca)

Provides information and education about family law, including making an application in Provincial Court.

To reach FLIC, go to [www.albertacourts.ca/familylaw](http://www.albertacourts.ca/familylaw) or call Service Alberta at 310.0000, toll-free, and ask for the Family Law Information Centre.

Alternately, you can call FLIC at

780. 415.0404 in Edmonton

403.297.6600 in Calgary

403.297.6600 elsewhere in Alberta

#### Law Society of Alberta Lawyer Referral Service

A Lawyer Referral Operator will provide you with the names of three lawyers in your area that you can consult. Each lawyer will provide a half-hour consultation free of charge.

Toll free: 1-800-661-1095

Calgary: 403-228-1722

[www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm](http://www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm)

#### Student Legal Services

A nonprofit, charitable organization of approximately 300 volunteer law students that provide year-round free legal services to those individuals who are unable to afford a lawyer. Please call in advance as student volunteers are not always available at all hours.

11011 – 88 Avenue, Edmonton, AB T6G 0Z3

780.492.8244

[www.slsedmonton.com](http://www.slsedmonton.com)

#### Legal Aid Society of Alberta

Provides legal services to financially eligible applicants.

Phone: 780.427.7575

Website: [www.legalaid.ab.ca](http://www.legalaid.ab.ca)

#### Legal Services Centre

A program of Legal Aid Alberta, which provides legal information and referrals to Albertans and legal advice to eligible callers. This free service is available across Alberta.

Toll-free in Alberta: 1.866.845.3425

To see the qualifications for free legal advice, visit

[www.legalaid.ab.ca/help/Pages/EdmontonLegalServicesCentre.aspx](http://www.legalaid.ab.ca/help/Pages/EdmontonLegalServicesCentre.aspx).

The Legal Services Centre does not provide legal information or legal advice by e-mail.

#### Older Adult Knowledge Network

[www.oaknet.ca](http://www.oaknet.ca)

#### Family Law Information Centre

Edmonton Law Courts Building,

1A Sir Winston Churchill Square,

Edmonton, AB T5J 0R2

Phone: 780-415-0404

[www.albertacourts.ab.ca/familylaw](http://www.albertacourts.ab.ca/familylaw)

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## Services

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### Child Abuse Hotline

1.800.387.KIDS (5437)

### Alberta Children and Youth Services

[www.child.alberta.ca/home/index.cfm](http://www.child.alberta.ca/home/index.cfm)

### Foster Care and Kinship Care

[www.child.alberta.ca/home/595.cfm](http://www.child.alberta.ca/home/595.cfm)

To find your local Child and Family Services Authorities office, contact:

[www.child.alberta.ca/home/local\\_offices.cfm](http://www.child.alberta.ca/home/local_offices.cfm)

Phone: 780.422.3004

Monday to Friday 8:15 am to 4:30 pm

For toll free access in Alberta dial 310.0000

### Becoming a Kinship Caregiver

[www.child.alberta.ca/home/892.cfm](http://www.child.alberta.ca/home/892.cfm)

### Guardianship Information

[www.child.alberta.ca/home/677.cfm](http://www.child.alberta.ca/home/677.cfm)

### Sample Letter of Consent to Travel

[www.voyage.gc.ca/preparation\\_information/consent-letter\\_lettre-consentement-eng.aspx](http://www.voyage.gc.ca/preparation_information/consent-letter_lettre-consentement-eng.aspx)

### Family Mediation Services

[www.albertacourts.ca/go/CourtServices/FamilyJusticeServices/MediationServices/tabid/124/Default.aspx](http://www.albertacourts.ca/go/CourtServices/FamilyJusticeServices/MediationServices/tabid/124/Default.aspx)

403.297.6981 in Calgary

780.427.8329 in Edmonton

403.340.7187 Elsewhere in Alberta

For toll free access in Alberta dial 310.0000

### Alberta Family Mediation Society

1.877.233.0143

Website: [www.afms.ca](http://www.afms.ca)

### Alberta Arbitration and Mediation Society

780.433.4881 in Edmonton

1.800.232.7214 Toll-free

Website: [www.aams.ab.ca](http://www.aams.ab.ca)

### Alberta's Family Court Counsellor Services (FCC)

Provides help for people applying to court for guardianship orders. FCC does not help people who have lawyers.

To contact FCC, go to: [www.albertacourts.ca](http://www.albertacourts.ca) and click the link for Family Justice Services

Alternately, call

780.427.8343 in Edmonton

403.297.6981 in Calgary

403.340.7187 elsewhere in Alberta.

For toll free access in Alberta dial 310.0000

### Family Law Information Centre

Edmonton Law Courts Building,

1A Sir Winston Churchill Square,

Edmonton, AB T5J 0R2

Phone: 780-415-0404

[www.albertacourts.ab.ca/familylaw](http://www.albertacourts.ab.ca/familylaw)

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## Community

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### Cangrands: Grands Raising Grandchildren

Alberta Branch

Box 1555 Blackfalds Alberta T0M 0J0

Melba (Mel) Desjarlais, Chapter Leader

Phone: 403.885.6047; Cell: 403.318.1429

E-mail: [md01@telus.net](mailto:md01@telus.net)

[www.cangrands.com](http://www.cangrands.com)

### Seniors Association of Greater Edmonton (SAGE)

100 102A Ave, 15 Sir Winston Churchill Sq NW

Edmonton AB, T5J 2E5

Phone: 780.423.5510, Fax: 780.426.5175

Email: [info@MySage.ca](mailto:info@MySage.ca); Website: [www.MySage.ca](http://www.MySage.ca)

Monday to Friday 8:30 am to 4:15 pm

### The Grandparent Foundation

Information Resource. American website.

<http://grandparenting.org>

### Community Groups

In many communities there are seniors groups that can provide information about legal issues. Ask your local seniors centre, community information centre, public library, or Royal Canadian Legion.

## 8. Where can I get more Information?

Links to literature on the topic of the role of grandparents in the lives of children

Alberta Civil Liberties Research Centre and the Canadian Grandparents Rights Association. The Child's Right to Love: Information for grandparents, relatives, and others close to the child. May 2003. [www.aclrc.com/pdf/Child%27s Right To Love.pdf](http://www.aclrc.com/pdf/Child%27s%20Right%20To%20Love.pdf)

Alberta Justice. An Introduction to Alberta's Family Law Act. (no date). [http://justice.alberta.ca/programs\\_services/families/Documents/intro\\_alberta\\_family\\_law\\_act\\_updated.pdf](http://justice.alberta.ca/programs_services/families/Documents/intro_alberta_family_law_act_updated.pdf).

Canada's Association for the Fifty-Plus (CARP). Beyond Loving: CARP fights for grandparents' rights to access and compensation for raising grandchildren. April 2006. [www.carp.ca/article\\_display.cfm?documentId=1920](http://www.carp.ca/article_display.cfm?documentId=1920)

Goldberg, Dan L. (Federal Department of Justice). Grandparent-Grandchild Access: A Legal Analysis. 2003. [www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2003/2003\\_15/2003\\_15.html](http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2003/2003_15/2003_15.html)

Marks, Marilyn. Family Law Act: Grandchild/Grandparent Access. March 2006. [www.cangrands.com/printpages/familylawactalberta2006.pdf](http://www.cangrands.com/printpages/familylawactalberta2006.pdf)

Milan, Anne and Hamm, Brian (Statistics Canada). Across the generations: Grandparents and grandchildren. Winter 2003. [www.statcan.ca/english/studies/11-008/feature/star2003071000s4a01.pdf](http://www.statcan.ca/english/studies/11-008/feature/star2003071000s4a01.pdf).

Grandparents raising Grandchildren (Parents' Support Services of BC) [www.parentsupportbc.ca/grandparents.html](http://www.parentsupportbc.ca/grandparents.html)  
An organization from British Columbia that offers support to grandparents raising grandchildren, and provides a network of grandparents to advocate for more support and recognition for the role they play in the care of children.

Supporting Grandparents raising Grandchildren: A Resource Booklet [www.parentsupportbc.ca/GRG\\_2nd\\_Mar16\\_07.pdf](http://www.parentsupportbc.ca/GRG_2nd_Mar16_07.pdf)  
(January 2007, 165 pages)

