

Chapter 4

Do not use this guide for legal advice. It provides information only, and that information only applies to British Columbia law, services, and benefits. Consult with a lawyer for advice related to your specific situation. Laws, benefits, policies, and procedures are always changing. Always double-check the information you intend to rely on with the appropriate agency or with your lawyer. Indigenous people's traditions and customary laws are outside the scope of this guide; however, we want to acknowledge those customs and traditions and emphasize that nothing in this guide should be misinterpreted as superseding or taking away from them.

Access and safety

Access is a legal term that means the right of any person (a parent, grandparent, other relative, or non-relative) to spend time with a child for the purpose of maintaining a meaningful relationship. Often people associate access with the rights of a child's parents or relatives to see the child, but it is better understood as the right of the child to have a relationship with another person. This chapter will explain access—how to get it if you want it, how to try to block another person's access if you think it is not in your grandchild's best interests, and how to go about arranging supervision for visits. There is also information for those who need protection from someone in the child's life (see pages 5-6 for information on protection orders).

Access and custody are usually dealt with at the same time, either in a written agreement between you and others, such as the parents, or in court. For example, if you and the parents come to an agreement to give you custody, this same agreement will likely include an agreement about when and how they can visit with the child.

If you are raising your grandchild, getting access is not really an issue for you. However, other people, like the child's parents, other grandparents, relatives, and other important people have the right to apply for visits. This does not mean that the applicant will automatically get this right. It is up to a judge to decide if it is in the child's best interests to allow visits. Remember, access rights are for the benefit of children first, and parents and others second.

Having someone apply to the court to spend time with their grandchildren can be worrisome for some grandparents, who may not want certain people visiting and upsetting the children. Other grandparents may be happy to arrange visits that work for everyone. It is important to remember that the visits are for the good of the child, and that the law actually recognizes this idea when it looks at what is in the child's best interests. Your ability to help your grandchild maintain important relationships by making these visits possible is actually a factor that a judge might consider when making decisions about custody. This section will discuss different ways that access rights can be arranged.

As with other areas of the law, it is almost always better to come to an agreement about access without going to court. If you can work together, file your written agreement at your local court registry office and it will have the force of a court order. Take a look at the information under the next heading to get some ideas about how visits can be planned.

Sometimes coming to an agreement with the parents or other persons is difficult or unsafe. If this is the situation, you may need a judge to hear your case, after which the judge may make an access order. It is always a good idea to find a lawyer to help you when you have to go to court.

Access orders

If you have custody of your grandchild, a person can apply for an access order to visit the child by filling out an application and filing it at the local court registry office. (Likewise, if you do not have custody, you can apply for access to your grandchild.) However, conditions for access to a child would most likely be included in the terms of a custody order. If a judge decides it is in the child's best interests to grant access, then the judge will make an access order. Often, this order will specify terms and conditions of the access, such as whether the visits must be supervised and where they can take place.

After the access order is granted, the amount of time that someone can spend with your grandchild is usually up to you and the other person to decide. It is common for people to agree on guidelines such as "reasonable" or "generous" access, leaving the details about time and place to be decided informally.

Specified access

For some families, broad guidelines are not enough and clear rules are needed. In this case, an access order may also include what is called specified access. This means that specific guidelines are included in the court order, such as "*the child's father can visit every Saturday from 4–6 p.m., at such-and-such a location...*" Specified access arrangements may also set out when the parents or relatives seeking access will see the children on special occasions and holidays.

Conditional access

A judge may also make an order for conditional access. In this case, conditions to access may be included in the order, such as:

- the access parent or relative cannot consume alcohol when the children are with him or her, or
- the access parent must complete a parenting skills course before overnight access is allowed.

If you, the custodial grandparent, request that conditions be placed on a parent or relative's right to access your grandchild, it will be up to you to show the court that the conditions are in the child's best interests.

If your circumstances have changed and the access order no longer suits your family's needs, you can apply to change the order, with or without the consent of both parties. If your circumstances have not changed, but you still want to change the order, then you must appeal it. Information about how to change or appeal a court order is in *Chapter 9 Using the Courts*.

Supervised access

The court or the ministry may say that visits between your grandchild and the child's parents need to be supervised. Sometimes the parents' and/or the child's behaviour is unpredictable or harmful. If this is the case, a supervisor will have to be present during any visits. The supervisor may be you, another family member or friend, your social worker, or someone from an agency that provides this service.

Some grandparents do not want to be the supervisor during parental visits because of the poor relationship between the parent, child, and grandparent. If this is the case, it is important to know how to find a supervisor and what sorts of costs are involved.

Find a supervisor

There are a few ways you might be able to arrange for someone to supervise visits with your grandchild (although in parts of the province, some of these services might be difficult to access):

- You can ask for a neutral family member or a friend (if the ministry is investigating your grandchild's home life, the social worker must approve this person).
- If your grandchild has a file with the ministry, the social worker may supervise the visits or may refer you to someone else who can.
- If you live nearby, you can call a Family Justice Centre (a service of the Ministry of Attorney General) and ask for referrals to family visit supervisors. To find a Centre near you - <http://www.clicklaw.bc.ca/helpmap/service/1019>

Remember: it is important to make sure that you are following the terms of an access order, so if another approved supervisor is not available, you will have to provide the supervision.

Costs for a supervisor

If your grandchild has a file open with the ministry, then the ministry should cover all costs associated with visits. That would include the cost of a supervisor and transport to and from the visit. You may have to be persistent in asking for this support, but if it is in the best interests of

your grandchild to have the visits, the ministry should pay for it. If you have not been involved with the ministry, it is unlikely that you will be able to get funding for a supervisor.

Access for Aboriginal families

When a person seeks access rights to Aboriginal children, the law encourages judges to keep in mind the ancestry of the children and of the people seeking access to them when deciding what is in the children's best interests. If a relative provides a unique link to the children's Aboriginal heritage, a judge might be more inclined to give that person frequent access. The existence of that link could also affect the circumstances under which the relative is given access, including where the visits take place.

The band council has the right to keep non-band members from entering the reserve, which means that, in rare cases, an access order might have to include the right to take the child off the reserve for visits.

Access to information

If you have custody and/or guardianship of your grandchild, you are the legal keeper of your grandchild's personal information. Your grandchild's parents or other relatives may want information about your grandchild, but the law only requires you to give it to them if:

- the parents or other person asking for information holds joint custody or joint guardianship with you, in which case that person is entitled to information about the child's health, education, and well-being.
- your grandchild's parents have a divorce order, and in that order the court awarded access rights to the parents or another person.

However, if the parents or other person has been awarded access rights under the Family Relations Act (i.e., not during a divorce), they do not have the right to get information about the child if you do not want to communicate with them. The parent or other person asking for information would need a guardianship order in addition to the access order to have this right. Of course, information can be shared willingly if you and the child are comfortable with the person knowing about the child's life, and if the child's rights are protected.

If you want to fight an application for access

If you have a custody order for your grandchildren and someone applies for access to them, a copy of the application will be delivered to you. This delivery will include a blank reply form. Here you can state your reply to the application – that is, whether you agree to the access order or not.

You must file this reply form, along with three copies of it, at the same court registry where the application for access was filed. You must do this *within 30 days* of receiving the application. There is no fee to file a reply. If you disagree with the application, you will have to make your argument before a judge, either in a family case conference or in a court. This can be a stressful and confusing process, so it is a good idea to seek legal advice. There are services that can help you, some of them free. (see *Chapter 8 Getting legal help*)

If you want access to your grandchild

Normally there are two situations when you would have to ask for access to your grandchild:

- when your grandchild is in the care of the Ministry of Children and Family Development, or
- when your grandchild's parents or guardians will not let you spend time with your grandchild.

If your grandchild is in the care of the ministry, speak to your grandchild's social worker about applying for access. If the social worker is not helpful, you can always ask to speak to the team leader.

If your grandchild is not in the ministry's care, you can apply for access in two ways:

- by filing an application with the Provincial Court that cites *the Family Relations Act* (section 35), or
- by filing an application with the Supreme Court if your grandchild is the subject of a divorce order. Your application would cite section 16(1) of the *Divorce Act*.

The judge may attach terms or conditions to the order if it is granted. Always remember: the court will make decisions according to what it decides is in the child's best interests, which may conflict with what you think is best for your grandchild. The law in this area is very fact-specific, which has sometimes made it difficult for grandparents to get access.

Safety concerns and protection orders

The information in this section was taken largely from the Family Law website. Go to <http://www.familylaw.lss.bc.ca/> to view the original, as well as to find more information about **protection orders**.

Sometimes, the problems in a family are more serious than mere disagreements. If you fear for the safety of yourself or your grandchildren, one way to protect yourselves is with a **protection order**.

A protection order was formerly called a restraining order. A judge will make this order to protect someone (and/or the children who live with that person) from another. If the person named in the order comes near you or calls you on the phone, he or she risks arrest, and could be fined or put in jail. You can apply for a protection order if you are afraid for your safety. You can also ask for an order to resolve less serious problems, such as getting someone to stop showing up uninvited at your grandchild's school. You may apply for a protection order with or without a lawyer. The hearing will be held in family (Provincial) court.

Aside from the typical protection order described above, there are also a few different ways a judge can insert an order for restraint within other orders. For example, a condition that keeps one person from contacting another may be included in a probation order. Or the victim of an alleged crime can ask for a protective order before and during a trial.

To find out how to request a protection order for yourself or your grandchild, go to the Family Law website at <http://www.familylaw.lss.bc.ca> and search "protection order". You can ask your grandchild's social worker for help, talk to family duty counsel at the courthouse, or seek out an advocate (see *Chapter 8 Getting Legal Help* for more information).

If the person named in the protection order comes near you or tries to contact you, call the police right away by dialing 9-1-1. If your community does not have 9-1-1 services, it is a good idea to look for the local police emergency phone number on the first page of your phone book under "Emergency" before you need to call, and to write this number on or near your phone.

This Legal Guide will be updated regularly. We are counting on readers to alert us to any errors, omissions or unclear content. Please send your feedback to "Communications" via: office@parentsupportbc.ca.