

## Chapter 7

*Do not use this guide for legal advice. It provides information only, and that information only applies to British Columbian 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.*

### Alternatives to court

Using the courts to settle family disputes can often add to everyone's pain and frustration. Some grandparents feel like their lives are no longer under their control when they have to leave major decisions to a judge. Whether you have had to file a case yourself or the ministry has become involved in your grandchild's care and you are trying to resolve the situation, you should know that there are alternatives that can help you to resolve family issues without going through the entire court process. In most cases, a mediator or another neutral third party can help the parent and grandparent (and the ministry, if it is involved) find a way to agree on what is best for your grandchild.

Coming to an agreement outside of court has many possible advantages:

- you can actively participate in the decision-making process
- problems are usually settled faster
- it is not as hard on a family, and relationships between family members are preserved when you work together
- alternatives to court can be much less costly
- the atmosphere is informal
- there is a better chance of reaching an agreement that meets everyone's needs

Keep in mind that sometimes, despite everyone's best efforts, you will have to go to court to settle your disagreements. But if you try one of the approaches below first, you may successfully limit your emotional and financial costs in the long run.

This chapter tells you about alternative ways to resolve family issues, like family case conferences and family mediation. The chart on the next page tells you about the options available to you, depending on your situation. It makes a big difference if the ministry is involved in your grandchild's care, because you will have to negotiate with them as well as with the parents.

## Agreements you can file yourself

One simple way to avoid using the courts is to file your own applications and documents at the Provincial Court Registry Office. This can only be done if both you and the parents agree about such things as custody, guardianship, and access, and if the ministry is not involved in your case. There are two ways to file your own documents.

### Written agreement

Parents can formally transfer custody and/or guardianship rights to a grandparent through a written agreement. You and the parents agree to the terms and write them up and sign them yourselves. There are many different ways agreements can be written to reflect your unique situation, such as joint custody and guardianship between the parent and grandparent, with the child's primary residence with the grandparent. The agreement can also spell out access arrangements and ground rules for how the agreement will be lived out.

Once you have written up the agreement, it can be filed at the Provincial Court Registry and have the strength of a court order when it comes to custody, guardianship, and access.

A family justice counselor can help you through this process free of charge. Read the section below entitled Family Justice Counselors for more information, or go to [http://www.familylaw.lss.bc.ca/help/who\\_JusticeCounsellors.php](http://www.familylaw.lss.bc.ca/help/who_JusticeCounsellors.php).

It is important to understand that there are some programs available through the ministry, such as the Extended Family Program, that are not available to children's legal guardians. As a result, when considering a legal transfer of guardianship, be sure that one of the things you consider is which programs you may want to access in future.

### Consent order

Another option is for you and the parents to write up something called a consent order. Once you agree on the terms and write up the order, everyone involved signs it, then a judge reviews the order outside of court. This way, you do not ever have to appear in court. Legal Support Services of BC can provide forms and further information. <http://www.lss.bc.ca/>

A consent order can also be finalized by having everyone involved go to court and agree in front of a judge to the terms of the order. A more informal way to develop a consent order is participation through a family case conference. You can find out more about consent orders at your local Court Registry Office. A family justice counselor can help you through this process for free.

## **Collaborative family law**

Collaborative family law is a relatively new concept. It is a process for resolving family disputes where everyone agrees to work together to reach an outcome that works for both parties, without going to court. This means that while you are involved in the collaborative process, neither you nor the other person will start or continue a court application. Trained lawyers take you through the process and charge fees.

At the first meeting, you and the parents—and your lawyers—sign a participation agreement saying that you commit to resolving the problem in a respectful way and to reaching an agreement that meets everyone’s needs.

In addition to collaborative lawyers, other professionals may participate, such as counselors, child specialists, and psychologists. What they are trying to do is reach a solution that is best for everyone, especially the children. Once a solution is reached, lawyers help you to draft a written agreement. To find out more about collaborative family law, visit: Canadian Bar Association - <http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Family-Law/111.aspx>

To find a collaborative family lawyer, call the Lawyer Referral Service: 604-687-3221 or 1-800-663-1919 toll free.

## **Family case conference**

If you read some of the previous chapters, you know that a family case conference is a private, informal, one- or two-hour-long meeting with a Provincial Court judge, the other people involved in a family court case (such as the parents), and your lawyer (if you have one). The purpose of the meeting is to resolve issues about custody, guardianship, and access without having to go to court for a full hearing.

If you apply for an order for custody, guardianship, or access in Provincial Court that the parents do not agree to, a judge may ask you to attend one of these conferences before you can have a court hearing. You can also request a case conference yourself, just as the parents or the ministry can (if the ministry is involved in the case), and you will all be required to attend.

During the conference, the judge will lead a discussion around a table about what is best for the child. The judge can do the following:

- mediate any issues you disagree on, meaning ask everyone involved to consider possible resolutions for the issues
- decide or make rulings on any issues that do not require evidence, and
- make consent orders.

The judge may also make any other order or give any direction that seems appropriate. Any of these outcomes are possible whether everyone attends the case conference or not. Therefore, make sure you can attend so that decisions are made with your input.

If you reach an agreement, the judge can make an order reflecting the agreement you reached. The judge's order will be binding on everyone involved. It will usually be drawn up into a formal court order by the court clerk and mailed to you.

If you cannot agree during the case conference, the judge can set a date for trial. If there are disagreements about serious issues, the case conference is not the place for the judge to make decisions about them.

The Legal Services Society of BC has a family case conference checklist to help you prepare if you must attend one. You can find it at:

If you would like to learn more about family case conferences or request one to settle your legal dispute, ask at your local Provincial Court Registry Office.

### **Family group conference**

In child protection matters involving MCFD, a family group conference (FGC) provides a chance for a family, extended family and community to get together to talk about their options, and try to come up with a plan to make sure their children are safe and have the care and support they need. A neutral FGC coordinator organizes and runs the meeting. A key feature of FGCs is that the family has private time to make decisions to conclude the plan.

A FGC is a no-charge service that can be provided through MCFD as long as the family's child protection file with the ministry stays open. This is different from a family case conference, in that it is not facilitated by a judge at the courthouse and does not have the same legal formalities associated with a Provincial Court case, involving the need for lawyers or direct connection with court orders such as custody, access, or support.

If you think this would be a good option for your family, you can ask the child welfare worker for a family group conference referral. You can also find more information at <http://www.ag.gov.bc.ca/child-protection-mediation/>.

Here is a general idea of the typical steps involved in the family group conference process:

- Your grandchild's child welfare worker will discuss with you whether a family group conference is the best collaborative process to reach an agreement with the family. Other Ministry collaborative processes exist that may be more suitable to the current circumstances, either because the processes are quicker and less formal than FGC and because more structure is needed in the process (e.g., child protection mediation). If FGC appears to be the best option, the child welfare worker will set one up with a conference coordinator.

- The conference coordinator will ask the family which other important adults should attend the conference, such as your grandchild's aunts or uncles, teachers, counselors, or close family friends. Your grandchild's participation in the conference is encouraged to the fullest extent they are able to. Some children who do not attend still express their views with pictures or writing
- Before the family group conference begins, the coordinator contacts everyone who is involved to make sure they understand what the meeting is about. This takes 3–6 weeks. At the family group conference, the coordinator makes sure everyone feels comfortable and explains that the information shared in the conference must remain confidential.
- First, everyone discusses what support services are available to strengthen the family. Then non-family members leave the conference and the family has private time to develop a plan for the child (called a plan of care). The child welfare worker will then review this plan of care and approve it if it meets your grandchild's need for safety. Once that is done, everyone who was at the conference gets a copy and promises to follow the plan.

Although a family group conference is a good way to avoid having to go to court, it does not produce a legally binding agreement. Even if everyone cooperates during the meetings, the parents could later decide to go to court to get a different legal arrangement. Also, more decision-making stays with the social worker in this process because they decide in consultation with their team leader whether a family group conference is the best collaborative process for reaching agreement with the family, and whether the plan of care coming out of the conference meets your grandchild's need for safety.

### **Family Justice Counsellors**

Family justice counsellors can be found at Family Justice Centers across the province. Family justice counsellors work with separated/divorced families, experiencing custody, access, guardianship and support issues. Specifically, family justice counsellors can assist when family members:

- need help in coming to an agreement about custody, guardianship or access, spousal or child support
- want to obtain or change a custody, guardianship, access, or support order in Provincial Court
- would like to learn about relevant legislation (i.e. Child Support Guidelines), the court process, or services that are available to help families adjust to separation and divorce, and
- want to understand more about separation and divorce in this province.

One of the goals of this service is to assist families to resolve their conflicts *without* going to court. A range of dispute resolution options are available at family justice centres. Mediation is one of the dispute resolution services offered by family justice counsellors. When families reach an agreement about their issues, family justice counsellors can help them prepare documents to formalize their agreement. Some of these documents are legally binding, can be filed in court, and are enforceable by the court: Written Agreements and Consent Orders.

Sometimes people might reach informal agreements that are documented but not enforceable: Memorandums of Understanding. Memorandums of Understanding are not legally binding and are not filed in court.

Sometimes these services are not a good option for families, for example there might be concerns about a person's safety. When that happens, the family justice counsellor will talk to people about other ways people can resolve their disputes such as going to court, and in some cases, applying for legal aid.

**To find a family justice counselor:**

You can visit [http://www.familylaw.lss.bc.ca/help/who\\_JusticeCounsellors.php](http://www.familylaw.lss.bc.ca/help/who_JusticeCounsellors.php) for a list of Family Justice Centers across the province.

Or call the number below between 8:00 a.m. and 5:00 p.m., Monday to Friday, and ask to be transferred to the nearest centre:

- Victoria: 250-387-6121
- Vancouver: 604-660-2421
- Elsewhere in B.C.: 1-800-663-7867
- Outside B.C.: 604-660-2421

Telephone Device for the Deaf (TDD)

- Vancouver: 604-775-0303
- Elsewhere in B.C.: 1-800-661-8773

For more info: <http://www.justicebc.ca/en/fam/help/fjc/index.html>

## Mediation

Mediation is another process that tries to help people come to an agreement outside of court when they have a legal dispute. Instead of a judge, the person who runs the session is a mediator—someone who does not represent one side or the other, or decide who is right or wrong. Instead, mediators are neutral and work with people on both sides to find a solution that best meets everyone's needs, without going to court.

## Family mediators

Family mediators are usually lawyers or counsellors who are informed about family law and trained in mediation. You can use a family mediator and still seek the advice of a lawyer at the same time. If mediation helps everyone come to an agreement, your mediator can help you draw up that agreement in writing.

Mediators charge a fee for their services. This fee will vary depending on the mediator's training and experience and the complexity of the issues involved. You can find a family mediator at Mediate BC (see below for contact information).

## Child protection mediators

Child protection mediators help resolve disputes relating to a child involved with the ministry. Like a family mediator, a child protection mediator is a neutral person who helps you and other family members make a plan of care that is best for the child. Mediation is an option that may be tried at any time when there are concerns about a child's safety, even before the child is removed or after a court hearing.

Child protection mediators are listed on the BC Mediator Roster. They must satisfy stricter requirements than regular mediators. The BC Dispute Resolution Office and the ministry set guidelines for these special mediators, whose services are free. Ask your family's social worker for more information.

## Find a mediator

The [Mediate BC](#) can give you a directory of trained mediators.

To reach the society:

In Vancouver: 604-681-6050  
Elsewhere in BC: 1-888-713-0433 (toll free)  
Website: <http://www.mediatebc.com>  
Email: [mediators@mediatebc.com](mailto:mediators@mediatebc.com)  
Suite 177-800 Hornby St. Vancouver BC V6Z 2C5

## Family Justice Counsellors

*Family justice counsellors are accredited mediators and their services are free for eligible families. They are qualified to help families try to resolve their disagreements without going to court and are specifically trained to assist with child custody, guardianship, access, and support issues. Family justice counsellors do not provide legal advice but they can provide legal information and options. If families can come to an agreement through their services, legal documents (see previous page) can be drawn up. To find a family justice counsellor, please see previous page for website and contact information.*

## **Traditional decision-making**

Traditional decision-making is a way of settling disputes by following cultural practices. This method of decision-making can apply to many different cultural groups with extended families and close community ties. For some communities, using traditional decision-making to resolve family problems is a more effective and culturally appropriate solution to the problem. The term “traditional decision-making” is quite broad, and different areas of the province have different practices depending on the communities involved and what they are able to offer.

In the past, concerns about confidentiality meant that extended family members were not included in the discussion about what was best for children whose homes the ministry was investigating. This has changed over the past 20 years, and now, based on increasingly positive outcomes, the ministry welcomes the involvement of extended family members, especially grandparents, as well as the child’s larger cultural community.

Traditional decision-making is particularly important because of the high number of Aboriginal child welfare cases. The ministry is attempting to return some of the responsibility for child protection and family support back to the First Nations community, where by tradition it has always been.

If you believe your grandchild’s plan of care could benefit from the wisdom of your cultural community members, discuss this with your social worker.

## **Working out an agreement with the ministry**

The social worker can make several types of agreements to ensure that your grandchild is cared for. Sometimes, signing an agreement will resolve the issues that led to the ministry’s involvement regarding your grandchild’s safety. Agreements described in this section are usually made when the investigation is no longer ongoing.

If your grandchild is Aboriginal, the Aboriginal community or delegated Aboriginal agency may be involved in planning the following agreements, unless the parent or child objects to the involvement or the community or if the agency is unable to be involved.

### **Extended Family Program agreement**

When parents are temporarily unable to care for a child, the Extended Family Program supports living arrangements with someone who has a relationship with the child, such as the grandparents, but who is not the child’s legal guardian. The parent agrees to the grandparent caring for the child for up to one to two years, depending on the age of the child, and the ministry provides the grandparent with financial and other supports to care for the child, based on his or her needs.

## **Special needs agreement**

A social worker can make an agreement with someone who has custody of a child with special needs (such as physical, mental, emotional, behavioural, or communication difficulties). This agreement places the child in a foster home temporarily so they can get proper support services. Before the ministry agrees to the placement, the child's views must be considered as much as possible. You must also have a medical professional assess the child and certify that the child has needs that meet the criteria. The first term of the agreement cannot be longer than 6 months, but it can be renewed for terms of up to 12 months each.

## **Support service agreement**

A social worker can make a support service agreement with a parent or other person, such as a grandparent, who has custody of a child. The agreement outlines what support services will be provided to assist you and your grandchild. You do not pay for services provided through a support service agreement. The child stays in that person's custody, and the parent or grandparent keeps all rights to the child.

Some examples of these services are:

- services for children and youth
- counselling
- in-home support
- respite care (having a caregiver come to the home to give you some time off if your grandchild has special needs)
- parenting programs
- services to support children and youth who witness family violence

These agreements last for six months at a time and can be renewed.

## **Voluntary care agreement**

A social worker can make a voluntary care agreement with someone who has custody of a child and is temporarily unable to look after a child in their home. Under a voluntary care agreement, the child is placed in foster care on a temporary basis. The length of the agreement's first term depends on the child's age, but the agreement can be renewed to meet the family's needs—however, this type of agreement does still have time limits.

In addition to providing a voluntary care agreement as a result of a request from a child's parent, the ministry can also make a voluntary agreement with a parent in situations where a child is unable to live with his/her parent due to child protection concerns. During the time that the voluntary care agreement is in place, the social worker works with the parent to address the child protection concerns so that the family can be safely reunited.

## Youth agreement

If your grandchild is 16–19 years old and you are unable to care for them, you can suggest a youth agreement as a way for them to become independent. Your grandchild will need to discuss this with a social worker to see if they qualify. The following six criteria are applied to determine if a Youth Agreement is in the youth’s best interest:

- 1) The youth is 16 years of age or over, but under 19 years of age or if the youth is younger than 16 years but married, a parent or expecting to be a parent.
- 2) The youth is:
  - affected by a significant adverse condition, such as severe substance abuse, a significant behavioural or mental disorder, or sexual exploitation OR
  - in the care of the director under an order or agreement that is about to expire and it would be in the best interests of the youth if a Youth Agreement were in place following the expiry of the order OR
  - likely to be in need of protection.
- 3) The youth cannot be re-established in the youth’s family or has no parent or other person willing or able to assist them, and reasonable efforts to support the youth in the home of the youth’s parent or other adult person have been unsuccessful.
- 4) The youth requires additional residential, education, financial assistance and other support services available in a Youth Agreement beyond that which is available through other sources and government programs
- 5) The youth understands the responsibilities and implications of entering into the agreement
- 6) The youth demonstrates ability and readiness to:
  - Engage in supported independent living
  - implement a plan for independence
  - address and manage risks that may affect the youth’s safety and well-being.

*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](mailto:office@parentsupportbc.ca).*